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federal register

WEDNESDAY, APRIL 26, 1978

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
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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.

ATTENTION: For questions, corrections, or requests for information please see the list of telephone numbers appearing on opposite page.

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[Last listing: April 21, 1978]

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[3195-01]

Title 3—The President

Presidential Determination of April 22, 1978

Welded Stainless Steel Pipe and Tube Industry

THE WHITE HOUSE,
Washington, April 22, 1978.

TO CHAIRMAN DANIEL MINCHEW

Pursuant to Section 337(g)(2) of the Tariff Act of 1930, as amended, I have decided to disapprove of the Commission's determination concerning Certain Welded Stainless Steel Pipe and Tube, Investigation No. 337-TA-29. Enclosed is a copy of my determination.

Sincerely,

Jimmy Carter

THE HONORABLE DANIEL MINCHEW
Chairman
United States International Trade Commission
Washington, D.C. 20436

DISAPPROVAL OF THE DETERMINATION OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION IN THE MATTER OF: CERTAIN WELDED STAINLESS STEEL PIPE AND TUBE, INVESTIGATION NO. 337-TA-29

The United States International Trade Commission, acting under Section 337 of the Tariff Act of 1930, as amended, has ordered certain manufacturers, exporters, and importers of Japanese welded stainless steel pipe and tube to cease and desist from selling such products for consumption in the United States at prices below the average variable cost of production without commercial justification.

Under Section 337(g) of the Tariff Act of 1930, as amended, the President may, for policy reasons, disapprove a determination of the United States International Trade Commission issued under Section 337(f) by notifying the Commission of such disapproval within 60 days after receiving the determination of the Commission. I have today determined for policy reasons to disapprove the Commission's determination concerning "Certain Welded Stainless Steel Pipe and Tube, Investigation No. 337-TA-29," and have so notified the Commission.

The following major policy considerations entered into my decision to disapprove the Commission's determination:

1. The detrimental effect of the imposition of the remedy on the national economic interest;

2. The detrimental effect of the imposition of the remedy on the international economic relations of the United States;

3. The need to avoid duplication and conflicts in the administration of the unfair trade practice laws of the United States;

4. The probable lack of any significant benefit to U.S. producers or consumers to counterbalance the above considerations.

In this case, the Commission found a tendency to restrain trade and commerce in the United States on the ground that sales below the average variable costs of production tended to reduce the domestic market share of other foreign competitors. The Commission did not base its finding on injury to the domestic welded stainless steel pipe and tube industry. The Commission cited a factual determination that total import penetration into the domestic market had increased only from 12.2% in 1972 to 12.7% in 1976. The primary effect of approving the cease and desist order would therefore likely be limited to a shifting among foreign suppliers of their share of the present level of imports into the domestic market. This result would provide little or no benefit to the United States welded stainless steel pipe and tube industry or its employees. Nor would it significantly promote competition in the domestic industry.

Sales below cost of welded stainless steel pipe and tube have been the subject of two antidumping investigations by the Department of the Treasury, one in 1972, and another which proceeded simultaneously with the Commission's Section 337 investigation. As a result of its more recent investigation, which involved six producers accounting for approximately 85% of Japanese imports into the United States, the Treasury Department found that four firms had sales at more than minimal margins below fair value. Sales from those four firms have been referred to the Commission for an injury determination under the Antidumping Act. The Treasury Department's determination under the Antidumping Act therefore provides adequate protection against unfair trade practices described in this petition. In fact, the cease and desist order's prohibition of unjustified sales below the variable cost of production provides a more difficult standard for petitioners to satisfy than that contained in the Antidumping Act of 1921, as amended, which prohibits injurious sales below the total cost of production.

In this case, the Commission did not suspend its investigation after notifying the Secretary of the Treasury of the potential applicability of the Antidumping Act to the same subject matter. This resulted in overlapping investigations and determinations. As a result of this duplication, the imposition of the cease and desist order would be viewed by our trading partners as a precedent and a departure from internationally agreed procedures for dealing with below cost sales. Such a result would be an irritant in relations between the United States and those governments whose firms are being subjected to duplicative investigations, often at considerable expense to the parties and governments concerned. If allowed to stand, the cease and desist order would be viewed by foreign governments as undesirable harassment of their producers and as an unjustified burden on international trade. It would invite retaliation against United States exports, would complicate our current efforts to negotiate revisions of the international trading rules, and would thus be detrimental to the national economic interest and to the international economic relations of the United States.

It is this Administration's policy to administer the unfair trade practice statutes of the United States expeditiously and fairly. Unnecessary duplications and conflicts in the administration of those laws result in confusion and the inefficient use of both private and governmental resources. Unfair trade practice laws should be administered so as to provide reasonable certainty to private parties as to which forum they should devote their resources in bringing their petition. To do otherwise is to impose an unreasonable burden upon the parties, both complainants and respondents.

In this case, the detrimental effect on the national economic interest, on the international economic relations of the United States, and on the sound

administration of unfair trade practice laws that would result from approval of the determination is not counterbalanced by any likely substantial benefits to the industry, its employees, or to competition in the United States. Therefore, the present use of Section 337 where other remedies are specifically provided for by law and are in fact utilized is not justified.

For the policy reasons stated above, the Commission's determination in Investigation No. 337-TA-29 is disapproved.

[FR Doc. 78-11494 Filed 4-24-78; 4:08 pm]

[3195-01]

PROCLAMATION 4565

Law Day, U.S.A., 1978

By the President of the United States of America

A Proclamation

More than any other country, the United States of America is founded upon law. Our people are enormously varied in ethnic and cultural background, in religious belief, and even in language and place of origin. What unites us in our diversity is a common commitment to the Constitution and the laws, and the liberties they represent. These are the basis of our very Nationhood.

This year we once again set aside a special day to honor our commitment to the rule of law. For this year's observance, the American Bar Association has selected the theme of "Your Access to Justice." It is a most appropriate one, for it asks us to reflect not only upon how our legal system can be made more responsive to our needs, but also upon the nature of justice itself.

Access to justice involves issues that lie beyond the scope of any single group. The law is not the private property of lawyers, nor is justice the exclusive province of judges and juries. In the final analysis, true justice is not a matter of courts and law books, but of a commitment in each of us to liberty and to mutual respect. Accordingly, the efforts of the legal profession to elicit the help and advice of all Americans are to be commended.

To encourage the people of the United States to consider their individual responsibilities with respect to our legal system, the Congress, by joint resolution approved April 7, 1961 (75 Stat. 43, 36 U.S.C. 164) has requested the President to issue a proclamation calling upon the American people to observe the first day of May of each year as Law Day, U.S.A.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, ask all Americans to celebrate Monday, May 1, 1978, as Law Day, U.S.A., and to honor the principle of equal justice under law. I ask all public officials to display the flag of the United States on all public buildings on that day.

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

Jimmy Carter

[FR Doc. 78-11573 Filed 4-25-78; 12:05 pm]

[3195-01]

PROCLAMATION 4566

National Architectural Barrier Awareness Week, 1978

By the President of the United States of America

A Proclamation

Physical access is often the key to whether people can enjoy their rights and freedoms, and exercise their responsibilities. Every day, however, millions of elderly and handicapped Americans are denied access to places of employment, houses of worship, shops, schools, public services, recreational areas and many other facilities that other Americans take for granted.

If all Americans are to have true access, we must remove the architectural barriers in our society that block some of our people from full participation and self-reliance. We must also remove the barriers of attitude and custom that have prevented many people from doing what they can.

The Congress expressed its commitment to the removal of physical barriers from Federal buildings by enacting the Architectural and Transportation Barriers Act in 1968. The Architectural and Transportation Barriers Compliance Board, created to enforce that act, will soon launch a national media campaign about barriers using the slogan, "Access America."

This Administration has taken steps to improve the access of handicapped citizens by issuing regulations under Section 504 of the Rehabilitation Act which require recipients of federal financial assistance to improve the accessibility of their programs to the disabled. We have also proposed a loan fund to assist institutions to pay for physical alterations when needed.

Many of the barriers that block people from opportunity and fulfillment are not subject to Federal regulation. Their elimination will require awareness and concern on the part of business and industry, state and local governments and organizations of all sorts, as well as individuals, in order that our society may provide access for full participation to all our people.

To encourage public awareness of the problems of such barriers, the Ninety-fifth Congress has adopted a joint resolution (H.J. Res. 578) requesting the President to issue a proclamation designating the third week in May of 1978 and of 1979 as National Architectural Barrier Awareness Week and calling for its appropriate observance.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate the third week of May, 1978 as National Architectural Barrier Awareness Week and ask all Americans to do all that lies within their power to remove these unnecessary barriers and to eliminate any lingering social and psychological stigma surrounding disabilities. Together we can make access a reality for all Americans.

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

Jimmy Carter

[FR Doc. 78-11574 Filed 4-25-78; 12:14 pm]

rules and regulations

[3410-02]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Orange, Grapefruit, Tangerine, and Tangelo Regulation 1, Amendment 11]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES AND TANGELOS GROWN IN FLORIDA

Amendment of Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment lowers the minimum grade requirements on domestic and export shipments of Florida Honey tangerines from Florida No. 1 Golden to U.S. No. 2 Specification of minimum grade requirements for Florida Honey tangerines is necessary because of current and prospective supply and demand for the fruit, and to maintain orderly marketing conditions in the interest of producers and consumers.

DATES: The amendment is effective April 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* (1) Pursuant to the marketing agreement and Order No. 905, both as amended (7 CFR Part 905; 42 FR 59367; 61853), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations of the committee established under the marketing agreement and order, and upon other information, it is found that the regulation of shipments of tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The amendment reflects the Department's appraisal of the current and prospective supply and market demand conditions for Florida Honey tangerines. Less restrictive grade requirements for such fruit are consistent with the character of much of the fruit available for fresh shipment.

(3) It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act; and this amendment relieves restrictions on the handling of Honey tangerines.

Accordingly, it is found that the provisions of § 905.301 (42 FR 57947; 59367; 59955; 60918; 61590; 62470; 63635; 63881; 43 FR 2820; 5497; 10901) should be and hereby are amended by revising in Table I (applicable to domestic shipments of the specified fruit) and in Table II (applicable to export shipments of the specified fruit) the minimum grade applicable to Honey tangerines as follows:

§ 905.301 Orange, grapefruit, tangerine, and tangelo regulation 1.

(a) * * *

TABLE I

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
Tangerines: Honey	Apr. 21 to Sept. 24, 1978.	U.S. No. 2	2 9/16

* * * * * * *

TABLE II

Variety (1)	Regulation period (2)	Minimum grade (3)	Minimum diameter (inches) (4)
Tangerines: Honey	Apr. 21 to Sept. 24, 1978.	U.S. No. 2	2 9/16

* * * * * * *

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

Dated: April 20, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-11320 Filed 4-25-78; 8:45 am]

[3410-02]

[Lemon Reg. 141, Amdt. 2]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This action increases the quantity of California Arizona lemons that may be shipped to the fresh market during the period April 16-22, 1978. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon indutry.

DATES: The amendment is effective for the period April 16-22, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under this marketing order, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act.

The committee met on April 20, 1978, to consider supply and market conditions and other factors affecting the need for regulation, and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports inadequate allotment to fill current orders.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act. This amendment relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the act to make this regulatory provision effective as specified, and handlers have been apprised of such provision and the effective time.

Paragraph (a) of § 910.441 Lemon Regulation 141 (43 FR 15608; 16968) is amended to read as follows: "The quantity of lemons grown in California and Arizona which may be handled during the period April 16, 1978, through April 22, 1978, is established at 300,000 cartons."

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

Dated: April 21, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 78-11319 Filed 4-25-78; 8:45 am]

[1505-01]

Title 8—Aliens and Nationality

CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

PART 236—EXCLUSION OF ALIENS

RENEWAL OF APPLICATIONS FOR ADJUSTMENT OF STATUS IN EXCLUSION PROCEEDINGS

Correction

In FR Doc. 78-10577 appearing on page 16445 in the issue of Wednesday, April 19, 1978, the heading of § 236.5 was revised and inadvertently omitted. It should have read as follows:

§ 236.5 Decision of the immigration judge; notice to the applicant.

* * * * *

The heading of § 236.6 should be followed by three asterisks only.

The revised heading of § 236.8 was inadvertently omitted and should have been included to read as follows:

§ 236.8 Fingerprinting of excludable aliens.

* * * * *

[7590-01]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 2—RULES OF PRACTICE

PART 8—INTERPRETATIONS

Miscellaneous Amendments

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending certain sections of its "Rules of Practice" to facilitate public participation in its facility license application review and hearing process, to improve coordination with States, counties, and municipalities, and to make certain other improvements.

DATE: This rule becomes effective on May 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Marc R. Staenberg, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-492-7437.

SUPPLEMENTARY INFORMATION: In 1972, the Atomic Energy Commission (now the Nuclear Regulatory Commission)[1] undertook a comprehensive and in-depth examination of its Rules of Practice with a view toward expediting the decision process. As a result, comprehensive amendments to the Rules of Practice in 10 CFR Part 2 were proposed in May 1972 (37 FR 9331) and, after consideration of public comments, effective amendments were published in July 1972 (37 FR 15127).

Experience under the restructured rules suggested the desirability of certain additional improvements. Therefore, on May 2, 1977, the Commission published in the FEDERAL REGISTER (42 FR 22168) for comment proposed amendments to 10 CFR Part 2 which would facilitate public participation in its facility license application review and hearing process, improve coordination with States, counties, and municipalities, and establish more reasonable time limits in the review and hearing process.

Seventeen comments were received on the proposed rules—twelve from representatives of the nuclear power industry, two from environmentally concerned citizen groups, one from a state government, and two from individual citizens. Though the comments offered support for some of the proposed changes and no objections to certain others, there was some general concern expressed by representatives of the nuclear power industry that the extension of certain time periods in the license review and hearing process would result in a substantially lengthened hearing process. The Commission is committed to developing a hearing process which will produce decisions in a timely fashion. Therefore, the Commission has carefully considered the objections to the proposed rule change in light of current practices in the review and hearing process. It is ap-

[1] Pursuant to the Energy Reorganization Act of 1974, as amended, the Atomic Energy Commission was abolished and the Nuclear Regulatory Commission (NRC) assumed the licensing and related regulatory functions of the AEC.

parent from current practice that some of the time limits presently set out in the Rules of Practice have proven to be too short and unrealistic. As a result, a routine practice of requests and grants of extensions of time has developed. The Commission takes this opportunity to set forth more reasonable time limits for certain portions of the review and hearing process, but wishes to indicate that it expects that these new time limits will be more closely adhered to, and that there will be less reason for extensions of time in such proceedings. The final rule differs somewhat from the proposed rule in this area. Rather than attempt to modify the interplay between § 2.710 and other timing provisions, the final rule (1) makes discrete changes to time limits in specific sections to provide a slight increase in the time for responses by the Staff and by the other parties, (2) removes the somewhat confusing sentence in § 2.710 regarding exclusion of Saturdays, Sundays and holidays in calculating time limits in certain circumstances, so that Saturdays, Sundays and holidays are now always included unless specifically excluded by the presiding officer and (3) revokes the General Counsel's interpretation of § 2.710 (found at 10 CFR § 8.3) regarding inclusion of Saturdays, Sundays and holidays in calculating time limits. The effects of these changes are to increase slightly the time limits and to simplify the calculation of time limits by allowing for straight calculation of days including Saturdays, Sundays and holidays. It is the Commission's expectation that these changes will lead to a more simplified hearing and prehearing process without any significant delays.

The specific amendments are further described below.

1. *Petitions to intervene.* The present rule, § 2.714, requires that petitions for leave to intervene include both the petitioner's contentions and an affidavit which sets forth with particularity how petitioner's interest may be affected and the bases for petitioner's contentions in the proceeding. Current practice has generally provided 30 days between the date a notice of hearing or notice of proposed action on an application for a nuclear power plant construction permit or operating license is published in the FEDERAL REGISTER and the last date for filing of timely petitions for leave to intervene. In contrast, the time generally required for complete review of the application for a nuclear power plant construction permit or operating license is over one year. Any contested hearings on such applications would likely commence more than six months after the expiration of the time for receipt of timely intervention petitions.

Experience has indicated that 30 days is often insufficient for potential petitioners to frame and support adequate contentions. It has become common practice for parties and petitioners in nuclear power plant licensing proceedings to discuss informally the framing of contentions until just before the special prehearing conference which is held some months or more after expiration of the 30 day period for timely petitions pursuant to § 2.751a. During this period the contentions are frequently revised based on the discussions among the parties and petitioners. Often the petitioners and parties will be able to present the presiding atomic safety and licensing board with an agreed upon set of contentions at the special prehearing conference. This practice reduces unnecessary controversy and litigation and should be encouraged. Accordingly, the rules are amended to permit the filing of contentions until shortly before the special prehearing conference. In this connection, § 2.751a, which generally provides for a special prehearing conference within 60 days after the notice of hearing, is amended to generally provide for a special prehearing conference within 90 days of the notice of hearing. This amendment more closely conforms with present practice. Timely petitions to intervene which address the petitioners' interest in the proceeding will still be filed within the initial 30 day period. At the same time, adequate time for discovery and preparation for hearing should remain, so that the time required for completion of the formal hearing process should be the same. This represents no change from the proposed rule.

At present, § 2.714(c) provides that answers to a petition for leave to intervene must be filed by a party within 5 days afer the petition for leave to intervene is filed. The Staff is given 10 days to answer. Experience has indicated that the present time limits are too short. As proposed, the time allowed to answer petitions is increased to 10 days for parties and to 15 days for the Staff. As a consequence of the interplay between these amendments and the amendments to § 2.710, described above, only a few days additional time will in fact result.

As proposed, the requirement that an affidavit accompany petitions to intervene is also abolished. Experience has shown that such affidavits do not serve a useful purpose at this early stage in licensing proceedings. Furthermore, the seriousness and accuracy of petitioners' contentions are adequately ensured by the requirement that all testimony at the hearing must be given under oath.

2. *Late filing of petitions and contentions.* At present, § 2.714 provides that late filed petitions will not be admitted absent a determination that petitioner has made a substantial showing of good cause and with reference to a balancing of specified factors. There is no provision in § 2.714 which specifically addresses the matter of amending or expanding contentions after a petitioner has been admitted as a party. Yet contentions are frequently expanded or amended because of new information which comes to light after petitioners have been admitted, such as information in the Commission Staff's safety evaluation or environmental impact statements.

The Commission believes that § 2.714 should be amended in the interest of clarifying the requirements in regard to both late filings of petitions and amending, expanding, and deleting contentions. First, § 2.714 is amended to outline clearly the factors which need to be considered and balanced before the presiding officer passes upon the admissibility of late filings. In essence, the amendment codifies the Commission's decision *In the Matter of Nuclear Fuel Services, Inc., and New York State Atomic and Space Development Authority* (1 NRC 273), which makes clear that the reason for the untimely filing is one factor to be balanced along with others in determining whether a late filing will be admitted. Second, § 2.714 is revised to specifically provide that late filed contentions (a contention or amended contention which is filed after 15 days prior to the special prehearing conference, or where there is no special prehearing conference, which is filed after 15 days prior to the first prehearing conference) will be considered for admission under the clarified criteria set forth in subparagraph (a)(1). Third, revised § 2.714 is intended to make clear that late filed contentions must meet the same requirements as timely filed contentions. That is, a proposed contention must be set forth with particularity and with the appropriate factual basis. Finally, this section has been generally reorganized to make the language more clear and to incorporate the present practice of granting intervention based upon adequate interest and at least one adequate contention. These changes represent no change from those in the proposed rule.

3. *Time for staff answers and mailings.* The proposed rule would have amended § 2.710 (computation of time) to adjust the interplay between § 2.710 and other sections of the rule which purported to provide the Staff with additional time. Based upon comments and further consideration, it is believed that the better course is to amend the individual sections of the rule and amend § 2.710 to provide for straight calculation of time and thereby abolish the exclusion of intermediate Saturdays, Sundays and holidays.

Therefore, the final rule deletes the sentence in § 2.710 and footnote reference to § 8.3, and revokes the General Counsel interpretation of § 2.710 contained in § 8.3, which indicated in what circumstances Saturdays, Sundays and holidays were to be excluded from the computation of days. Instead, weekends and holidays will henceforth be included in the computation of time unless specifically ordered otherwise by the presiding officer.

In this regard, the time limits in the individual sections of the rule (§§ 2.706, 2.714(c), 2.730(c), 2.740(f), 2.740a(f), 2.743(b), 2.749(a), 2.754, 2.762(a), 2.771(b) and 2.788) have been increased to take account of this new manner of computation as well as to provide some small additional time, in fact, to parties and Staff.

As proposed, the final rule increases the time allowed for service by mail from 3 to 5 days.

4. *Expanded participation: Limited appearances at prehearings, interested counties and cities, and "Amicus" participation.* Section 2.715 sets forth the ground rules for limited appearances at NRC proceedings and for participation by interested States without the necessity for their being admitted as a party under § 2.714. This form of participation by members of the public and the States has been a welcome and valuable part of the Commission's licensing proceedings.

(a) At present, § 2.715(a) provides for limited appearances, at the presiding officer's discretion, during the course of a proceeding. This discretion has been exercised to permit limited appearances at a hearing but has generally excluded such appearances at prehearing conferences. Since prehearing conferences often precede the hearing by several months, members of the public attending prehearing conferences are sometimes understandably disappointed when they learn that their limited appearance must be postponed until some uncertain date in the future. Experience indicates that members of the public are often interested in making their limited appearances early in the licensing process. Therefore, as proposed, § 2.715(a) is amended to clarify that limited appearances may be allowed at prehearing conferences as well as at the hearing.

(b) Section 2.715(c) of the Commission's Rules of Practice permit interested States to participate in NRC licensing proceedings without taking a position with respect to the issues. Pursuant to section 161 of the Atomic Energy Act, which grants broad discretionary authority to the Commission to obtain information, make investigations or hold hearings as it deems necessary, this type of cooperation could be extended to other units of government which also have an interest in the licensing proceeding. Therefore, § 2.715(c) is expanded to include interested cities, counties, and agencies thereof. In addition, § 2.715(c) is amended to specifically provide that such interested States, counties, cities, and agencies thereof may, in addition to participation at the hearing, file proposed findings of fact and conclusions of law pursuant to § 2.754, file exceptions (appeals) pursuant to § 2.762 and petition for review by the Commission pursuant to § 2.786. It is, however, further provided that the presiding officer may require such participants to indicate, in advance of the hearing, the subject matters on which they desire to participate. These amendments conform to present practice and represent no change from the proposed rule.

(c) At present, there is no specific provision in Part 2 for participation in appeals before the Atomic Safety and Licensing Appeal Board or Commission by a person in an "amicus" capacity on particular legal or factual issues. Although discretion already rests with the Commission or Appeal Board to permit such "amicus" participation, a new paragraph (d) is added to § 2.715 to set forth specifically the guidelines for such participation. It is envisioned that a person who is not a party and who seeks to so participate will move for permission to file a brief in support of an existing party. Oral argument will be granted to such persons at the discretion of the Appeal Board or the Commission. This provision is as proposed.

5. *Consolidated and joint hearings with States.* At present, the rules (§§ 2.402 and 2.716) provide that the Commission may consolidate for hearing two or more proceedings if it finds that consolidation is desirable. There appears to be no good reason why such authority should only rest with the Commission or Atomic Safety and Licensing Appeal Board. Therefore, as proposed, the authority to consolidate two or more proceedings is hereby extended to Atomic Safety and Licensing Boards.

Also, § 2.716 is amended to provide specific authority to hold joint hearings with States and/or other Federal agencies on matters of concurrent jurisdiction provided that the Commission's Rules of Practice are not waived. Joint hearings promise to minimize duplication in the reviews by the Commission, State and/or Federal agencies, and improve State and interagency coordination. Whether joint hearings should be held will be determined on a case-by-case basis.

These changes allowing Atomic Safety and Licensing Boards to consolidate hearings or to hold joint hearings with other agencies are expected to be used to avoid costly and time-consuming duplication of effort. Consolidation would only be proper when such action is separately approved by each of the affected Licensing Boards. Joint hearings would similarly be appropriate only where approved by the Board and each of the State or other Federal agencies involved.

6. *Earlier filing of written testimony.* At present, § 2.743(b) provides that written testimony must be served on each other party at least 5 days in advance of the session of the hearing at which the testimony is to be presented. In light of experience which suggests that 5 days is often too short for review of testimony, the time for filing testimony is amended to 15 days in advance of the hearing at which it will be presented. This amendment also responds to a petition for rule making filed with the Commission by Forelaws on Board and the Coalition for Safe Power (Docket No. PRM-2-3). The petitioners requested that § 2.743(b) be changed to provide that written testimony be filed "at least thirty (30) days in advance of the hearing * * * unless otherwise agreed upon by all parties and the presiding officer." Notice of receipt of the petitions and a request for public comment was published on September 7, 1976 (41 FR 37605). One comment, opposed to the petition, was received.

The Commission has given consideration to the petition, comment, and its own experience in changing the time for filing testimony from 5 days to 15 days in advance of the hearing. It was necessary, in reaching this position, to balance the needs of parties to have adequate time to consider written testimony and prepare for the hearing, with the Commission's goal of avoiding unwarranted delays. The Commission believes that the 30 day period suggested by petitioners would be unnecessarily long in the majority of cases. At the same time, the rules allow the presiding officer flexibility to impose a greater than 15 day period for advance filing of written testimony—including 30 days—in complex cases. This represents no change from the proposed rule.

7. *Summary disposition.* (a) Motions for summary disposition have proved to be a very valuable tool for disposing of issues which have little arguable merit. However, § 2.749 does not provide adequate time limits for such motions. At present, motions for summary disposition must be filed 10 days before the time fixed for the hearing and answers must be filed 2 days before the date of hearing.

Usually such motions are filed well before these dates and contain an extensive factual presentation. Thus, these filing times do not give parties a reasonable period of time in which to respond nor the presiding officer adquate time to consider the response.

Therefore, as proposed, § 2.749 is amended to require that (1) motions

for summary disposition be filed at least 45 days before the time fixed for evidentiary hearings and (2) answers be filed within 20 days after service of the motion, unless other time limits are specified by the presiding officer. It is expected that this will facilitate responses to motions for summary disposition and consideration of the motions and answers by presiding boards. It is hoped that with adequate time, last minute delays in commencement of hearings caused by such motions may be avoided.

(b) Section 2.749 is also amended to broaden its applicability. At present, § 2.749 states that, "any party to an *initial licensing proceeding* may . . . move . . . for decision . . ." There appears to be no reason to limit the use of summary disposition solely to initial licensing actions. By deleting the reference to "initial licensing", summary disposition may be utilized in other of the Commission's adjudicatory proceedings, such as enforcement proceedings.

8. *Findings and conclusions.* Review of § 2.754, which sets forth the time requirements for the filing of findings of fact and conclusions of law, revealed an apparent inconsistency between the general language of paragraph (a) and the more specific provision of paragraph (b). In addition, experience suggests that the time limits established in paragraph (b) are too short.

Therefore, as proposed, §§ 2.754 (a) and (b) are revised to clarify the time requirements under which parties must file, unless otherwise provided by the presiding officer. In addition, the time allowed parties, pursuant to subparagraphs (a)(1) and (a)(2), to file their findings and conclusions is increased. It is expected that this increased time will allow sufficient time for the filing of findings and conclusions in ordinary cases.

9. *Application of time limits to decisions on limited work authorizations.* Section 2.760(a) is amended to clarify that final action is considered to be taken 45 days after a decision on a limited work authorization. This amendment simply includes limited work authorizations among those licensing matters that become final 45 days after the initial decision by the presiding officer.

10. *Additional briefing time on exceptions to initial decisions.* (a) At present, § 2.762(a) provides that within 7 days after service of an initial decision, any party may take an appeal to the Commission by the filing of exceptions to that decision or designated portions thereof. Section 2.762(a) further provides that briefs in support of exceptions must be filed within 15 days (20 days for the Staff) after the filing of exceptions. Experience has shown that these time periods are often too short. The result has been that parties do not have adequate opportunity to thoroughly consider the initial decision and brief exceptions.

Therefore, as proposed, § 2.762(a) is amended to provide that exceptions, if any, must be filed within 10 days after service of the initial decision and that briefs in support of exceptions must be filed within 30 days (40 days for the Staff) after the filing of exceptions.

(b) Section 2.762(b) likewise provided 15 days and 20 days to parties and staff, respectively, when such party wished to file a brief in support of or opposition to a brief filed pursuant to § 2.762(a). In order to maintain consistency between § 2.762 (a) and (b), the final rule reflects that the time allowed for briefs filed pursuant to § 2.762(b) shall be 30 days for parties and 40 days for the staff. It is hoped that these changes will offer sufficient time for improved briefs and less reason for filing requests for additional time.

In promulgating these amendments, the Commission recognizes both an obligation to the segment of the public participating in the Commission's licensing process to provide an adequate forum for the consideration and resolution of their concerns, and a responsibility to the general public to arrive at sound licensing decisions in a timely fashion. The Commission expects that these amendments will improve the hearing process without causing significant delays in reaching sound licensing decisions.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, notice is hereby given that the following amendments of 10 CFR Part 2 are published as a document subject to codification. Since the new amendments described in paragraphs 3, 7(b), 9 and 10(b) of the preamble constitute rules of agency procedure and practice, notice of proposed rulemaking and public procedure thereon are not required by section 553 of Title 5 of the United States Code.

§ 2.402 [Amended]

1. In § 2.402(b) of 10 CFR Part 2, the expression "or presiding officers of each affected proceeding" is inserted immediately following the phrase "the Commission".

§ 2.706 [Amended]

2. In § 2.706, the phrase "five (5) days" is changed to "ten (10) days".

§ 2.710 [Amended]

3. In § 2.710, the sentence "When the period of time is less than seven (7) days, intermediate Saturdays, Sundays and holidays are excluded." is deleted, the phrase "three (3) days" is changed to "five (5) days" and the footnote 2 referencing § 8.3 (32 FR 11379) is deleted.

4. In § 2.714, paragraphs (a), (b) and (c) are revised to read as follows:

§ 2.714 Intervention.

(a)(1) Any person whose interest may be affected by a proceeding and who desires to participate as a party shall file a written petition for leave to intervene. In a proceeding noticed pursuant to § 2.105, any person whose interest may be affected may also request a hearing. The petition and/or request shall be filed not later than the time specified in the notice of hearing, or as provided by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, or as provided in § 2.102(d)(3). Nontimely filings will not be entertained absent a determination by the Commission, the presiding officer or the atomic safety and licensing board designated to rule on the petition and/or request, that the petition and/or request should be granted based upon a balancing of the following factors in addition to those set out in paragraph (d) of this section:

(i) Good cause, if any, for failure to file on time.

(ii) The availability of other means whereby the petitioner's interest will be protected.

(iii) The extent to which the petitioner's participation may reasonably be expected to assist in developing a sound record.

(iv) The extent to which the petitioner's interest will be represented by existing parties.

(v) The extent to which the petitioner's participation will broaden the issues or delay the proceeding.

(2) The petition shall set forth with particularity the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, including the reasons why petitioner should be permitted to intervene, with particular reference to the factors in paragraph (d) of this section, and the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes to intervene.

(3) Any person who has filed a petition for leave to intervene or who has been admitted as a party pursuant to this section may amend his petition for leave to intervene. A petition may be amended without prior approval of the presiding officer at any time up to fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.751a, or where no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference. After this time a petition may be amended only with approval of the presiding officer, based on a balancing of the fac-

tors specified in paragraph (a)(1) of this section. Such an amended petition for leave to intervene must satisfy the requirements of this paragraph (a) of this section pertaining to specificity.

(b) Not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.751a, or where no special prehearing conference is held, fifteen (15) days prior to the holding of the first prehearing conference, the petitioner shall file a supplement to his petition to intervene which must include a list of the contentions which petitioner seeks to have litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies the requirements of this paragraph with respect to at least one contention will not be permitted to participate as a party. Additional time for filing the supplement may be granted based upon a balancing of the factors in paragraph (a)(1) of this section.

(c) Any party to a proceeding may file an answer to a petition for leave to intervene within ten (10) days after the petition is filed, with particular reference to the factors set forth in paragraph (d) of this section. However, the staff may file such an answer within fifteen (15) days after the petition if filed.

* * * * *

§ 2.714a [Amended]

5. In § 2.714a(a), the phrase "within five (5) days" is changed to "within ten (10) days" wherever it appears.

6. In § 2.715, paragraph (a) is amended by adding the phrase "at any session of the hearing or any prehearing conference" immediately following the phrase "on the issues", paragraph (c) is revised and a new paragraph (d) is added to read as follows:

§ 2.715 Participation by a person not a party.

* * * * *

(c) The presiding officer will afford representatives of an interested State, county, municipality, and/or agencies thereof, a reasonable opportunity to participate and to introduce evidence, interrogate witnesses, and advise the Commission without requiring the representative to take a position with respect to the issue. Such participants may also file proposed findings and exceptions pursuant to §§ 2.754 and 2.762 and petitions for review by the Commission pursuant to § 2.786. The presiding officer may require such representative to indicate with reasonable specificity, in advance of the hearing, the subject matters on which he desires to participate.

(d) If a matter is taken up by the Appeal Board on appeal or sua sponte or by the Commission pursuant to § 2.786 or sua sponte, a person who is not a party may, in the discretion of the Appeal Board or the Commission, respectively, be permitted to file a brief "amicus curiae". A person who is not a party and desires to file a brief must submit a motion for leave to do so which identifies the interest of the person and states the reasons why a brief is desirable. Except as otherwise provided by the Commission or the Appeal Board, such brief must be filed within the time allowed to the party whose position the brief will support. A motion of a person who is not a party to participate in oral argument before an Appeal Board or the Commission will be granted at the discretion of the Appeal Board or the Commission.

7. Section 2.716 is revised to read as follows:

§ 2.716 Consolidation of proceedings.

On motion and for good cause shown or on its own initiative, the Commission or the presiding officers of each affected proceeding may consolidate for hearing or for other purposes two or more proceedings, or may hold joint hearings with interested States and/or other federal agencies on matters of concurrent jurisdiction, if it is found that such action will be conducive to the proper dispatch of its business and to the ends of justice and will be conducted in accordance with the other provisions of this subpart.

§ 2.730 [Amended]

8. In § 2.730(c), the phrase "within 5 days" is changed to "within ten (10) days" and the present phrase "within 10 days" if changed to "within fifteen (15) days".

§ 2.740 [Amended]

9. In § 2.740(f), the phrase "within five (5) days" is changed to "within ten (10) days".

§ 2.740a [Amended]

10. In § 2.740a(f), the phrase "Within seven (7) days" is changed to "Within ten (10) days".

§ 2.743 [Amended]

11. In § 2.743(b), the expression "five (5) days" is changed to "fifteen (15) days".

§ 2.749 [Amended]

12. In § 2.749(a), the expression "an initial licensing" is deleted and replaced by "a", the phrase "ten (10) days" in the first sentence is changed to "forty-five (45) days" and the phrase "at least two (2) days before the date of the hearing" in the third sentence is changed to "within twenty (20) days after service of the motion".

§ 2.751a [Amended]

13. In § 2.751a(a), the expression "sixty (60) days" is changed to "ninety (90) days".

14. In § 2.754, paragraphs (a) and (b) are revised to read as follows:

§ 2.754 Proposed findings and conclusions.

(a) Any party to a proceeding may, or if so directed by the presiding officer shall, file proposed findings of fact and conclusions of law, briefs and a proposed form or order or decision within the time provided by the following subparagraphs, except as otherwise ordered by the presiding officer:

(1) The party who has the burden of proof shall, within twenty (20) days after the record is closed, file proposed findings of fact and conclusions of law and briefs, and a proposed form of order or decision.

(2) Other parties may file proposed findings, conclusions of law and briefs within thirty (30) days after the record is closed. However, the staff may file such proposed findings, conclusions of law and briefs within forty (40) days after the record is closed.

(3) A party who has the burden of proof may reply within ten (10) days after service of proposed findings and conclusions of law and briefs by other parties.

(b) Failure to file proposed findings of fact, conclusions of law or briefs when directed to do so may be deemed a default, and an order or initial decision may be entered accordingly.

* * * * *

§ 2.760 [Amended]

15. In § 2.760(a), the expression "or limited work authorization" is inserted immediately following the expression "the issuance or amendment of a license" and immediately preceding the expression "for a facility".

§ 2.762 [Amended]

16. In § 2.762(a) the expression "7 days" is changed to "ten (10) days", the expression "fifteen (15) days" is changed to "thirty (30) days" and the phrase "(twenty (20) days in the case of the staff)" is changed to "(forty (40) days in the case of the staff)." In § 2.762(b) the expression "fifteen (15) days" is changed to "thirty (30) days" and the phrase "(twenty (20) days in the case of the staff)" is changed to "(forty (40) days in the case of the staff)."

§ 2.771 [Amended]

17. In § 2.771(b), the phrase "Within seven (7) days" is changed to "Within ten (10) days".

§ 2.788 [Amended]

18. In § 2.788, paragraphs (a) and (d) are amended by changing the phrase

"Within seven (7) days" in each to "Within ten (10) days".

Appendix A—[Amended]

19. In section II(a) of Appendix A to 10 CFR Part 2, the expression "Sixty (60) days" is changed to "ninety (90) days".

20. In section III of Appendix A, paragraphs (a)(1) and (a)(2) are revised to read as follows:

III. INTERVENTION AND LIMITED APPEARANCES

(a)(1) As required by § 2.714, a person who wishes to intervene must set forth, in a petition for leave to intervene, his interest in the proceeding and how the interest may be affected by Commission action. Petitions for leave to intervene shall, as a basis for enabling the board or the Commission to determine how the petitioner's interest may be affected by the proceeding, set forth (i) the nature of his right under the Act to be made a party to the proceeding, (ii) the nature and extent of the interest that may be affected by the proceeding, and (iii) the effect of any order which may be entered in the proceeding on the petitioner's interest. The petition must identify the specific aspects as to which the petitioner wishes to intervene and set forth with particularity the facts pertaining to his interest. The petitioner must file a supplement to his petition containing his contention(s) and basis therefor not later than fifteen (15) days prior to the holding of the special prehearing conference pursuant to § 2.751a. After consideration of any answers to the petition, the board will rule on the petition. If the board finds that the petitioner's interest is limited to one or more of the issues in the proceeding, the intervenor's participation will be limited to those issues.

Petitions and supplements thereto which set forth contentions relating only to matters outside the jurisdiction of the Commission will be denied. In any event, the granting of a petition for leave to intervene does not operate to enlarge the issues, or become a basis for receipt of evidence, with respect to matters beyond the jurisdiction of the Commission.

(2) Petitions for leave to intervene which are not filed within the time specified in the notice of hearing will not be granted unless the board determines that the petition should be granted based upon paragraph (a)(1) of this section and upon a balancing of (i) good cause, if any, for petitioner's failure to file on time, (ii) the availability of other means whereby the petitioner's interest will be protected, (iii) the extent to which petitioner's participation may reasonably be expected to assist in developing a sound record, (iv) the extent to which petitioner's interest will be represented by existing parties, and (v) the extent which the petitioner's participation will broaden the issues or delay the proceedings.

* * * * *

21. In section V(d)(2) of Appendix A, the expression "at least 5 days" is changed to "at least 15 days".

21. In section IX(d)(1) of Appendix A, the phrase "within 7 days" is changed to "within 10 days" and the third sentence is revised to read as follows: "A brief in support of the exceptions shall be filed by the appellant within 30 days thereafter (40 days in the case of the staff)".

§ 8.3 [Reserved]

22. Section 8.3 of 10 CFR Part 8 is hereby revoked and reserved.

* * * * *

(Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 201, as amended, Pub. L. 93-438, 88 Stat. 1243, Pub. L. 94-79, 89 Stat. 413 (42 U.S.C. 5841).)

Dated at Washington, D.C. this 19th day of April, 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-11215 Filed 4-25-78; 8:45 am]

[7590-01]

PART 51—LICENSING AND REGULATORY POLICY AND PROCEDURES FOR ENVIRONMENTAL PROTECTION

Summary of Environmental Considerations for Uranium Fuel Cycle; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Effective clarifying amendment to Table S-3 and Response to petition for Rulemaking filed on behalf of the New England Coalition on Nuclear Pollution (Docket No. PRM-51-1).

SUMMARY: The Nuclear Regulatory Commission is correcting certain errors which appear in the docket published in FR Doc. 78-9952.

FOR FURTHER INFORMATION CONTACT:

Ms. Jane A. Axelrad, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone: 301-492-7437.

In FR Doc. 78-9952, appearing at page 15613, in the issue for Friday, April 14, 1978, make the following corrections:

1. On page 15613, third column, eighth line, the heading is corrected by deleting the words "Uranium Fuel Cycle Impacts From Spent Fuel Reprocessing and Radioactive Waste Management" and by replacing them with "Summary of Environmental Considerations for Uranium Fuel Cycle."

2. On page 15616, third column, fourth paragraph, fifth line, the word "curries" should read "curies".

3. On page 15617, first column, footnote 1 (as amended), twenty-ninth line, the word "transporatation" should read "transportation".

Dated at Washington, D.C. this 20th day of April, 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-11232 Filed 4-25-78; 8:45 am]

[3128-01]

CHAPTER II—FEDERAL ENERGY ADMINISTRATION [1]

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Appeal from Interpretations; Correction

AGENCY: Department of Energy.

ACTION: Final rule; correction.

SUMMARY: The purpose of this notice is to correct an inadvertent error in the regulation amendments issued by the Department of Energy (DOE) on March 31, 1978 (43 FR 14436, April 6, 1978), eliminating administrative appeals from interpretations issued by the Office of General Counsel.

EFFECTIVE DATE: April 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles Cope (Office of General Counsel) 12th and Pennsylvania Avenue NW. Room 1119, Washington, D.C. 20461, 202-566-9070.

SUPPLEMENTARY INFORMATION: The regulation amendments issued by DOE on March 31, 1978, eliminating administrative appeals from interpretations issued by the Office of the General Counsel, contained an inadvertent error in the words of issuance in amendment No. 3. As published in the first column on page 14437 in FR Doc. 78-9033, the words of issuance provided as follows: "In § 205.85(a) the words 'on his delegate' are added after the words 'General Counsel'." The reference to § 205.85(a) is erroneous. Consistent with the notice of proposed rulemaking in this respect (43 FR 3468, January 26, 1978), it was § 205.82, not § 205.85(a), which DOE intended to amend in amendment No. 3. Accordingly, reference to "§ 205.85(a)" in the words of issuance in amendment No. 3 is deleted and "§ 205.82" is substituted therefor.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L.

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[1] Editorial Note: Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Department of Energy.

93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385; E.O. 11790, 39 FR 23185; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267.)

Issued in Washington, D.C., April 20, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration,
Department of Energy.

[FR Doc. 78-11266 Filed 4-25-78; 8:45 am]

[1505-01]

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

PART 303—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Appeal from Interpretations

Correction

In FR Doc. 78-9033 appearing at page 14436 in the issue for Thursday, April 6, 1978, at the top of the first column of page 14437, above the signature, the date of issuance should have read ". . . March 31, 1978." instead of ". . . March 34, 1978."

[6714-01]

Title 12—Banks and Banking

CHAPTER III—FEDERAL DEPOSIT INSURANCE CORPORATION

SUBCHAPTER A—PROCEDURE AND RULES OF PRACTICE

PART 309—DISCLOSURE OF INFORMATION

Adoption of Amendments of Regulation

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation revises its regulation on the disclosure of confidential information. The revision is intended to simplify the procedures for public access to confidential FDIC records.

DATE: Effective on April 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Douglas H. Jones, Legal Division, Federal Deposit Insurance Corp., 550 17th Street NW., Washington, D.C. 20429, 202-389-4433.

SUPPLEMENTARY INFORMATION: Section 309.6 of the rules and regulations of the Federal Deposit Insurance Corporation ("FDIC") delegates the responsibility for the release by FDIC employees of specified confidential information. (12 CFR 309.6). It also provides the procedures for members of the public to request access to confidential FDIC records. On July 1, 1977, the FDIC published in the FEDERAL REGISTER (42 FR 33715) notice of the revision of its regulations for the disclosure of information. This revision was intended to accomplish two things: (1) To simplify and update the procedures followed by the FDIC in disclosing records it maintains; and (2) to clarify and provide greater authority at the divisional level of the FDIC for disclosures which previously required the authorization of the Chairman of the FDIC's Board of Directors. Experience under these procedures and delegations since their adoption has indicated a need to clarify the existing delegations and to expand the authority of FDIC employees to disclose information. These revisions will enable the FDIC to respond more quickly to requests from the public for access to confidential information.

In addition to the revision of section 309.6, the Board of Directors of the FDIC has decided to make available to the public all reports of condition and reports of income filed with the FDIC by FDIC insured banks that are state chartered and not members of the Federal Reserve System ("insured State nonmember banks"). Beginning in January of 1973, the FDIC made all reports of condition and reports of income filed by insured State nonmember banks on or after December 31, 1972, publicly available. Because banks that had submitted reports prior to December 31, 1972, had never been informed the reports would be released to the public, it was determined that these reports would continue to be held in confidence. The Board of Directors has now determined there is no longer a need to withhold these reports. This decision was based on the fact that material submitted prior to December 31, 1972, is now quite old and more recent reports submitted by the banks have been made public. Moreover, it was felt that the availability of this information may be helpful to the public. Therefore, §309.4(b)(1) is revised to provide for the public release of all reports of condition and reports of income submitted to the FDIC by banks.

These revisions are authorized under paragraphs "Seventh" and "Tenth" of section 9 of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1819 "Seventh" and "Tenth").

Because these amendments and revision affect only internal FDIC policy, the Board of Directors has determined, pursuant to §302.6 of the rules and regulations of the FDIC (12 CFR 302.6), that public participation in the rulemaking is unnecessary and that good cause exists for the waiver of the thirty-day period before the amendments and revision become effective. The Board of Directors of the FDIC, therefore, adopts the amendments and revision as follows:

1. Section 309.2 is amended by revising paragraph (c) and adding paragraph (g) to read as follows:

§309.2 Definitions.

For purposes of this part:

* * * * *

(c) The words "disclose " or "disclosure", as used in §309.6, mean to give access to a record, whether by producing the written record or by verbal discussion of its contents. In addition, where the Corporation employee authorized to release Corporation documents makes a determination that furnishing copies of the documents is necessary, the words "disclose" or "disclosure" include the furnishing of copies of documents or records.

* * * * *

(g) The words "he", "his", or "him" shall also refer to the feminine gender where appropriate.

§309.4 [Amended]

2. Section 309.4(b)(1) is amended by deleting the phrase "on or after January 1, 1973".

3. Section 309.6 is amended by revising paragraph (c) to read as follows:

§309.6 Disclosure of exempt records by Corporation Personnel.

* * * * *

(c) *Disclosure authorized.* Exempt records of the Corporation may be disclosed in accordance with the following conditions and requirements. With respect to disclosures authorized by §309.6(c)(1), (2)(i), (3), (4), (5), (6), exempt records may be disclosed on a routine or periodic basis. Routine or periodic disclosures may be made under the authority of §309.6(c)(3), (4)(ii), (6), without any further request, only if: a written request for the records is received and the request specifies that the record be furnished to the requestor on a routine or periodic basis; and the Corporation employee authorized to disclose the record determines that routine or periodic disclosure is appropriate. *In any instance in which copies of FDIC reports of examination or other confidential records are furnished under the provisions of this §309.6(c), all copies of the reports of examination and*

other information so furnished shall remain the property of the Corporation and under no circumstances shall the individual, concern or agency (or any director, officer, employee or agent of the foregoing) disclose or make public in any manner the reports or exempt records without express written authorization from the Director of the Corporation's Division of Bank Supervision as provided in § 309.6(c)(7).

(1) *Reports of examination and other exempt records—disclosure to bank.* The Director of the Corporation's Division of Bank Supervision, or any one designated by him in writing, may disclose to any director or authorized officer, employee or agent of any bank, information contained in, or copies of, reports of any examination of the bank and other exempt records pertaining to that bank.

(2) *Reports of examination and other exempt records—disclosure to State banking agencies.* (i) The Director of the Corporation's Division of Bank Supervision, or anyone designated by him in writing, may disclose to any authorized officer or employee of any State agency or authority which exercises general supervision over banks copies of any report of examination or other exempt records to the extent the report or records pertain to a State chartered bank supervised by the agency or authority. (ii) The Director of the Corporation's Division of Bank Supervision, or anyone designated by him in writing, may disclose to any authorized officer or employee of any State agency or authority which exercises general supervision over banks copies of any exempt Corporation records pertaining to a bank or institution which the agency or authority does not supervise. Before any such information may be released, it is the responsibility of the Corporation employee authorized to disclose the information to make an affirmative determination that the requestor is authorized to request the records on behalf of the agency or authority and that the records are requested for a legitimate bank supervisory or regulatory purpose.

(3) *Reports of examination and other exempt records—disclosure to Federal Financial institution supervisory agencies.* The Director of the Corporation's Division of Bank Supervision, or anyone designated by him in writing, may disclose to any officer or employee of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, any Federal Reserve Bank, the Federal Home Loan Bank Board, any Federal Home Loan Bank, and the National Credit Union Adminstration any report of examination of a bank or any other exempt records. Before information is released to any employees of the above listed Federal financial institution supervisory agencies, it is the responsibility of the Corporation employee authorized to disclose the information to make an affirmative determination that the requestor is authorized to request the record on behalf of the agency and that the records are requested for a legitimate bank supervisory or regulatory purpose.

(4) *Reports of examination and other exempt records—disclosure to nonbanking agencies.* (i) The Director of the Corporation's Division of Bank Supervision, or anyone designated by him in writing, may disclose to the proper Federal or State prosecuting or investigatory authorities copies of exempt records pertaining to irregularities discovered in banks which are believed to constitute violations of any Federal or State civil or criminal law, or unsafe or unsound banking practices. (ii) The Director of the Corporation's Division of Bank Supervision, or anyone designated by him in writing, may disclose to any authorized officer or employee of any Federal or State agency or authority, for good cause shown, reports of any examination of a bank or other exempt records, *Provided,* That such records shall be disclosed only in response to a written request which: (A) is signed by an authorized official of the agency making the request; (B) identifies the record or records to which access is requested; and (C) gives the reasons for the request.

(5) *Evaluations of bank data centers, bank service corporations and data centers—disclosure to servicers and to serviced institutions.* The Director of the Corporation's Division of Bank Supervision, or anyone designated by him in writing, may disclose copies of any Corporation examination report of a bank data center, a bank service corporation or any other data center that provides data processing or related services to an insured institution (hereinafter referred to as "data center") to: (i) the examined data center; (ii) any insured institution that receives data processing or related services from the examined data center; (iii) any State agency or authority which exercises general supervision over an institution serviced by the examined data center; and (iv) any Federal financial institution supervisory agency which exercises general supervision over an institution serviced by the examined data center. The Federal supervisory agency may disclose any such examination report received from the Corporation to an insured institution over which it exercises general supervision and which is serviced by the examined data center.

(6) *Reports of examination and other exempt records—disclosure to third parties.* Except as otherwise provided in § 309.6(c)(1) through 309.6(c)(5), the Director of the Corporation's Division of Bank Supervision, or anyone designated by him in writing, may disclose copies of any report of examination of a bank or data center or other exempt records to any third party where requested to do so in writing. Any such written request shall: (i) specify the record or records to which access is requested; and (ii) give the reasons for the request. Any Corporation employee authorized to disclose exempt Corporation records to third parties may disclose the records only upon determining that good cause exists for the disclosure. Either prior to or at the time of any disclosure, the Corporation employee shall impose such terms and conditions as he deems necessary to protect the confidential nature of the record, the financial integrity of any bank to which the record relates, and the legitimate privacy interests of any individual named in such records.

(7) *Reports of examination and other exempt records—disclosure by banks or other third parties.* (i) The Director of the Corporation's Division of Bank Supervision may authorize any director, officer, employee, or agent of a bank to disclose copies of any report of examination or other exempt record in his custody to anyone who is not a director, officer or employee of the bank. Such authorization may be given only in response to a written request from the party seeking the record or from management of the bank to which the report or record pertains. Any such request shall specify the record sought, the party's interest therein and the party's relationship to the bank to which the record relates. (ii) The Director of the Corporation's Division of Bank Supervision may authorize any third party, including Federal or State agencies, that has received a copy of a Corporation report of examination or other exempt record to disclose such report or exempt record to another party or agency. such authorization may be given only in response to a written request from the party that has custody of the copy of the Corporation report or record. Any such request shall specify the report or record sought to be disclosed and the reasons why disclosure is necessary. (iii) With respect to any disclosure that is authorized under this § 309.6(c)(7), the Director of the Corporation's Division of Bank Supervision shall permit the disclosure of the records only upon determining that good cause exists for the disclosure. Before authorizing the disclosure, the Director of the Corporation's Division of Bank Supervision may require that both the party having custody of a copy of a Corporation report of examination or record and the party seeking access to the report or record agree to such limitations as the Director of the Corporation's Division

of Bank Supervision deems necessary to protect the confidential nature of the record, the financial integrity of any bank to which the record relates, and the legitimate privacy interests of any individual named in such report or record.

(8) *Production of exempt records and testimony of Corporation personnel.* The Corporation's General Counsel, or anyone designated by him in writing, may produce or authorize the production of any exempt record in response to a valid subpoena, court order, or other legal process and may authorize any officer, employee, or agent of the Corporation to appear and testify regarding any exempt record at any administrative or judicial hearing or proceeding where such person has been served with a valid subpoena, court order, or other legal process requiring him to so testify. The General Counsel, or anyone designated by him in writing, may produce or authorize the production of any exempt record sought in connection with any hearing or proceeding without the service of a subpoena, or other process requiring production, if he determines that the records to be produced are relevant to the hearing or proceeding and that production is in the best interests of justice. Where the General Counsel authorizes the production of any exempt record, or the testimony of any officer, employee or agent of the Corporation relative thereto, pursuant to this § 309.6(c)(8), he shall limit his authorization to so much of the record or testimony as is relevant to the issues at the hearing or proceeding, and he shall give his authorization only upon fulfillment of such conditions as he deems necessary to protect the confidential nature of the record consistent with any requirement that it be produced and made a part of the record of the hearing or proceeding.

(9) *Disclosures by corporation division or office heads.* Except as otherwise provided in §§ 309.6(c)(1) through 309.6(c)(8), each head of a Corporation Division or Office may disclose any exempt record which is in the custody of and was created by or originated in the Division or Office he supervises. Any such disclosure shall be made only: (i) upon receipt of a written request specifying the record sought and the reason why access to the record is necessary; and (ii) after the Division or Office head determines that disclosure of the record is in the public interest and not detrimental to any individual or concern.

(10) *Authority of the chairman of the corporation's board of directors.* Except where expressly prohibited by law, the Chairman of the Corporation's Board of Directors may authorize the disclosure of any Corporation records. Except where disclosure is required by law, the Chairman of the Corporation's Board of Directors may direct any officer, employee or agent of the Corporation to refuse to disclose any record if the Chairman determines that refusal to permit such disclosure is in the best interests of the Corporation and is not contrary to the public interest.

(11) *Limitations on disclosure.* Any disclosure permitted by this § 309.6(c) is discretionary and nothing in this § 309.6(c) shall be construed as requiring the disclosure of information. Further, nothing in this § 309.6(c) shall be construed as restricting, in any manner, the authority of the Board of Directors, the Chairman of the Board of Directors, the Director of the Corporation's Division of Bank Supervision or anyone designated by him in writing, the Corporation's General Counsel or anyone designated by him in writing, or any other Corporation Division or Office head, in their discretion and in light of the facts and circumstances attendant in any given case, to impose conditions upon and to limit the form, manner, and extent of any disclosure permitted hereunder.

By order of the Board of Directors, April 19, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[FR Doc. 78-11270 Filed 4-25-78; 8:45 am]

[3510-12]

Title 15—Commerce and Foreign Trade

CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 904—FINANCIAL COMPENSATION OF PARTICIPANTS IN ADMINISTRATIVE PROCEEDINGS

Criteria and Procedures

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

ACTION: Final rulemaking.

SUMMARY: These rules establish criteria and procedures for reimbursing members of the public for the costs of participation in administrative proceedings conducted by NOAA. The intended effect of this action is to provide a mechanism for compensation of participants in proceedings of the agency in accordance with the criteria established in this regulation.

DATES: These rules will go into effect on May 26, 1978.

ADDRESS: Office of General Counsel, National Oceanic and Atmospheric Administration, Room 5807, U.S. Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT:

Patrick J. Travers, Office of General Counsel, National Oceanic and Atmospheric Administration, Room 310, Page Building No. 1, 3300 Whitehaven Street NW., Washington, D.C. 20235, telephone 202-634-4245.

SUPPLEMENTARY INFORMATION: On August 11, 1977, the National Oceanic and Atmospheric Administration (NOAA) published a notice of proposed rulemaking on financial compensation of participants in NOAA administrative proceedings, 42 FR 40711. At that time, NOAA invited interested persons to comment on the proposed rules. The comment period was extended, and the administrative record of the rulemaking made available for routine public inspection, through notices published on November 14, 1977, 42 FR 58958, and on March 9, 1978, 43 FR 9623. The comment period closed on March 25, 1978.

NOAA has received 23 comments on the proposed rules, submitted on behalf of 39 organizations. We appreciate the interest of those who commented, and are grateful for the resources devoted to the preparation of the comments. Each comment has been carefully reviewed and considered with the other materials in the administrative record. On the basis of this review and consideration, NOAA has prepared the final rules set forth below.

In accordance with 5 U.S.C. § 553(d), the final rules will go into effect May 26, 1978.

NECESSITY OF THE RULES

Few of the comments treated in great detail the question whether financial assistance to persons who would otherwise be unable to participate in NOAA administrative proceedings would so improve the quality of NOAA decisionmaking as to justify the associated expense. Some commenters suggested that public participation in agency proceedings is already sufficiently broad. They contended that representatives of affected interests will come forward whether or not they are offered the prospect of agency funding. Commenters also expressed the fear that the increased number of participants resulting from, and the burden of administering, a financial assistance program would seriously disrupt agency processes and delay agency action. One commenter suggested that financial assistance programs would hinder the expansion efforts of the energy industry. Another commenter stated that, if financial assistance programs are to be established, this should be done under

uniform guidelines applicable to all agencies.

Although one commenter offered this rulemaking as an example of a proceeding in which a wide range of businesses, trade associations, and public interest organizations of varying sizes had enjoyed access to the decisionmaking process, the commenters did not in general include factual evidence to support their assertions that a financial assistance program would be unnecessary, or even harmful.

This lack of data was also a feature of most comments asserting that financial assistance programs like the one proposed are necessary for sound agency decisionmaking. Among those taking this position was a Federal agency that alleged the costs of participation in administrative proceedings to have caused a severe imbalance of access to the decisionmaking process of regulatory agencies. This commenter noted the support of the present Administration for increased public participation in agency proceedings, and urged study and analysis of the financial assistance programs of the Federal Trade Commission and the Consumer Product Safety Commission. A trade association of party-boat owners commented that it had been prevented from participating in the development of fishery conservation and management measures by a lack of funds, noting that it represented a fragmented industry serving unorganized recreational fishers. Another commenter pointed out that businesses that participate in agency proceedings are authorized to treat the associated costs as business expenses for tax purposes.

In view of the lack of factual evidence in the comments, NOAA has turned to its own experience for guidance as to the desirability of a financial assistance program. NOAA's administrative actions are subject to the judicial review provisions of the Administrative Procedure Act (APA), 5 U.S.C. Chapter 7. Under the APA, a NOAA action may be reversed if the reviewing court finds, on the basis of the administrative record, that the action was arbitrary and capricious or that it was not based on substantial evidence. 5 U.S.C. 706. Knowing that their actions will be judged on the basis of the evidence and arguments submitted to them through the prescribed proceedings, and thus included in the administrative record, NOAA decisionmakers must of necessity focus upon those items in formulating their final action while giving little, if any, consideration to materials not in the record. Among the items in the administrative record, the prospect of judicial review causes most attention to be given to sophisticated legal arguments and to carefully compiled and verified evidence. In many NOAA proceedings, particularly those dealing with marine mammal protection and fishery conservation and management, such arguments and evidence can be provided only through the expenditure of substantial sums of money on professional, technical and clerical services. When a hearing is involved, these materials can be presented fully only through the expenditure of further sums on transportation and other expenses incidental to attendance at the hearing.

NOAA thus perceives a real danger that, in the absence of a financial assistance program like the one proposed, important interests and viewpoints that it should consider in formulating its actions will be inadequately considered because their proponents lack the financial resources to participate in the prescribed NOAA proceedings on a basis comparable to that of proponents of opposing views. Because this possibility has serious implications for the quality of NOAA's decisionmaking, NOAA has concluded that it is necessary to implement a financial assistance program like the one proposed on an indefinite trial basis. As the program is implemented, NOAA will attempt to determine the effect, if any, that the program has on the range of interests and viewpoints that are represented adequately in NOAA administrative proceedings.

Legal Authority for the Rules

The main issue dealt with in the comments was whether or not NOAA has the legal authority to implement a financial assistance program like the one proposed.

In its notice of proposed rulemaking of August 11, 1977, NOAA cited as authority for the proposed rules the statutory appropriation of funds "[f] or expenses necessary for the National Oceanic and Atmospheric Administration. . . ." Pub. L. No. 95-86, Title III, 91 Stat. 419, 431 (1977). It noted that several decisions of the Comptroller General, particularly B-92288 of February 19, 1976, and B-180224 of May 10, 1976, had stated that an agency was authorized to provide similar financial assistance on the authority of similarly broad statutory language if the agency determined that such assistance was necessary for the performance of its functions. NOAA acknowledged, however, that on June 30, 1977, the United States Court of Appeals for the Second Circuit had specifically disapproved B-92288 in *Greene County Planning Board* v. *Federal Power Commission*, 565 F.2d 807 (2d Cir. 1977), *cert. den.*, —— U.S. —— (February 21, 1978).

As was expected, many commenters argued that the *Greene County* decision undercut any claim of authority that NOAA might have had under its appropriation act and the Comptroller General's decisions for the implementation of the proposed financial assistance program. NOAA believes the *Greene County* decision was poorly reasoned and incorrect. In NOAA's view, the decision is deficient in at least two respects:

(a) It disregards the principle of *Udall* v. *Tallman* 380 U.S. 1, 16 (1965), by failing to accord deference to the Comptroller General's construction of an appropriation act.

(b) It unjustifiedly assumes that recent cases, forbidding courts and agencies to shift attorney fees from the prevailing party in a proceeding to another unwilling party without specific statutory authority, govern the question whether an agency may reimburse the expenses of a participant in a proceeding itself without imposing corresponding levies on other participants and without regard to whether the reimbursed party "prevailed" in any sense.

On September 27, 1977, the General Counsel of NOAA joined the chief legal officers of six other Federal agencies in requesting the Solicitor General to support the petition for certiorari then before the United States Supreme Court in the *Greene County* case, even though the Government had prevailed in the Court of Appeals and would normally have opposed the petition. The Solicitor General subsequently filed a brief in support of the petition for certiorari, and requested that the Supreme Court vacate the *Greene County* decision. The Supreme Court nevertheless denied certiorari on February 21, 1978. The Supreme Court's denial of the petition for certiorari did not involve an evaluation of the merits of the case.

Subsequent to the denial of certiorari in *Greene County*, the Assistant Attorney General for the Office of Legal Counsel, in a letter of March 1, 1978, to the General Counsel of the Department of Transportation, expressed the opinion that the *Greene County* decision involved only a construction of the Federal Power Act and that, as a result, no department or agency other than the successor to the Federal Power Commission is bound by the decision. Based upon this Justice Department opinion, NOAA does not consider the *Greene County* decision to be a legal obstacle to implementation of the proposed financial assistance program. NOAA also believes that the *Greene County* case can be distinguished from the circumstances that NOAA confronts because the Federal Power Commission had found that financial assistance to the parties requesting it in *Greene County* was not necessary to the performance of the Commission's functions. NOAA's proposed rules would authorize assistance only in situations in which NOAA has

determined that such assistance is necessary for the performance of its mission.

Many commenters treated the question of NOAA's authority to implement the proposed program independently of the controversy surrounding *Greene County.* Some commenters were disturbed by the generality of the statutory language relied upon by NOAA. NOAA acknowledges the sweeping character of this language. It continues, however, to rely upon the Comptroller General opinions cited in the notice of proposed rulemaking as authoritative constructions of similar language by the agency charged by Congress with the enforcement of the appropriations statutes. In this connection, NOAA emphasizes that, contrary to the belief of some commenters, the Comptroller General was not in these opinions purporting to allow uses of appropriated funds other than the uses permitted by Congress. The Comptroller General was attempting to determine what uses Congress had authorized through its enactment of extremely broad statutory language, and he decided in these opinions that financial assistance like that proposed by NOAA was one of those uses.

One commenter suggested that appropriation acts are to some degree inferior to other acts of Congress, and should not be relied on to the same extent as authorities for agency action. NOAA does not preceive a basis for the proposed distinction in either theory or practice.

Many commenters suggested that because Congress has specifically authorized certain agencies, such as the Federal Trade Commission, to provide financial assistance like that proposed by NOAA, Congress should be considered to have withheld that authority from all other agencies. While this argument has merit, NOAA does not consider it to be dispositive in view of the following statement of the conference committee that deleted specific financial assistance authority for the Nuclear Regulatory Commission from the Energy Reorganization Act of 1974:

> . . . because there are currently several cases on the subject pending before the Commission, it would be best to withhold Congressional action until these issues have been definitely determined. The resolution of these issues will help the Congress determine whether [such a] provision . . . is necessary since it appears that there is nothing in the Atomic Energy Act, as amended, that would preclude the Commission from reimbursing parties where it deems it necessary.

H. Rep. No. 93-1445 at 37 (1974). The Nuclear Regulatory Commission was the agency dealt with in Comptroller General's Opinion No. B-92288.

Some commenters argued that the Comptroller General's statement in Opinion B-92288 that "it would be advisable for the parameters of such financial assistance, and the scope and limitations on the use of appropriated funds for this purpose to be fully set forth by the Congress in legislation" was an implied directive to Federal agencies to withhold action on such financial assistance programs until Congress acted. Neither NOAA nor, to the best of NOAA's knowledge, the Comptroller General, reads this language as anything more than a recommendation to Congress.

Some commenters questioned NOAA's authority to implement a program having the scope of the one it has proposed on the basis of the following language from Opinion B-92288:

> [I]f NRC in the exercise of its administrative discretion, determines that it *cannot make the required determination* unless it extends financial assistance to certain interested parties who require it, and whose participation is *essential* to dispose of the matter before it, we would not object to use of its appropriated funds for this purpose.

Comp. Gen. Op. No. B-92288, February 19, 1976, at 4 [emphasis added].

These commenters argued that this passage should be read conservatively, so that the most NOAA could claim authority for under Opinion B-92288 would be financial assistance to parties without whose participation a NOAA proceeding would be totally paralyzed. The Comptroller General eschewed this position in Opinion No. B-139703 of December 3, 1976, 56 Comp. Gen. 111, in which he stated:

> While our decision to NRC did refer to participation being "essential," we did not intend to imply that participation must be absolutely indispensable. We would agree . . . that it would be sufficient if an agency determines that a particular expenditure for participation "can reasonably be expected to contribute substantially to a full and fair determination of" the issues before it, even though the expenditure may not be "essential" in the sense that the issues cannot be decided at all without such participation. Our previous decision, B-92288, . . . may be considered modified to this extent.

56 Comp. Gen. 113.

Some commenters argued that the Comptroller General's opinions relied upon by NOAA authorize financial assistance only to persons or organizations that are "indigent." Opinion No. B-92288, however, authorized the agency to provide financial assistance.

> . . . when it finds that the intervenor is indigent *or otherwise unable to bear the financial costs of participation in the proceedings.*

Comp. Gen. Op. No. B-92288, at 7 [emphasis added].

Several commenters argued that the proposed financial assistance program is prohibited under such cases as *Alyeska Pipeline Service Company* v. *Wilderness Society,* 421 U.S. 240 (1975), and *Turner* v. *Federal Communications Commission,* 514 F.2d 1354 (D.C. Cir. 1975), which forbade courts and agencies to shift attorney fees from prevailing parties to other unwilling parties to proceedings before them. As was noted above in the discussion of *Greene County,* NOAA believes that its proposed program is totally different from the involuntary fee shifting dealt with in *Alyeska* and *Turner.*

On the basis of the preceding discussion, NOAA concludes that it has the legal authority to establish and implement a financial assistance program like the one it has proposed.

Specific Inquiries of the Notice of Proposed Rulemaking

In its notice of proposed rulemaking of August 11, 1977, NOAA requested comment on ten specific questions concerning the proposed program. The comments received on these questions are discussed below.

1. Should attorneys' fees and other assistance be provided in all administrative proceedings conducted by NOAA?

Most commenters who replied to this question stated that NOAA should not at this time categorically limit the kinds of proceedings in which financial assistance to participants would be considered. Their underlying assumption appeared to be that experience in the operation of the program would be needed before sound limitations could be formulated. Some commenters urged that assistance be considered even in NOAA proceedings not involving a hearing, including negotiations that obviate the need for a hearing and the consultations that often take place before the issuance of a notice of proposed rulemaking. One commenter asked whether participants in hearings on draft environmental impact statements would be considered for financial assistance under NOAA's proposal. Other commenters urged that NOAA limit the kinds of proceedings in which assistance might be granted in the final rules.

NOAA agrees with the commenters who believe that it lacks the experience to formulate at this time detailed limitations on the kinds of proceedings in which assistance will be considered. Because the danger that financial considerations will interfere with equal access to the decisionmaking process is greatest when a hearing is involved, however, the program will for the time being be limited to proceedings involving a hearing.

In considering whether hearings on draft environmental impact statements would be included in the program as it was described in the proposed rules, NOAA focused on the

statement of scope contained in proposed section 904.1. This section would have authorized assistance.

> . . . in any adjudication, enforcement, or rulemaking proceeding involving a hearing in which there may be public participation pursuant to statute, regulation, or agency practice. . . .

Because the scope of the term "Adjudication" is not entirely clear, and in order to ensure that proceedings such as hearings on draft environmental impact statements are not categorically excluded from the program's coverage, the quoted language has been changed in the final rules to read as follows:

> . . . in any NOAA proceeding involving a hearing in which there may be public participation pursuant to statute, regulation, or agency practice. . . .

Thus, under the final rules, financial assistance to participants is authorized in any NOAA proceeding involving a hearing. Whether or not such assistance will be granted in any single proceeding will depend on the particular circumstances and the funds available.

One commenter suggested that NOAA reimburse the expenses of parties to litigation against it that has contributed to a clarification of its responsibilities. The suggestion is beyond the scope of this rulemaking.

2. Should the standard for providing attorney's fees and other assistance be the standard in the regulation, or should the standard be expanded to include applicants who represent an interest which contributes or can reasonably be expected to contribute substantially to a fair determination of the proceedings and applicants whose economic interest in the outcome is small in comparison to the costs of effective participation?

While some commenters favored adoption of the broader standard set forth in the question, NOAA has decided that it should not be adopted in view of the specific disapproval of the standard by the Comptroller General in Opinion No. B-139703 of December 3, 1976, 56 Comp. Gen. 114-15. The Comptroller General stated there that the standard for providing financial assistance must, in the absence of specific statutory authority, incorporate a criterion of financial need.

One commenter suggested that the criterion of small economic interest in the outcome relative to the costs of participation be *added* to the criteria of substantial contribution to a fair determination and financial need that are provided for in the proposed rules. In this way, prospective participants having comparatively great economic interests in the outcome would not be eligible for financial assistance even if they faced immediate difficulty in financing their participation. In view of NOAA's position that the public interest requires the broadest possible participation, rather than the participation or nonparticipation of any particular type of entity, this suggestion will not be adopted.

3. What financial eligibility criteria should be adopted?

Some commenters suggested that assistance be given only to participants found to be "indigent." This suggestion appears to be based on the view that indigency is required under the Comptroller General's opinions relied upon by NOAA, a view that was rejected above.

The comments contained almost no discussion of substantive standards of financial need. NOAA believes that the formulation of such standards must await the acquistion of experience under the new program. The broad standard set forth in proposed § 904.3(a)(2) will therefore be retained. This standard does not require "indigency," and the Administrator will give full consideration to a wide range of circumstances that might cause applicants to lack sufficient resources of their own for participation in a proceeding.

Most of the comments on this question dealt with the procedures to be followed in determining financial eligibility for assistance. NOAA agrees with the commenters who pointed out that case by case evaluation of each applicant will require some loss of privacy and the making of judgments about applicants' management of their resources. It will also impose an additional administrative burden on NOAA and on the applicants themselves. NOAA is not convinced, however, that the difficulties posed by these requirements are so great as to justify either a decision to provide no financial assistance at all or the exemption of entire categories of participants from financial disclosure requirements of the kind provided for in the proposed rules.

In considering applications for assistance, NOAA will attempt to confine its evaluation of the program and policy priorities of any applicant to the process of determining the applicant's comparative ability to contribute substantially to a fair determination of the proceedings. Once an applicant has been determined to be eligible under the substantial contribution criterion, its program and policy priorities will not be considered in determining its eligibility under the financial need criterion. Under no circumstances will assistance be denied or its amount affected on the ground that an applicant opposes NOAA or a position supported by NOAA in another proceeding.

One commenter suggested that a participant must have "standing" of the kind required for participation in judicial proceedings before it might be considered for financial assistance. NOAA administrative proceedings are open to all interested persons, and participation in those proceedings does not depend upon satisfaction of any standing requirement.

In evaluating the financial needs of applicants for assistance, NOAA will make every effort to take into account the differing financial situations confronting businesses and nonprofit organizations, each of which enjoys certain advantages and is subject to certain disadvantages in the mobilization of financial resources that do not apply to the other.

4. Should attorneys' fees and other assistance be available to those with an economic interest in the outcome or limited to those whose participation benefits the general public or has a strong public interest justification?

One commenter was under the impression that the proposed rules would disqualify those having economic interests in the outcome from receiving assistance through their incorporation of the following subcriterion, appearing in proposed § 904.3(a)(1)(iv):

> The need to encourage participation by segments of the public who, as individuals, may have little economic incentive to participate. . . .

This language is not intended to disqualify those having substantial economic interests in the outcome from receiving assistance. It is only one of five subcriteria for determining whether an applicant will contribute substantially to a fair determination of the proceedings.

Some commenters urged that those with an economic interest in the outcome of a proceeding be disqualified from receiving financial assistance, while others took the opposite view. NOAA believes that the public interest is served by the widest possible participation in its proceedings by all persons with an individual interest in the outcome, whether or not that interest is economic. It therefore declines to incorporate in the final rules a blanket disqualification of persons having an economic interest in the outcome of a proceeding. For the same reason, NOAA does not believe that the criteria for eligibility should incorporate a comparison of the magnitude of the economic interest of an applicant with the cost of that applicant's participation in a proceeding beyond what already appears in proposed § 904.3(a)(1)(iv).

5. What procedures and criteria should NOAA adopt for (a) evaluating the quality of a participant's potential contribution to the resolution of a hearing; (b) determining the importance of the issue(s) to be heard; (c) assessing the strength of a participant's interest or the uniqueness of a participant's point of view; and (d) distinguishing among equally capable

participants all of whom want to receive financial support for participation in the same proceeding?

The commenters noted a number of considerations that NOAA would have to take into account in making these determinations, including professional and technical expertise, past interest and involvement in the problem at issue, and accountability to the class of persons allegedly represented. NOAA agrees, however, with those commenters who suggested that the formulation of procedures and criteria more specific than the ones contained in the proposed rules would have to be based upon experience in administering the program.

NOAA will not require that the participation of an applicant be "essential" for the reaching of a decision before financial assistance will be given. This is in accordance with the present position of the Comptroller General, discussed above.

One commenter suggested that competition for financial assistance among public interest groups will not be a major problem, because those groups are accustomed to forming coalitions for the sharing of resources. This, too, is a point that may or may not be borne out by experience with the program. NOAA does not believe that the purposes of the program will be advanced by giving automatic preference to those applicants who have devoted some of their own resources to participation in a proceeding before finding out whether they have been awarded assistance by NOAA. Neither would those purposes be served by establishing priorities among equally qualified applicants on the basis of the dates of their applications.

NOAA will not require that parties receiving assistance present facts that would otherwise not be presented to the agency in the proceeding. A distinctive interpretation of a line of argument based on facts that have been demonstrated by other participants will be sufficient for consideration of an application for assistance.

6. Should the number of participants who may be subsidized in any one proceeding be limited? If so, what should the number be?

Most of the commenters on this question stated that there should be no limitation in the final rules on the number of participants in any proceeding who might receive assistance. Two commenters urged that a limit of one award of assistance in any proceeding should be established. NOAA does not believe it has sufficient information at this time to establish a numerical limit on those receiving assistance in a proceeding, and will therefore refrain from incorporating such a limit in the final rules.

7. Who should determine eligibility for compensation?

Several commenters suggested that NOAA establish an independent office for the consideration of applications for assistance. At the present time, the expense of establishing such an office would probably consume a large part of the funds that might otherwise be available for assistance, and therefore will be avoided.

One commenter suggested that the decision be made by the administrative law judge in formal proceedings. Several others suggested that it be made by the NOAA General Counsel. The arguments for these alternatives were not, however, compelling enough for NOAA to abandon the procedure prescribed in the proposed rules, under which applications would be processed through the General Counsel's office, with the final decisions made by the Administrator.

One commenter suggested that applicants have the opportunity to appeal the Administrator's decision to the Secretary of Commerce. In NOAA's view, this procedure would disrupt the administrative process without resulting in significant modification of financial assistance decisions.

8. What criteria should NOAA adopt for determining whether the costs of participation incurred by a participant are reasonable or necessary for participation?

None of the commenters on this question seemed to object seriously to the "prevailing market rates" standard of proposed § 904.5(c). Several commenters did, however, object to that provision's limitation of attorney, expert, and consultant fees to the amounts paid for such services by NOAA. NOAA believes, however, that specific congressional authorization would be advisable before it pays private attorneys and experts at rates higher than it is authorized to pay its own employees, particularly in view of the incorporation of such a ceiling in the specific statutory authority of the Federal Trade Commission to grant financial assistance.

9. Should reimbursable costs be limited to certain costs, but not all costs, *e.g.*, the cost of travel, but not the costs of salaries of persons regularly employed by the participant?

While many commenters argued that any cost incurred as a result of participation in a NOAA proceeding should be considered for reimbursement, other commenters suggested that one or more kinds of costs should be excluded. NOAA did not find the reasons given for the proposed exclusions to be sufficiently strong to warrant adoption of the exclusions, at least until they have been substantiated by experience. The inclusive provisions of proposed section 904.5(d) are, therefore, retained in the final rules.

One commenter suggested that the cost of preparing the application to NOAA for assistance should be included in reimbursable costs under the program. While NOAA is willing to consider claims for such costs during the early stages of the program on a case-by-case basis, such claims will not be favored to the extent that they threaten to reduce the total number of assisted participants.

10. What consideration should NOAA give to alternative ways of providing advocacy assistance to participants, *e.g.*, establishment of a public counsel within the agency to represent consumer interests in hearings; and what support should NOAA give for establishment of an independent agency to advocate consumer interests?

Most commenters seemed to regard these questions as beyond the scope of this rulemaking, and their remarks were too sparse to justify extended treatment here. NOAA will continue to investigate alternative ways of accomplishing the purposes of the final rules set forth below.

General Comments

Some commenters suggested that establishment of the program would embroil NOAA in litigation brought by disappointed applicants for assistance. While this possibility should not be dismissed lightly, NOAA believes that courts will not be inclined to overturn the kind of factual determinations upon which NOAA's decisions under this program will be based.

Some commenters appeared to believe that this program would cover proceedings before the Regional Fishery Management Councils established under the Fishery Conservation and Management Act of 1976 (FCMA). It will not cover proceedings before the Councils, but will cover NOAA proceedings under the FCMA.

Several commenters expressed general unease about the vagueness of the standards proposed for the program and the subjectivity inherent in NOAA's evaluation of applications for assistance. NOAA believes that general standards are necessary until it has enough practical experience to formulate more specific standards. It believes that the dangers of subjectivity can be minimized through the preparation of written determinations on the eligibility of each applicant for assistance. Because these written determinations will be required in the final rules, NOAA has decided not to adopt the suggestion that the names of those granted and refused assistance be published in the Federal Register, which is another possible device for checking subjectivity in financial assistance decisions.

One commenter suggested that NOAA should coordinate its financial assistance actions with those of all other Federal agencies under uniform

guidelines. NOAA considers early implementation of this program to be more important than uniformity of procedure among all Federal agencies, the attainment of which could take years.

One commenter questioned the need for this program because it believed that the agency staff should represent the public interest. While it is the ultimate responsibility of NOAA's employees to determine what agency actions will be in the best interest of the public, they must have the broad public input that this program is intended to foster if they are to determine where the public interest lies.

One commenter suggested that, because implementation of this program may shift the political balance in NOAA proceedings, it should have been left to Congress. As was discussed above, NOAA believes that this program is necessary to carry out the duties that Congress has assigned it. Operation of the program, like all NOAA activities, will be subject to regular Congressional oversight.

One commenter urged that NOAA incorporate in the proposed rules a provision for recovery of assistance provided a participant who engaged in dilatory tactics during the proceeding. This commenter also suggested a contractual provision under which those assisted would agree to compensate other parties that might be injured by their misconduct during the proceeding. The latter suggestion would put those receiving assistance on an unequal footing relative to other parties, and is not acceptable. In NOAA's view, the probability that a misbehaving participant would never again receive assistance is a sanction sufficient to obviate the need for adoption of the first suggestion.

One commenter urged that NOAA provide a reserve fund in each proceeding to accommodate late requests and supplemental assistance for unanticipated expenses. Such a fund would be permissible under the final rules, but its establishment in any proceeding occurring in the near future may be impractical due to the shortage of available funds.

One commenter suggested that those hoping to receive assistance under the program might become less diligent in their other fundraising activities. Under the final rules, NOAA is requiring applicants to describe their fundraising efforts, which will be evaluated as part of the determination of financial need.

One commenter questioned NOAA's statement in the notice of proposed rulemaking that the proposal did not require preparation of an economic impact analysis under Executive Orders 11821 and 11949. In view of the aggregate amount of funds likely to be involved in this program for the foreseeable future, NOAA adheres to that statement.

Dated: April 19, 1978.

RICHARD A. FRANK,
Administrator.

Chapter IX of 15 CFR is amended by adding the following Part 904:

PART 904—FINANCIAL COMPENSATION OF PARTICIPANTS IN ADMINISTRATIVE PROCEEDINGS

Sec.
904.1 Purpose.
904.2 Definitions.
904.3 Criteria for financial compensation.
904.4 Submission of applications by participants.
904.5 Amount of financial compensation and procedures for payment.

AUTHORITY: Title III, Pub. L. 95-86, 91 Stat. 419, 431.

§ 904.1 Purpose.

The Administrator may provide compensation for reasonable attorneys' fees, fees and costs of experts, and other costs of participation incurred by eligible participants in any NOAA proceeding involving a hearing in which there may be public participation pursuant to statute, regulation, or agency practice, whenever the Administrator determines that public participation in such a proceeding promotes or can reasonably be expected to promote a full and fair determination of the issues involved in the proceeding.

§ 904.2 Definitions.

As used herein: (a) "NOAA" means the National Oceanic and Atmospheric Administration;

(b) "Administrator" means the Administrator of NOAA;

(c) "Applicant" means any person who has filed a timely application for compensation;

(d) "Person" means any person as defined in section 551(2) of 5 U.S.C. and includes a group of individuals with similar interests.

§ 904.3 Criteria for Financial Compensation.

(a) Any person is eligible to receive compensation under this section for participation (whether or not as a party) in NOAA proceedings referred to in § 904.1 if:

(1) The person represents an interest the representation of which contributes or can reasonably be expected to contribute substantially to a fair determination of the proceeding, taking into account:

(i) Whether the person represents an interest which is not adequately represented by a participant other than the agency itself;

(ii) The number and complexity of the issues presented;

(iii) The importance of public participation;

(iv) The need to encourage participation by segments of the public who, as individuals, may have little economic incentive to participate;

(v) The need for representation of a fair balance of interests; and

(2) The person demonstrates to the satisfaction of the Administrator that such person does not have sufficient resources available to participate effectively in the proceedings in the absence of compensation under § 904.1.

(b) In order to facilitate public participation, the Administrator shall make written determinations, giving reasons therefor, of the eligibility of an applicant for compensation under § 904.1, and the amount and computation of such compensation. The determinations required by this paragraph shall be made as soon as practicable after receipt of an application for compensation, unless the Administrator makes an express written finding that all or any part of the determination relating to the amount or computation of such compensation cannot practicably be made at the time the initial determination of eligibility is made. The Administrator shall make such determination after consideration of the maximum amounts payable for compensation under § 904.5 for the proceedings and requests or possible requests for compensation under § 904.1 by other eligible participants in the proceeding.

(c) The Administrator may require consolidation of duplicative presentations, select one or more effective representatives to participate, offer compensation only for certain categories of expenses, or jointly compensate persons representing identical or closely related viewpoints.

§ 904.4 Submission of applications by participants.

(a) A participant must submit a written application to the Administrator in order to be authorized to receive compensation. This application shall be submitted as soon as practicable after publication of notice of the proceeding in the FEDERAL REGISTER. Applications shall be addressed to: Office of General Counsel, National Oceanic and Atmospheric Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Each application shall contain, in a sworn statement, the following information in the form specified:

(1) The applicant's name and address, and in the case of an organization, the names, addresses, and titles of the members of its governing body and a description of the organization's general purposes, structure, and tax status;

(2) An identification of the proceeding for which funds are requested;

(3) A description of the applicant's economic, social, and other interests in

the outcome of the proceeding for which funds are requested;

(4) A discussion of the reasons why the applicant is an appropriate representative of those interests, including the expertise and experience of the applicant in the matters involved in the proceeding for which funds are requested and in related matters;

(5) An explanation of how the applicant's participation would enhance the quality of the decisionmaking process and serve the public interest by contributing views and data which would not be presented by another participant;

(6) A statement of the total amount of funds requested;

(7) With respect to the proceeding for which funds are requested, an itemized statement of the expenses to be covered by the requested funds and of the expenses to be covered by the applicant's funds;

(8) A description of the evidence, activities, studies or other submissions that will be generated by each of those expenditures;

(9) An explanation of how the requested funds would result in enhancing the quality of the applicant's participation in the proceeding for which funds are requested;

(10) An explanation of why the applicant cannot use funds that it already possesses or expects to receive for the purpose for which funds are requested, including:

(i) A listing of the applicant's anticipated income and expenditures (rounded to the nearest $100) during the current fiscal year; and

(ii) A listing of the total assets and liabilities of the applicant as of the date of the application.

(11) An explanation of why the applicant cannot in other ways obtain the funds that are requested, including a description of the applicant's past efforts to obtain those funds in other ways and the feasibility of future attempts to raise funds in other ways; and

(12) A list of all proceedings of the Federal Government in which the applicant has participated during the past year (including the interest represented and the contribution made) and any amount of financial assistance received from the Federal Government in connection with these proceedings.

§ 904.5 Amount of financial compensation and procedures for payment.

(a) The Administrator may establish a limit on the total amount of financial compensation to be made to all participants in a particular proceeding and/or may establish a limit on the total amount of compensation to be made to any one participant in a particular proceeding.

(b) The Administrator shall compensate participants only for costs that have been authorized and only for such costs actually incurred for participation in a proceeding.

(c) The Administrator shall compensate participants only for costs that he or she determines are reasonable. The amount of reasonable attorneys' fees, fees and costs of experts, and other costs of participation awarded under § 904.1 shall be based upon prevailing market rates for the kind and quality of the goods and services, as appropriate, furnished, except that no attorney, expert or consultant shall be compensated at a rate in excess of the highest rate of compensation for attorneys, experts, consultants, and other personnel with comparable experience and expertise paid by NOAA.

(d) The Administrator may compensate participants for any or all of the following costs:

(1) Salaries for participants or employees of participants;

(2) Fees for consultants, experts, contractual services, and attorneys that are incurred by participants;

(3) Transportation costs;

(4) Travel related costs such as lodging, meals, tipping, telephone calls, etc.; and

(5) All other reasonable costs incurred, such as document reproduction, postage, etc.

(e) The Administrator shall compensate participants within 30 days following the date on which the participant submits an itemized voucher of actual costs pursuant to paragraph (a) of this section.

(f) The participant shall be paid upon submission of an itemized voucher listing each item of expense. Each item of expense exceeding $15.00 must be substantiated by a copy of a receipt, invoice, or appropriate document evidencing the fact that the cost was incurred.

(g) The Administrator and the Comptroller General of the United States, or their duly authorized representatives, shall have access for the purpose of audit and examination to any pertinent books, documents, papers and records of a participant receiving compensation under this section. The Administrator may establish additional guidelines for accounting, recordkeeping and other administrative procedures with which participants must comply as a condition of receiving compensation.

[FR Doc. 78-11254 Filed 4-25-78; 8:45 am]

[6351-01]

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

Demonstration of Continued Compliance With the Requirements for Contract Market Designation

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is revising regulation 1.50 to permit the Commission periodically to review the designations of contract markets more efficiently. Regulation 1.50 previously required each contract market to demonstrate to the Commission at least once every 5 years the provisions that it had made to comply with the conditions and requirements for designation as a contract market set forth in sections 5 and 5a of the Commodity Exchange Act, as amended. The automatic 5-year filing requirement has been deleted. A contract market will be required to file a report upon the request of the Commission to demonstrate compliance with all or a specified portion of the conditions and requirements of Sections 5 and 5a.

EFFECTIVE DATE: May 26, 1978.

FOR FURTHER INFORMATION CONTACT:

John Mielke, Office of Surveillance and Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone 202-254-3310.

SUPPLEMENTARY INFORMATION: On December 21, 1977 the Commission published a proposal (42 FR 63899) to revise regulation 1.50, 17 CFR 1.50 (1977), by eliminating (1) the mandatory 5-year filing requirement, and (2) the requirement that each submission seek to demonstrate compliance with all of the provisions of sections 5 and 5a of the Commodity Exchange Act, as amended, 7 U.S.C. 7 and 7a (1976). In lieu thereof, the Commission proposed that with respect to each commodity for which it has been designated as a contract market, each board of trade be required to file a report upon Commission request to demonstrate its compliance with the conditions and requirements for designation set forth in Sections 5 and 5a of the Act as the Commission shall specify in the request. The report also would be re-

quired to contain supporting data and any other information and documents the Commission requests. In this way, the Commission believed that its review of a contract market's continued compliance with sections 5 and 5a would become more efficient and flexible.

The Commission received 6 comment letters on its proposed amendment to § 1.50. Each commenter supported the concept of the proposal. Three commenters stated that they favored adoption of the amendments to § 1.50 as proposed. The other three commenters suggested that certain substantive and technical changes be made. The Commission has considered all of the comments and suggestions and has determined to adopt § 1.50 as proposed with two technical changes.

As revised, § 1.50 will allow the Commission to utilize its limited resources more efficiently and save contract markets from having to engage in the costly, time consuming and often unnecessary exercise of supplying information to the Commission every 5 years showing the provisions the contract markets have made to remain in compliance with all the designation requirements set forth in Sections 5 and 5a of the Act. Moreover, the Commission will now be able to require contract markets specifically to provide information (such as minutes of director or disciplinary committee meetings) that the Commission believes necessary for its review. Presently § 1.50 only requires contract markets "to include any information which will assist the Commission in evaluating the effectiveness of the provisions described in the statement."

Set forth below is a synopsis of § 1.50 in the form adopted, together with a discussion of the comments received by the Commission and of the revisions made in the proposed rule as a result of those comments and further consideration by the Commission.

One commenter argued that proposed § 1.50 is overly broad in scope, conflicts with the historical purpose of § 1.50 and should be amended to deal only with the economic requirements of continued contract market designation contained in sections 5 and 5a of the Act (i.e., sections 5(a), 5(d), 5(g), and 5a(10)). This commenter stated that all of the non-economic requirements of Sections 5 and 5a of the Act will have been met either by the passage of contract market rules and bylaws prior to designation or are continuous requirements which require submissions to the Commission (e.g., rule changes pursuant to section 5(a)(12) of the Act) and are covered by other Commission regulations.

Existing § 1.50 is not limited in scope just to the economic criteria for designation. The Commission acknowledges, however, that the predominant use to date of § 1.50 has been to review the economic and public interest requirements of contract market designation. Nevertheless, there are other designation requirements which the Commission may wish to review through the submission of information under § 1.50. For example, the Commission may wish to obtain information pertaining to a contract market's rule review process, or obtain information about specific rules or classes or rules which the Commission has already approved but wishes to reexamine. The Commission might also request a contract market to supply information under section 5a(9)—pertaining to a contract market's enforcement of minimum financial requirements. The Commission does not wish to foreclose the opportunity to obtain information concerning contract markets' continuing compliance with the requirements for designation by limiting the § 1.50 exclusively to a review of the economic terms and conditions of designation. It should be stressed that the Commission does not intend routinely to request a filing of information from each contract market addressing all of the requirements of section 5 and 5a of the Act. To the contrary, a principal reason for revising § 1.50 was to permit the Commission to specify those particular designation requirements it wishes to review. To make this clear, a sentence has been added to § 1.50(a) explicitly to state that the Commission may limit its request for information to specific requirements of sections 5 and 5a of the Act.

One commenter requested the Commission to indicate the frequency with which the Commission expects to request information from contract markets. The Commission expects to give first priority to those futures contracts with which it has experienced problems that can be related to a designation requirement, such as with the adequacy of contract's delivery provisions to prevent or diminish price manipulation or market congestion. Thereafter, the Commission plans to review periodically as many contracts as its resources permit. Because of the large number of active contracts currently being regulated, however, it is unlikely that, absent the development of some problem, the Commission would review the economic criteria of any one contract more than once in 5 years, although it may review the other criteria more frequently.

Proposed § 1.50(a) would have required each contract market clearly to demonstrate compliance with the provisions of Sections 5 and 5a specified by the Commission. Two commenters suggested deletion of the word "clearly" from § 1.50(a). They stated that the word "clearly" is unnecessary, may constitute an unnecessarily high burden of proof, and goes beyond the statutory standard for contract market designation. The Commission finds these arguments persuasive and has deleted the word "clearly" from § 1.50(a). It should be emphasized, however, that the Commission expects each contract market to submit a report that demonstrates in an understandable and lucid manner the contract market's compliance with the specified sections of the Act.

Although all the commenters favored the elimination of the automatic 5 year filing requirement, four commenters expressed concern over the proposed requirement in § 1.50(a) that reports by filed within 60 days of a Commission request. They stated that 60 days would not be sufficient time to prepare a complete filing. Currently, contract markets have 90 days to respond to a special call by the Commission for information. See 17 CFR 1.50(c). One commenter noted that as proposed, § 1.50(c) would permit the Commission to extend the filing date specified in a Commission request, but would not require the Commission to do so. This commenter recommended that § 1.50(c) be revised to require the Commission automatically to extend the filing period upon reasonable request by a contract market.

The Commission agrees that 60 days might not be a sufficient amount of time for a contract market to submit a report addressing all of the conditions and requirements of sections 5 and 5a. However, § 1.50(a) provides that a report shall be filed within 60 days of a Commission request, *or within such longer period as the Commission may specify in the request.* In a case where the Commission asks that all, or substantially all, of the requirements of sections 5 and 5a be addressed, the Commission would specify a longer period than 60 days to comply. For the most part, the Commission intends to administer § 1.50 by promulgating filing schedules. In doing so, it intends to give due consideration to the scope of the information being requested. In some instances, however, the Commission may ask a contract market to provide information on only one or a few of the section 5 and 5a requirements, which, in the Commission's view, are in need of review. In those instances, the Commission believes that a 60-day filing period is reasonable. Moreover, as proposed, § 1.50(c) provides that if a contract market can make a showing of good cause to extend the filing date specified in a Commission request, the Commission may extend the filing period. The Commission believes that proposed § 1.50(c) provides an appropriate standard for granting extensions of time and sees no reason to modify it to provide for automatic extensions of time. The standard for granting extensions of time is identical

to that presently in effect in 17 CFR 1.50(e).

One commenter suggested that when the Commission requests a filing pursuant to §1.50, a contract market be given the opportunity to submit the materials it believes demonstrate compliance with the designation requirements specified in the Commission's request. It was suggested that the Commission not specify the materials it wants until after the Commission determines that the materials submitted are not sufficient for its purposes. A contract market will, of course, be free to provide the information and materials it believes demonstrate compliance with the sections of the Act specified. Commission Guideline I, CCH Comm. Fut. L. Rep. ¶20,041 (May 13, 1975), for example, sets forth in broad terms the types of economic information that the Commission expects a contract market to submit. In some cases, however, the Commission may know the specific information it wants to be supplied. The Commission's review process would be delayed unnecessarily if it could not request that information until after a contract market made its submission. Of course, after a review of the materials supplied, if the Commission determines the information to be inadequate, the Commission should be free to request additional information which it believes reasonably to be necessary to complete the review.

Finally, one commenter requested that the Commission make a determination concerning confidential treatment of the information to be submitted before a formal filing is made by a contract market. With respect to any material submitted to the Commission, 17 CFR 145.9 provides that a person has the right to file a petition for confidential treatment of some or all the information supplied. 17 CFR 145.9(c) also provides that a decision to grant or deny such a petition will not be made until the Commission receives a request by a member of the public for access to the information under the Freedom of Information Act (5 U.S.C. 552) and the Commission's rules thereunder (17 CFR 145.7). In certain instances, however, the Commission may determine on its own, even without a petition for confidential treatment, that documents submitted to it are nonpublic and entitled to exemption from disclosure under the Freedom of Information Act. The Commission will not make such a determination, however, until it has had the opportunity to examine the documents in question.

No comments were received concerning proposed §1.50(b), relating to the consequences of the failure of a contract market to comply with the designation requirements of Sections 5 and 5a of the Act or the failure or refusal to file the information requested under §1.50(a). This section is being adopted in the form proposed. Section 1.50(b) is identical to the rule presently in effect, 17 CFR 1.50(d). The redesignation is technical only.

In consideration of the foregoing, the Commission, pursuant to the authority contained in section 5, 5a, 6(a), 6b, 6c, and 8a of the Act, 7 U.S.C. 7, 7a, 8, 13, 13a-1 and 12a (1976) hereby amends §1.50 of Chapter 1 of Title 17 of the Code of Federal Regulations to read as follows:

§1.50 Demonstration of continued compliance with the requirements for contract market designation.

(a) With respect to each commodity for which it has been designated as a contract market, each board of trade shall file with the Commission within 60 days of a Commission request, or within such longer period as the Commission may specify in the request, a written report containing such supporting data, and other information and documents as the Commission may specify, that demonstrates that such contract market is complying with the conditions and requirements of sections 5 and 5a of the Act. At the discretion of the Commission, the information requested may be limited to certain conditions and requirements of sections 5 and 5a of the Act.

(b) Any failure by a contract market to continue to comply with the conditions and requirements for designation as a contract market as set forth in sections 5 and 5a of the Act, and any failure or refusal to file the information required by this regulation shall be cause for action by the Commission under sections 5b, 6(a), 6b, 6c, or 8a(7) of the Act (7 U.S.C. 7b, 8(a), 13a, 13a-1, and 12a(7)).

(c) Upon showing of good cause by a contract market, the Commission may extend for a reasonable time the filing date for any report under this regulation.

(7 U.S.C. 7, 7a, 8, 13, 13a-1 and 12a (1976).)

Issued in Washington, D.C. on April 21, 1978 by the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc. 78-11274 Filed 4-25-78; 8:45 am]

[4910-22]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

PART 652—PEDESTRIAN FACILITIES AND BIKEWAYS

Revision

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: This document revises the regulations to reflect an increase in the amount of Federal funds which may be allocated, to delete duplicate instructions or information, and to clarify certain definitions for independent and incidental bikeway or pedestrain walkway construction projects.

EFFECTIVE DATE: April 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas A. Jennings, Engineer, Office of Engineering, 202-426-0314; or Marguerite L. Price, Attorney, Office of the Chief Counsel, 202-426-0791, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

NOTE.—The Federal Highway Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Orders 11821 and 11949 and OMB Circular A-107.

Issued on: April 17, 1978.

WILLIAM M. COX,
Federal Highway Administrator.

In consideration of the foregoing, Chapter I of Title 23, Code of Federal Regulations, Part 652 is revised to read as follows:

PART 652—PEDESTRIAN FACILITIES AND BIKEWAYS

Sec.

AUTHORITY: 23 U.S.C. 217, 315 and 402(b)(1)(F); 109, 152, and 49 CFR 1.48.

§652.1 Purpose.

To provide policies and procedures relating to the provision of adequate pedestrian accommodations and bicycle facilities on Federal-aid projects, and Federal participation in the cost of these facilities.

§ 652.3 Definitions.

(a) Bicycle—A device, having two tandem wheels, propelled exclusively by human power, upon which any person may ride.

(b) Bicycle route, bicycle way, or bikeway—Any road, path or way which in some manner is specifically designated as being open to bicycle travel, regardless of whether such facilities are designated for the exclusive use of bicycles or are to be shared with other transportation modes.

(c) Bicycle trail—A separate trail or path which is for the exclusive use of bicycles. Where such trail or path forms a part of a highway it is separated from the roadways for motor vehicular traffic by an open space or barrier.

(d) Bicycle lane—A portion of a roadway which has been designated for preferential or exclusive use by bicycles. It is distinguished from the portion of the roadway for motor vehicular traffic by a paint stripe, curb or other similar device.

(e) Shared roadway—A roadway which is officially designated and marked as a bicycle route but which is open to motor vehicular travel and upon which no bicycle lane is designated.

(f) Pedestrian walkway or walkway—A continuous way designated for pedestrians and separated from the through lanes for motor vehicles by space or barrier.

(g) Highway construction project—A project financed in whole or in part with Federal-aid or Federal funds for the construction, reconstruction or improvement of a highway or a portion thereof, including bridges and tunnels.

(h) Independent bikeway or pedestrian walkway construction project—One constructed independently and solely as a bikeway and/or pedestrian walkway project and not as an incidental part of a highway construction project. Such projects may be constructed on existing highway right-of-way or on special right-of-way or easements acquired for this purpose.

(i) Incidental bikeway or pedestrian walkway construction project—One constructed as an incidental part of a highway construction project and within the normal right-of-way, including land acquired for traffic improvements and scenic enhancement programs.

(j) Snowmobile—A motorized vehicle solely designed to operate on snow or ice.

§ 652.5 Policy.

Full consideration is to be given to safely accommodate pedestrian and bicycle traffic on all Federal-aid highway projects. Every effort shall be made to minimize the detrimental effects on those who share the highway facility in the planning of these projects when current or anticipated nonmotorized traffic presents a potential conflict with motor traffic. The construction of pedestrian facilities and bikeways may be approved as either incidental features of highway construction projects, separate safety projects, or independent walkway or bikeway construction projects where all of the following conditions are satisfied:

(a) The facility will not impair the safety of the motorist, bicyclist or pedestrian.

(b) The facility will form a segment located and designed pursuant to an overall plan.

(c) A public agency has formally agreed to: (1) Operate and maintain the facility, and

(2) Ban all motorized vehicles other than maintenance vehicles. Snowmobiles may be allowed where permitted by State or local regulations.

(d) The facility is to either improve the safety of the highway environment or have sufficient use to justify its construction and maintenance costs.

§ 652.7 Federal participation.

(a) Pedestrian facilities and bikeways may be constructed as incidental features of highway construction projects where the walkway or bikeway is to be constructed concurrently with the improvement for motor vehicular traffic and the walkway or bikeway will be within the right-of-way of the highway, including land acquired under 23 U.S.C. 319 (Scenic Enhancement program). Projects constructed as incidental features of larger highway construction projects may be financed with the same types of Federal-aid funds as the basic highway project, including Interstate projects, and are not subject to the funding limitations for independent walkway or bikeway projects.

(b) Independent walkway or bikeway construction projects may be financed with all types of Federal-aid funds, except Interstate, provided the total amount obligated for all such projects in any one State in any one fiscal year does not exceed $2.5 million of Federal-aid funds or a lesser amount apportioned by the Federal Highway Administration to avoid exceeding the annual $45 million cost limitation on these projects for all States in a fiscal year. This limitation does not apply to projects of the type described in paragraph (d). Independent walkway or bikeway projects may be constructed on completed sections of Federal-aid highways. Projects may include the acquisition of land outside the right-of-way, provided the facility will accommodate traffic which would have normally used a Federal-aid highway route, disregarding any legal prohibitions on the use of the route by cyclists or pedestrians.

(c) The Federal share payable for pedestrian or bikway facilities on a Federal-aid project shall be as provided in 23 U.S.C. 120 for such projects, except that independent walkway or bikeway construction projects on the Interstate System shall be financed as projects on the primary system or urban extensions thereof.

(d) Pedestrian Safety Improvement projects which meet the provisions of 23 CFR Part 655, Subpart E and 23 CFR 922 are eligible for funding under the High Hazard program and the Safer Off System Roads program, respectively.

§ 652.9 Planning.

(a) *Pedestrians.* Pedestrian accommodations included in Federal-aid projects should be the result of planning and design procedures which include pedestrian safety as an important factor. These efforts should also examine the adequacy of any existing pedestrian accommodations to determine improvements necessary to provide for safe pedestrian movement on all Federal-aid projects. In addition special attention is needed for accommodating the pedestrian during the construction of many Federal-aid highway projects, in the work and detour areas.

(b) *Bikeways.* Bikeways should be planned as parts of bicycle transportation systems. Where planning is conducted under 23 U.S.C. 134(a), consideration should be given to including bicycle transportation. Funds provided by 23 U.S.C. 307(c) may be used to plan bikeways. Consultation with organized groups of bicyclists is certain to prove valuable in the planning and design of bikeway projects, and such counsel should be actively sought.

[FR Doc. 78-11253 Filed 4-25-78; 8:45 am]

[4830-01]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7541]

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Election With Respect to Recovery of Intangibles Under Section 57(d) of the Code

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations relating to the

election permitted in computing the intangible drilling costs item of tax preference. Changes to the applicable tax law were made by the Tax Reform Act of 1976. These regulations provide the public with guidance needed to make the election, and affect taxpayers who are subject to the minimum tax on the intangible drilling costs item of tax preference.

EFFECTIVE DATE: April 26, 1978 with respect to taxable years beginning after December 31, 1975.

FOR FURTHER INFORMATION CONTACT:

John H. Parcell of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document amends the Temporary Income Tax Regulations under the Tax Reform Act of 1976 (26 CFR Part 7) to reflect section 57(d) of the Internal Revenue Code of 1954, as added by section 301 of the Tax Reform Act of 1976 (90 Stat. 1549). The temporary regulation provided by this document will remain in effect until superseded by final regulations on this subject.

INTANGIBLE DRILLING COSTS ITEM OF PREFERENCE

Section 57(a)(11) of the Code, as added by section 301 of the Tax Reform Act of 1976, includes intangible drilling costs as an item of tax preference for taxable years beginning after December 31, 1975. Section 57(a)(11) was amended by section 308 of the Tax Reduction and Simplification Act of 1977 (91 Stat. 153), but only for taxable years beginning in 1977.

To compute the amount of the intangible drilling costs item of tax preference for any taxable year (including taxable years beginning in 1977), it is necessary to determine the amount by which certain intangible drilling and development costs exceed the straight line recovery of these costs. Section 57(d) of the Code provides that straight line recovery of intangibles can be determined through ratable amortization or, at the election of the taxpayer, through cost depletion.

ELECTION

Section 57(d)(2) provides that the election to use cost depletion to determine straight line recovery of intangibles shall be made in the manner prescribed by regulations. Therefore, to provide immediate guidance to taxpayers, this regulation prescribes the manner in which the election is made.

The regulation provides that the election is made separately for each oil and gas well. The election is made by using cost depletion to compute straight line recovery of intangibles for purposes of determining the amount of the intangible drilling costs item of tax preference.

DRAFTING INFORMATION

The principal author of this regulation was John H. Parcell of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, the Temporary Income Tax Regulations under the Tax Reform Act of 1976 (26 CFR Part 7) are amended by inserting the following temporary regulation in the appropriate place:

§ 7.57(d)-1 Election with respect to straight line recovery of intangibles.

(a) *Purpose.* This section prescribes rules for making the election permitted under section 57(d)(2), as added by the Tax Reform Act of 1976. Under this election taxpayers may use cost depletion to compute straight line recovery of intangibles.

(b) *Election.* The election under section 57(d) is subject to the following rules:

(1) The election is made within the time prescribed by law (including extensions thereof) for filing the return for the taxable year in which the intangible drilling costs are paid or incurred or, if later, by June 26, 1978.

(2) The election is made separately for each well. Thus, a taxpayer may make the election for only some of his or her wells.

(3) The election is made by using, for the well or wells to which the election applies, cost depletion to compute straight line recovery of intangibles for purposes of determining the amount of the preference under section 57(a)(11).

(4) The election may be made whether or not the taxpayer uses cost depletion in computing taxable income.

(5) The election is made by a partnership rather than by each partner.

(c) *Computation of cost depletion.* For purposes of computing straight line recovery of intangibles through cost depletion, both depletable and depreciable intangible drilling and development costs for the taxable year are taken into account. They are treated as if capitalized, added to basis, and recovered under § 1.611-2(a). Costs paid or incurred in other taxable years are not taken into account.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation of 5 U.S.C. 553(d).

This Treasury decision is issued under the authority contained in sections 57(d) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1551; 68A Stat. 917; 26 U.S.C. 57(d), 7805).

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: April 18, 1978.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

[FR Doc. 78-11334 Filed 4-25-78; 8:45 am]

[4830-01]

SUBCHAPTER H—INTERNAL REVENUE PRACTICE

PART 601—STATEMENT OF PROCEDURAL RULES

Miscellaneous Amendments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Amendment of Statement of Procedural Rules.

SUMMARY: This document contains miscellaneous amendments to the Statement of Procedural Rules. The Statement of Procedural Rules sets forth the procedural rules of the Internal Revenue Service for all taxes administered by the Service. These amendments are made necessary by statutory changes and miscellaneous changes of a technical nature.

DATE: The amendments are effective April 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert M. Fowler of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3458, not a toll-free number.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document contains amendments to the Statement of Procedural Rules (26 CFR Part 601). A discussion of the most significant amendments follows:

Paragraph (a)(3) of § 601.106 is amended to indicate that the Appel-

late Division has jurisdiction in wagering tax cases.

Paragraph (n)(1)(i) of § 601.201 is amended to provide a current list of the key Internal Revenue district offices that handle exempt organization matters.

Paragraph (n)(2) of § 601.201 is amended to indicate Service procedure with respect to issuing rulings and determination letters on private foundation status and operating foundation status.

Paragraph (n)(5) of § 601.201 is amended to indicate the general appeal procedures with respect to application for recognition of exemption from tax under section 501 or 521, and with respect to revocation or modification of certain exemption rulings and determination letters.

Paragraph (n)(6) of § 601.201 is amended to indicate the procedures of the Service with respect to revocation, modification, and reconsideration of rulings and determination letters on private foundation and operating foundation status.

Paragraph (n)(7) of § 601.201 is amended to indicate the procedure of the Service with respect to the issuance of determinations and related matters to which section 7428 of the Internal Revenue Code applies.

RELATIONSHIP TO NOTICE OF ESTABLISHMENT OF SINGLE LEVEL OF APPEALS

These amendments do not take into account the changes proposed in the notice of proposed amendments to the Statement of Procedural Rules, relating to the establishment of a single level of appeals, that was published in the FEDERAL REGISTER on April 3, 1978 (43 FR 13896).

DRAFTING INFORMATION

The principal author of these amendments to the Statement of Procedural Rules was Mr. Robert M. Fowler of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service participated in developing the amendments, both on matters of substance and style.

AMENDMENT OF THE STATEMENT OF PROCEDURAL RULES

The amendments to 26 CFR Part 601 are as follows:

§ 601.105 [Amended]

PARAGRAPH 1. Section 601.105 is amended by deleting from paragraph (b)(5)(v)(*e*) the phrases "964-4504 or 964-4505" and "964-3767 or 964-3788" and inserting in lieu thereof the phrases "566-4504 or 566-4505" and "566-3767 or 566-3788", respectively.

PAR. 2. Section 601.106 is amended as follows:

1. Paragraph (a)(3) is revised as set forth below.

2. Paragraph (d)(2)(ii) is amended by revising the first sentence as set forth below.

3. Paragraph (d)(3)(iii)(*e*) is amended by deleting the phrase "Trial Status Order" and inserting in lieu thereof the phrase "Trial Status Request".

4. Paragraph (d)(3)(iii)(*i*) is amended by deleting the phrase "Trial Status Order" in the first sentence and inserting in lieu thereof the phrase "Trial Status Request", by deleting the third sentence, and by revising the fourth sentence as set forth below.

§ 601.106 Appellate functions.

(a) *General.* * * *

(3) The authority vested in the Appellate Division does not extend to the determination of liability for any excise tax imposed by subtitle E or by subchapter D of chapter 78, to the extent it relates to subtitle E.

* * * * *

(d) *Disposition and settlement of cases before the Appellate Division.* * * *

(2) *Cases not docketed in the Tax Court.* * * *

(ii) If after consideration of the case by the Appellate Division of the region it is determined that there is a deficiency in income, profits, estate, or gift tax, or taxes under chapter 42 of the Internal Revenue Code of 1954, to which the taxpayer does not agree, a statutory notice of deficiency will be prepared and issued by the Appellate Division. * * *

* * * * *

(3) *Cases docketed in the Tax Court.* * * *

(iii) * * *

(*i*) * * * These cases are designated by the Court as small tax cases upon request of petitioners and will include letter "S" as part of the docket number. * * *

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PAR. 3. Section 601.201 is amended as follows:

1. Paragraph (e)(2) is revised by adding immediately after the sentence reading "(Revenue Procedure 73-36 sets forth the information to be included in the request for a ruling under section 346, and its related sections, 331 and 336.)" the new sentences set forth below.

2. Paragraph (e)(15) is revised as set forth below.

3. Paragraph (n)(1)(i) is revised as set forth below.

4. Paragraph (n)(1)(iv) is revised as set forth below.

5. Paragraph (n)(2) is revised as set forth below.

6. Paragraph (n)(3)(iii) is revised as set forth below.

7. The first sentence of paragraph (n)(4) is revised as set forth below.

8. Paragraphs (n)(5) and (n)(6) are revised as set forth below.

9. Paragraph (n)(7) is redesignated as paragraph (n)(8), and a new paragraph (n)(7) is added.

§ 601.201 Rulings and determination letters.

* * * * *

(e) Instructions to taxpayers. * * *

(2) * * * If the request is for a ruling concerning the classification of an organization as a limited partnership where a corporation is the sole general partner, see Rev. Proc. 72-13, 1972-1 C.B. 735. See also Rev. Proc. 74-17, 1974-1 C.B. 438, and Rev. Proc. 75-16, 1975-1 C.B. 676. (Rev. Proc. 74-17 announces certain operating rules of the Service relating to the issuance of advance ruling letters concerning the classification of organizations formed as limited partnerships, and Rev. Proc. 75-16 sets forth a checklist outlining required information frequently omitted from requests for rulings relating to classification of organizations for Federal tax purposes.) * * *

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(15) A taxpayer or the taxpayer's representative desiring to obtain information as to the status of the taxpayer's case may do so by contacting the following offices with respect to matters in the areas of their responsibility:

Telephone numbers (area code 202)

Official:

Director, Corporation Tax Division—566-4504 or 566-4505.

Director, Individual Tax Division—566-3767 or 566-3788.

* * * * *

(n) *Organization claiming exemption under section 501 or 521 of the Code*—(1) *Filing applications for exemption.* (i) An organization seeking recognition of exempt status under section 501 or section 521 of the Code is required to file an application with the key district director for the Internal Revenue district in which the principal place of business or principal office of the organization is located. Following are the 19 key district offices that process the applications and the Internal Revenue districts covered by each:

Key district(s) and IRS districts covered

Central Region:

Cincinnati: Cincinnati, Louisville, Indianapolis.

Cleveland: Cleveland, Parkersburg.
Detroit: Detroit.
Mid-Atlantic Region:
Baltimore: Baltimore (which includes the District of Columbia and Office of International Operations), Pittsburgh, Richmond.
Philadelphia: Philadelphia, Wilmington.
Newark: Newark.
Midwest Region:
Chicago: Chicago.
St. Paul: St. Paul, Fargo, Aberdeen, Milwaukee.
St. Louis: St. Louis, Springfield, Des Moines, Omaha.
North-Atlantic Region:
Boston: Boston, Augusta, Burlington, Providence, Hartford, Portsmouth.
Manhattan: Manhattan.
Brooklyn: Brooklyn, Albany, Buffalo.
Southeast Region:
Atlanta: Atlanta, Greensboro, Columbia, Nashville.
Jacksonville: Jacksonville, Jackson, Birmingham.
Southwest Region:
Austin: Austin, New Orleans, Albuquerque, Denver, Cheyenne.
Dallas: Dallas, Oklahoma City, Little Rock, Wichita.
Western Region:
Los Angeles: Los Angeles, Phoenix, Honolulu.
San Francisco: San Francisco, Salt Lake City, Reno.
Seattle: Seattle, Portland, Anchorage, Boise, Helena.

* * * * *

(iv) A ruling or determination letter recognizing exemption will not ordinarily be issued if an issue involving the organization's exempt status under section 501 or 521 of the Code is pending in litigation or on appeal within the Service.

(2) *Processing applications and requests for determination of foundation status.* (i) Under the general procedures outlined in paragraphs (a) through (m) of this section, key district directors are authorized to issue determination letters involving applications for exemption under sections 501 and 521 of the Code, and requests for foundation status under sections 509 and 4942 (j)(3).

(ii) A key district director will refer to the National Office those applications that present questions the answers to which are not specifically covered by statute, Treasury decision or regulation, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. The National Office will consider each such application, issue a ruling directly to the organization, and send a copy of the ruling to the key district director. Where the issue of exemption under section 501(c)(3) of the Code is referred to the National Office for decision under this subparagraph, the foundation status issue will also be the subject of a National Office ruling. In the event of a conclusion unfavorable to the applicant, it will be informed of the basis for the conclusion and of its rights to file a protest and to a conference in the National Office. If a conference is requested, the conference procedures outlined in subdivision (v) of paragraph (b)(5) of § 601.105 will be followed except that the conference will take place in the Technical Branch of the Exempt Organizations Division of the Office of Assistant Commissioner (Employee Plans and Exempt Organizations). After reconsideration of the application in the light of the protest and any information developed in conference, the National Office will affirm, modify, or reverse the original conclusion, issue a ruling to the organization, and send a copy of the ruling to the key district director.

(iii) Key district directors will issue determination letters on foundation status. All adverse determinations issued by key district directors (including adverse determinations on the foundation status under section 509(a) of the Code of nonexempt charitable trusts described in section 4947(a)(1)) are subject to the protest and conference procedures outlined in subparagraph (5) of this paragraph. Key district directors will issue such determinations in response to applications for recognition of exempt status under section 501(c)(3). They will also issue such determinations in response to requests for determination of foundation status by organizations presumed to be private foundations under section 508(b), requests for new determinations of foundation status by organizations previously classified as other than private foundations, and, subject to the conditions set forth in subdivision (vi) of subparagraph (6) of this paragraph, requests to reconsider status. The requests described in the preceding sentence must be made in writing. For information relating to the circumstances under which an organization presumed to be a private foundation under section 508(b) may request a determination of its status as other than a private foundation, see Revenue Ruling 73-504, 1973-2 C.B. 190. All requests for determinations referred to in this paragraph should be made to the key district director for the district in which the principal place of business or principal office of the organization is located.

(3) *Effect of exemption rulings or determination letters.* * * *

(iii) (*a*) When an organization that has been listed in IRS Publication No. 78, "Cumulative List of Organizations described in section 170 (c) of the Internal Revenue Code of 1954," as an organization contributions to which are deductible under section 170 of the Code subsequently ceases to qualify as such, and the ruling or determination letter issued to it is revoked, contributions made to the organization by persons unaware of the change in the status of the organization generally will be considered allowable until (*1*) the date of publication of an announcement in the Internal Revenue Bulletin that contributions are no longer deductible, or (*2*) a date specified in such an announcement where deductibility is terminated as of a different date.

(*b*) In appropriate cases, however, this advance assurance of deductibility of contributions made to such an organization may be suspended pending verification of continuing qualification under section 170 of the Code. Notice of such suspension will be made in a public announcement by the Service. In such cases allowance of deductions for contributions made after the date of the announcement will depend upon statutory qualification of the organization under section 170.

(*c*) If an organization, whose status under section 170 (c) (2) of the Code is revoked, initiates within the statutory time limit a proceeding for declaratory judgment under section 7428, special reliance provisions apply. If the decision of the court is adverse to the organization, it shall nevertheless be treated as having been described in section 170 (c) (2) for purpose of deductibility of contributions from other organizations described in section 170 (c) (2) and individuals (up to a maximum of $1,000), for the period beginning on the date that notice of revocation was published and ending on the date the court first determines that the organization is not described in section 170 (c) (2).

(*d*) In any event, the Service is not precluded from disallowing any contributions made after an organization ceases to qualify under section 170 of the Code where the contributor (*1*) had knowledge of the revocation of the ruling or determination letter, (*2*) was aware that such revocation was imminent, or (*3*) was in part responsible for, or was aware of, the activities or deficiencies on the part of the organization which gave rise to the loss of qualification.

(4) *National Office review of determination letters.* The National Office will review determination letters on exemption issues under sections 501 and 521 of the Code and foundation status under sections 509 (a) and 4942 (j) (3) to assure uniformity in the application of the established principles and precedents of the Service. * * *

(5) *Protest of adverse determination letters.* (i) Upon the issuance of an adverse determination letter, the key district director will advise the organization of its right to protest the determination by requesting regional office consideration. To do this, the organization must submit to the key district director within 30 days from the date of the letter, a statement of the facts, law, and arguments in support of its

position. The organization must also state whether it wishes a regional office conference. Upon receipt of an organization's request for regional office consideration, the key district will, if it maintains its position, forward the request and the case file to the Office of the Assistant Regional Commissioner (Employee Plans and Exempt Organizations).

(ii) If the regional office, after considering the organization's protest and any additional information developed, disagrees with the key district director's determination, the regional office will so advise the taxpayer and the case will be returned to the key district director for appropriate action. If the regional office, after considering the organization's protest and any information developed, agrees with the key district director, it will so notify the organization in writing, explaining the reasons therefor and advising the organization that it may, within 30 days from the date of the notification, request National Office consideration (as described in subdivision (iii) of this subparagraph). If the organization does not do so within the prescribed time, the case will be returned to the key district director for issuance of a final determination letter. Organizations should make full presentation of the facts, circumstances, and arguments at the initial level of consideration, since submission of additional facts, circumstances, and arguments at any level of appeal may result in suspension of appeal procedures and referral of the case back to the key district for additional consideration.

(iii) If the organization wishes to request National Office consideration, it must submit within 30 days to the regional office a request for such consideration. The request must state, with supporting argument, the ground(s) upon which the request is based (see below) and whether a conference is desired in the National Office. Upon receipt of the request, the regional office will forward the request and the case file to the National Office in care of the Assistant Commissioner (Employee Plans and Exempt Organizations) E:EO:T (or the Assistant Commissioner (Technical) T:C:C in section 521 cases) and will notify the organization of this action. Upon receipt of the case file in the National Office, a decision will be made whether to accept the case for consideration and the organization will be advised of this decision. The National Office will not accept a case unless the organization can show that the position of the regional office is contrary to the statute, Treasury decision or regulations, or a ruling, opinion or court decision published in the Internal Revenue Bulletin; that the position of the regional office is in conflict with the determination made in a similar case in the same or another region; or that the case presents a substantial issue not covered by published precedent. If the National Office decides that the case will be accepted, and if an adverse decision is indicated, the organization will be afforded the opportunity of a conference if one was requested. After consideration by the National Office, the National Office will notify the organization of its decision, and the case file will be returned through the regional office to the key district office for issuance of a final determination letter in accordance with the National Office decision. If the National Office decides not to accept the case, the case file will be returned through the regional office to the key district director for issuance of a final determination letter.

(iv) Any determination letter that is issued on the basis of National Office technical advice may not, thereafter, be appealed to a regional office or the National Office of the Internal Revenue Service with regard to those issues that were the subject of technical advice.

(6) *Revocation of modification of rulings or determination letters on exemption and foundation status.* (i) An exemption ruling or determination letter may be revoked or modified by a ruling or determination letter addressed to the organization, or by a revenue ruling or other statement published in the Internal Revenue Bulletin. The revocation or modification may be retroactive if the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or engaged in a prohibited transaction of the type described in subdivision (vii) of this subparagraph. In any event, revocation or modification will ordinarily take effect no later than the time at which the organization received written notice that its exemption ruling or determination letter might be revoked or modified.

(ii) If a key district director concludes, as a result of examining an information return or considering information from any other source, that a ruling or determination letter should be revoked or modified, the organization will be advised in writing of the proposed action and the reasons therefor. The key district director will also advise the organization of its right to protest the proposed action by requesting regional office consideration. To do this, the organization must submit to the key district director within 30 days from the date of the letter, a statement of the facts, law, and arguments in support of its continued exemption. The organization's protest and conference procedures are the same as set out in subparagraph (5) of this paragraph.

(iii) A ruling or determination letter respecting private foundations or operating foundation status may be revoked or modified by a ruling or determination letter addressed to the organization, or by a revenue ruling or other statement published in the Internal Revenue Bulletin. If a key district director concludes, as a result of examining an information return or considering information from any other source, that a ruling or determination letter concerning private foundation status (including foundation status under section 509(a)(3) of the Code of a nonexempt charitable trust described in section 4947(a)(1)) or operating foundation status should be modified or revoked, the procedures in subdivision (iv) or (v) of this subparagraph should be followed depending on whether the revocation or modification is adverse or non-adverse to the affected organization. Where there is a proposal by the Service to change foundation status classification from one particular paragraph of section 509(a) to another paragraph of that section, the procedures described in subdivision (iv) of this paragraph will be followed to modify the ruling or determination letter.

(iv) If a key district director concludes that a ruling or determination letter concerning private foundation or operating foundation status should be revoked or modified, the organization will be advised in writing of the proposed adverse action, the reasons therefor, and the proposed new determination of foundation status. The key district director will also advise the organization of its right to protest the proposed adverse action by requesting regional office consideration. The organization must submit to the key district director within 30 days from the date of the proposed action, a statement of the facts, law, and arguments in support of its position. See subparagraph (5) of this paragraph for the balance of the appeal and protest procedures. Unless the effective date of revocation or modification of foundation status or operating foundation status letter is expressly covered by statute or regulations, such effective date generally is the same as the effective date of revocation or modification of exemption letters delineated in subdivision (i) of this subparagraph.

(v) If the key district director concludes that a ruling or determination letter concerning private foundation or operating foundation status should be revoked or modified and that such revocation or modification will not be adverse to the organization, the key district director will issue a determination letter revoking or modifying foundation status. The determination letter will also serve to notify the organization of its foundation status as redetermined. A nonadverse revocation or modification as to private foundation or operating foundation status

will ordinarily be retroactive if the initial ruling or determination letter was incorrect.

(vi) In cases where an organization believes that it received an incorrect ruling or determination letter as to its private foundation or operating foundation status, the organization may request a key district director to reconsider such ruling or determination letter. Except in rare circumstances, the key district director will only consider such requests where the organization had not exercised any protest or conference rights with respect to the issuance of such ruling or determination letter. If a key district director decides that reconsideration is warranted, the request will be treated as an initial request for a determination of foundation status, and the key district director will issue a determination on foundation status or operating foundation status under the procedures of subparagraph (2) of this paragraph. If a nonadverse determination is issued, it will also inform the organization that the prior ruling or determination letter is revoked or modified. Adverse determinations are subject to the protest and conference procedures set out in subparagraph (5) of this paragraph. If the key district director decides that reconsideration is not warranted, the organization will be notified accordingly. The organization does not have a right to protest the key district director's decision not to reconsider.

(vii) If it is concluded that an organization that is subject to the provisions of section 503 of the Code entered into a prohibited transaction for the purpose of diverting corpus or income from its exempt purpose, and if the transaction involved a substantial part of the corpus or income of the organization, its exemption is revoked effective as of the beginning of the taxable year during which the prohibited transaction was commenced.

(viii) The provisions of this subparagraph relating to protests and conference before a revocation notice is issued are not applicable to matters where delay would be prejudicial to the interests of the Internal Revenue Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the period of limitations, or where immediate action is necessary to protect the interests of the Government).

(7) *Declaratory judgments relating to status and classification of organizations under section 501(c)(3) of the Code.* (i) An organization seeking recognition of exempt status under section 501(c)(3) of the Code must follow the procedures of subparagraph (1) of this paragraph regarding the filing of Form 1023, Application for Recognition of Exemption. The 270-day period referred to in section 7428(b)(2) will be considered by the Service to begin on the date a substantially completed Form 1023 is sent to the appropriate key district director. A substantially completed Form 1023 is one that:

(*a*) Is signed by an authorized individual;

(*b*) Includes an Employer Identification Number (EIN) or a completed Form SS-4, Application for Employer Identification Number;

(*c*) Includes a statement of receipts and expenditures and a balance sheet for the current year and the three preceding years or the years the organization was in existence, if less than four years (if the organization has not yet commenced operations, a proposed budget for two full accounting periods and a current statement of assets and liabilities will be acceptable);

(*d*) Includes a statement of proposed activities and a description of anticipated receipts and contemplated expenditures;

(*e*) Includes a copy of the organizing or enabling document that is signed by a principal officer or is accompanied by written declaration signed by an officer authorized to sign for the organization certifying that the document is a complete and accurate copy of the original; and

(*f*) If the organization is a corporation or unincorporated association and it has adopted bylaws, includes a copy that is signed or otherwise verified as current by an authorized officer.

If an application does not contain all of the above items, it will not be further processed and may be returned to the applicant for completion. The 270-day period will not be considered as starting until the date the application is remailed to the Service with the requested information, or, if a postmark is not evident, on the date the Service receives a substantially completed application.

(ii) Generally, rulings and determination letters in cases subject to declaratory judgment are issued under the procedures outlined in this paragraph. In National Office exemption application cases, proposed adverse rulings will be issued by the rulings sections in the Exempt Organizations Technical Branch. Applicants shall appeal these proposed adverse rulings to the Conference and Review Staff of the Exempt Organizations Technical Branch. In those cases where an organization is unable to describe fully its purposes and activities (see subparagraph (1)(ii) of this paragraph), a refusal to rule will be considered an adverse determination for which administrative appeal rights will be afforded. Any oral representation of additional facts or modification of the facts as represented or alleged in the application for a ruling or determination letter must be reduced to writing.

(iii) If an organization withdraws in writing its request for a ruling or determination letter, the withdrawal will not be considered by the Service as either a failure to make a determination within the meaning of section 7428(a)(2) of the Code or as an exhaustion of administrative remedies within the meaning of section 7428(b)(2).

(iv) Section 7428(b)(2) of the Code requires that an organization must exhaust its administrative remedies by taking timely, reasonable steps to secure a determination. Those steps and administrative remedies that must be exhausted within the Internal Revenue Service are:

(*a*) The filing of a substantially completed application Form 1023 pursuant to subdivision (i) of this subparagraph, or the filing of a request for a determination of foundation status pursuant to subparagraph (2) of this paragraph;

(*b*) The timely submission of all additional information requested to perfect an exemption application or request for determination of private foundation status; and

(*c*) Exhaustion of all administrative appeals available within the Service pursuant to subparagraphs (5) and (6) of this paragraph, as well as appeal of a proposed adverse ruling to the Conference and Review Staff of the Exempt Organizations Technical Branch in National Office original jurisdiction exemption application cases.

(v) An organization will in no event be deemed to have exhausted its administrative remedies prior to the completion of the steps described in subdivision (iv) of this subparagraph and the earlier of:

(*a*) The sending by certified or registered mail of a notice of final determination from a key district director, the office of the Assistant Regional Commissioner (Employee Plans and Exempt Organizations), or the Chief, Exempt Organizations Technical Branch in the National Office; or

(*b*) The expiration of the 270-day period described in section 7428(b)(2) of the Code, in a case in which the Service has not issued a notice of final determination and the organization has taken, in a timely manner, all reasonable steps to secure a ruling or determination.

(vi) The steps described in subdivision (iv) of this subparagraph will not be considered completed until the Internal Revenue Service has had a reasonable time to act upon the appeal or request for consideration, as the case may be.

(vii) A notice of final determination to which section 7428 of the Code applies is a ruling or determination letter, sent by certified or registered mail, which holds that the organization is not described in section 501(c)(3) or section 170(c)(2), is a private foundation as defined in section 509(a), or is not a private operating

foundation as defined in section 4942(j)(3).

* * * * *

PAR. 4. Section 601.601 is amended by revising paragraph (d)(2)(iii) to read as follows, and by deleting and reserving paragraph (d)(2)(iv).

§ 601.601 Rules and Regulations.

* * * * *

(d) *Publication of rules and regulations.* * * *

(2) *Objectives and standards for publication of revenue rulings and revenue procedures in the Internal Revenue Bulletin.* * * *

(iii) The purpose of publishing revenue rulings and revenue procedures in the Internal Revenue Bulletin is to promote correct and uniform application of the tax laws by Internal Revenue Service employees and to assist taxpayers in attaining maximum voluntary compliance by informing Service personnel and the public of National Office interpretations of the internal revenue laws, related statutes, treaties, regulations, and statements of Service procedures affecting the rights and duties of taxpayers. Therefore, issues and answers involving substantive tax law under the jurisdiction of the Internal Revenue Service will be published in the Internal Revenue Bulletin, except those involving:

(*a*) Issues answered by statute, treaty, or regulations;

(*b*) Issues answered by rulings, opinions, or court decisions previously published in the Bulletin;

(*c*) Issues that are of insufficient importance or interest to warrant publication;

(*d*) Determinations of fact rather than interpretations of law;

(*e*) Informers and informers' rewards; or

(*f*) Disclosure of secret formulas, processes, business practices, and similar information. Procedures affecting taxpayers' rights or duties that relate to matters under the jurisdiction of the Service will be published in the Bulletin.

(iv) [Reserved].

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JEROME KURTZ,
Commissioner of Internal Revenue.

[FR Doc. 78-11333 Filed 4-25-78; 8:45 am]

[3710-08]

Title 32—National Defense

CHAPTER V—DEPARTMENT OF THE ARMY

[Army Reg. 340-21]

PART 505—PERSONAL PRIVACY AND RIGHTS OF INDIVIDUALS REGARDING PERSONAL RECORDS

Exemptions

AGENCY: Department of Defense, Department of the Army.

ACTION: Amendment and deletion of exemption rules.

SUMMARY: The Department of the Army is amending one and deleting two exemption rules pertaining to systems of records under the Privacy Act of 1974.

EFFECTIVE DATE: This action is effective April 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Cyrus H. Fraker, 202-693-0973.

SUPPLEMENTARY INFORMATION: Exemption rules for the following systems of records are deleted since the systems of records for which the exemptions were approved were deleted in 43 FR 15353 of April 12, 1978:

AO501.12DAMI, entitled: Subversion and Espionage Directed Against the U.S. Army (SAEDA) (42 FR 51504);

AO508.25bUSACIDC, entitled: Index to Case Files—Republic of Vietnam CY 70-CY 73 (42 FR 51509).

Exemption rule for system of records AO727.05OSA, entitled: Army Council of Review Boards Files (42 FR 51512) is amended to add a suffix to the identification; i.e., AO727.05aOSA. With this change, the rule agrees with the system of records to which it applies, published in 42 FR 50565 of September 28, 1977. The amended exemption rule follows:

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

APRIL 20, 1978.

§ 505.9 Exemption rules for Army systems of records.

* * * * *

EXEMPTED RECORD SYSTEMS

(Specific Exemptions)

ID—AO727.05aOSA.
SYSNAME—Army Council of Review Boards Files.
EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(k)(1) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(d), (d), (e)(4)(G), (e)(4)(H), and (f).
AUTHORITY—5 U.S.C. 552a(k)(1).
REASONS—Disclosure of those records which are currently and properly classified in the interests of national security could cause damage to the national defense or foreign policy. The exemption from access necessarily includes exemptions from the other requirements.

[FR Doc. 78-11264 Filed 4-25-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

[FRL 887-8]

PART 418—FERTILIZER MANUFACTURING POINT SOURCE CATEGORY

AGENCY: Environmental Protection Agency.

ACTION: Promulgation of amended regulations.

SUMMARY: The United States Environmental Protection Agency (EPA) is today promulgating regulations under the Federal Water Pollution Control Act which establish effluent limitations and guidelines and new source performance standards for fertilizer manufacturing plants producing urea and ammonium nitrate.

EFFECTIVE DATE: May 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Harold B. Coughlin, Effluent Guidelines Division, 401 M Street SW., Room 911 WSME (WH-552) Washington, D.C. 20460, 202-426-2560.

SUPPLEMENTARY INFORMATION: Effluent limitations and guidelines, and new source performance and pretreatment standards for the urea and ammonium nitrate subcategories (40 CFR 418, Subparts C and D, respectively) were first promulgated by EPA on April 8, 1974 (39 FR 12832). On June 23, 1975 (40 FR 26275), Subpart D—Ammonium Nitrate was suspended until further notice. On August 20, 1975 (40 FR 36337), Subpart C—Urea was amended.

On July 16, 1976 (41 FR 29429), EPA published proposed amendments to the applicability sections, effluent limitations and guidelines and new source performance standards for the suspended ammonium nitrate and amended urea subcategories (Sections 418.40, 418.42, 418.43, 418.45, 418.30, 418.32, 418.33, and 418.35) and announced its intention to reinstate the suspended sections of the ammonium nitrate subcategory upon promulga-

tion of amendments to that subcategory. Interested persons were invited to participate in the rulemaking by submitting comments on the proposed amendments. A list of the companies and organizations which submitted comments, a summary of the comments received, and the Agency's response are contained in Appendix B to this preamble.

All comments received were thoroughly evaluated by EPA. As a result of this evaluation, and the Agency's continuing review of the regulations for the two subcategories, the following changes have been made in the proposed regulations:

(1) The definition of "product" has been amended for both the urea and ammonium nitrate subcategories to clarify that product is to be determined on a 100% basis.

(2) Ammonia nitrogen data from plant 108 has been deleted from the data base used to calculate ammonia nitrogen effluent limitations for the urea subcategory.

(3) Data from plants 113 and 125 have been deleted from the data base used to calculate ammonia nitrogen and nitrate nitrogen effluent limitations for the ammonium nitrate subcategory.

(4) Data from plants 112 and 140 have been deleted from the data base used to calculate organic nitrogen and ammonia nitrogen effluent limitations for the urea subcategory.

(5) The descriptions of the urea and ammonium nitrate subcategories have been amended to exclude discharges attributable to cooling tower blowdown.

(6) The description of the ammonium nitrate subcategory has been amended to exclude discharges from plants which totally condense their overheads.

The enactment of the Clean Water Act of 1977 (Pub. L. 95-217, December 27, 1977), amending the Federal Water Pollution Control Act, has necessitated additional changes in the proposed regulations.

As proposed, § 418.33 of the urea subcategory and § 418.43 of the ammonium nitrate subcategory ("Effluent limitations and guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable" (BAT)) included effluent limitations for pH. Under the Clean Water Act of 1977, the requirement that industrial point sources achieve effluent limitations based on BAT for "conventional pollutants"—including pollutants expressly enumerated in the statute (such as pH) and such other pollutants as may be identified as "conventional pollutants" by EPA—has been amended to require application of the "best conventional pollutant control technology" (BCT). The establishment of BCT requires the consideration of several criteria. For example, the Act requires the evaluation of the reasonableness of effluent reduction benefits as compared to effluent control costs. However, in no case can the effluent limitations established as BCT be less stringent than those attainable by application of the "best practicable control technology currently available" (BPT).

For these reasons, pH limitations have been deleted from §§ 418.33 and 418.43 (BAT effluent limitations and guidelines) and added to new Sections 418.37 and 418.47 (BCT effluent limitations and guidelines). Since the pH limitations originally proposed as BAT are based on BPT technology and are identical to BPT limitations, no supplementary BCT evaluation has been performed.

The Act requires EPA to develop by March 27, 1978, and from time to time revise, a list of "conventional pollutants" other than those explicitly identified in the statute. EPA is currently determining whether pollutants regulated in the urea and ammonium nitrate subcategories (other than pH) should be placed on this "conventional pollutant" list.

The Act requires that effluent limitations for pollutants on the "conventional pollutant" list be based on BCT; it also requires that effluent limitations for pollutants on the list which were promulgated prior to the effective date of the Act be reviewed by EPA in light of the requirements of BCT and, where appropriate, revised. The Act is silent, however, concerning the effect of the new BCT provisions on regulations which, like the ones published today, are promulgated prior to development of the conventional pollutant list but after the effective date of this Act. The Agency believes, however, that it was Congress' intent in enacting the BCT provisions of the Clean Water Act of 1977 to require review, and where appropriate, revision of such effluent limitations where the pollutants regulated are subsequently included on the "conventional pollutant" list. Accordingly, if in the future a pollutant regulated under Section 418.33 or 418.43 of these regulations is identified by EPA as a "conventional pollutant", the Agency will undertake a review to determine whether any adjustment should be made in the effluent limitations for that pollutant in light of the BCT provisions of the Act.

Legal Authority

These regulations are issued pursuant to sections 301, 304 (b) and (c), 306(b) and 307(c) of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1311, 1314(b), 1316 (b) and (c) and 1317(c)). These sections of the Act require EPA to develop effluent limitations for existing industrial point sources which, among other things, require (1) application of the best practicable control technology currently available (BPT) by July 1, 1977, (2) for conventional pollutants, application of the best conventional pollutant control technology (BCT) by July 1, 1984, and (3) for nonconventional pollutants and for pollutants not listed in Sections 301(b)(2) (C) and (D) of the Act, application of the best available technology economically achievable (BAT) not later than three years after the date of such limitations are established, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987. They also require EPA to establish standards of performance and pretreatment standards for new sources.

Technical Basis for Regulations

The effluent limitations and guidelines and new source performance standards published today are based on responses to a written request to industry for information and on permit compliance monitoring data.

The request to industry for information asked for process information, production rates, raw waste load data, treatment descriptions and treated effluent data. It was sent to essentially all urea and ammonium nitrate plants in the United States. Responses were received from 47 plants producing urea, ammonium nitrate, or both. These plants represent approximately 78 percent of the urea and 79 percent of the ammonium nitrate manufacturing capacity in the country.

To analyze the data received, the industry was categorized by product and process. Treatment systems and process differences were examined. Effluent data were reduced to consistent units and variability of performance was studied. To develop the effluent limitations proposed by EPA on July 15, 1976, plants with performance better than the median value for each of the controlled pollution parameters were averaged to determine the long term effluent waste load for each pollutant. These long term waste loads were then multiplied by the variability factors developed by EPA to derive the effluent limitations. As a result of comments concerning some of the plants used in calculating the proposed effluent limitations, data from some plants have been deleted and the remaining data re-averaged.

To examine pH practices and performance, permit compliance monitoring data were evaluated. In addition, a phone survey was made of those plants that continuously measure and record pH to find out what treatment methods are used and to confirm and update the data. From this evaluation the limitations for pH were established.

A summary of the data used is contained in Appendix A to this preamble.

Economic Impact Analysis

The economic impact analysis (using 1972 data) for the urea and ammonium nitrate subcategories was presented with the promulgation of the initial regulations in April 1974. (The document, Economic Analysis of Effluent Guidelines-Fertilizer Industry, PB-214-315, is available from the National Technical Information Service, Springfield, Va. 22151.) The Agency performed a supplementary economic impact analysis in 1975 (using 1974 data) in connection with revision of the regulations. (This analysis is contained in a document, No. EPA-230/2-74-010 (supp.), which is available in limited quantities from the Water Economics Staff (WH-586), EPA, Washington, D.C. 20460.)

The supplementary analysis was similar to the original in that the methodology and cost data remained the same. However, in evaluating the potential impacts, certain assumptions concerning long run prices and demand were revised due to changes in the economic situation of the fertilizer industry. The results of the analysis showed that the industry was in a much improved state as compared to 1972 when the original study was done. The oversupply situation, which had resulted in weak demand and low prices present in 1972, had been greatly alleviated.

On the basis of an in-house review, the Agency believes that the results from the supplementary analysis performed in 1975 are still valid and can be used to support the promulgation of these standards. The supplementary report was based on an analysis of the viability of investment in plants, which involves a projection of future long run prices and demand, and therefore is not affected by short term fluctuations in price.

Conditions in both the urea and ammonium nitrate markets are much less optimistic today than in 1974 to 1975, but a survey of present prices indicates that they are within the long run predictions used in the 1975 analysis. For example, the long run (1977 to 1983) price for ammonium nitrate was estimated to be around $80 per ton. For the same time period, the price of urea was estimated to be around $113 per ton. A review of early 1978 (Gulf Coast) prices for these items indicates that ammonium nitrate was getting around $95 to $105 per ton, while urea was commanding around $112 to $116 per ton. When deflated to 1975 dollars, these values are reasonably comparable. However, it should be pointed out that overall profitability for these two segments may be lower due to increases in raw material and other manufacturing (especially energy) costs.

For the promulgation of these amended regulations, the performance of the specified technologies have been reviewed. Based on this review, the regulations being promulgated are less stringent than those originally proposed. For both urea and ammonium nitrate, the less stringent requirements will mean that the costs of meeting the BPT requirements will be somewhat less than the costs associated with meeting the original regulations.

On balance, the Agency believes that the economic impact estimates should remain approximately the same. Further support for this position can be found in the fact that comments on the proposed amendments did not refer to economic concerns at all. However, EPA will continue to monitor the economic performance of the industry.

Ammonium nitrate: The supplementary analysis estimated baseline closures to be from 0 to 4 plants. An additional 2 to 4 plants were estimated to close as a result of the BPT regulations. The incremental BPT impact (of 2 to 4 plant closures) represent 3 to 6 percent of plants in this subcategory; around 1.4 percent of total capacity; and represent a potential loss of 39 to 74 jobs. No significant foreign trade impacts or community effects were indicated by the analysis. The analysis also indicated that there will not be any additional impacts due to the BAT regulations.

Urea: The supplementary analysis estimated baseline closures of from 1 to 3 plants. The analysis indicated that the BPT regulations may cause an additional 1 to 7 plant closures, which represent between 3 to 17 percent of plants in this subcategory. The 1 to 7 plants account for 1 to 2 percent of capacity and between 37 to 123 jobs. No significant foreign trade impacts or community effects were indicated by the analysis. The results also indicated that there will not be any additional impacts due to the BAT regulations.

Availability of Documents

The technical and economic reports described above, the data collected, the information received, and a summary of EPA's findings are available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library), Waterside Mall, 401 M Street SW., Washington, D.C. 20460. The technical and economic reports are also available at all EPA Regional Offices and at State Water Pollution Control Offices. EPA public information regulations provide that a reasonable fee may be charged for copying materials at EPA offices.

Small Business Administration Loans

Section 8 of the FWPCA authorizes the Small Business Administration, through its ecomomic disaster loan program, to make loans to assist any small business concerns in effecting additions to or alterations in their equipment, facilities, or methods of operation so as to meet water pollution control requirements under the FWPCA, if the concern is likely to suffer a substantial economic injury without such assistance.

For further details on this Federal loan program write to EPA, Office of Analysis and Evaluation, WH-586, 401 M Street SW., Washington, D.C. 20460.

Statement of Promulgation

In consideration of the foregoing:

40 CFR Chapter I, Subchapter N, Part 418, Fertilizer Manufacturing Point Source Category, Subpart C—Urea Subcategory is amended as set forth below. These amendments supersede previous amendments to Subpart C—Urea Subcategory promulgated on August 20, 1975 (40 FR 36337).

40 CFR Chapter I, Subchapter N, Part 418, Fertilizer Manufacturing Point Source Category, Subpart D—Ammonium Nitrite is reinstated as amended below.

These amendments shall be effective May 26, 1978.

Dated: April 14, 1978.

Barbara Blum,
Acting Administrator.

Appendix A

The following data summarize the information used as a basis for the limitations and standards established. Original data and other information are available at the EPA Public Information Unit.

(a) Urea Subcategory (Subpart C)

Best practicable control technology currently available (BPT) for solutions producing plants is based on the performance of plants submitting applicable data tabulated as follows:

Pounds per 1,000 lb (kilograms per 1,000 kg)]

Plant	Organic nitrogen	Ammonia nitrogen
108	0.0043	—
111	.043	.319
141	.054	.231
146	.129	.102
137	.224	.079
Long-term average	.091	.183
Average of 30 days	.33	.48
Daily maximum.	.61	.95

The numbers for the average of 30 days and the daily maximum were derived from the long term average by using the variability factors listed in this appendix. Taking Organic Nitrogen as an example:

Average of 30 Days=Long Term Average × Variability Factor 0.091 × 3.6=0.33.

Daily Maximum=Long Term Average × Variability Factor 0.091 × 6.7=0.61.

BPT for plants that prill or granulate their product is based on the performance of plants submitting applicable data tabulated as follows:

[Pounds per 1,000 lb (kilograms per 1,000 kg)]

Plant	Organic nitrogen	Ammonia nitrogen
146	0.129	0.102
137	.224	.079
110	.310	.501
Long-term average	.221	.227
Average of 30 days	.80	.59
Daily maximum.	1.48	1.18

Best available technology economically achievable (BAT) for solutions producing plants is based on the average of the best two plants. The performance of the best plants used in this determination is as follows:

[Pounds per 1,000 lb (kilograms per 1,000 kg)]

Plant	Organic nitrogen	Ammonia nitrogen
108	0.0043	—
146	.129	0.102
Long-term average	.067	.102
Average of 30 days	.24	.27
Daily maximum.	.45	.53

BAT for plants that prill or granulate their products is the performance of the best plant. The performance of the best plant used in this determination is as follows:

[Pounds per lb (kilograms per 1,000 kg)]

Plant	Organic nitrogen	Ammonia nitrogen
146	0.129	0.102
Long term average	0.129	0.102
Average of 30 days	0.46	0.27
Daily maximum	0.86	0.53

The new source performance standard (NSPS) is equal to BAT since there is now a plant performing at this level.

Permit compliance monitoring data for 30 plants producing urea have been examined for pH control performance. To find out what treatment methods are used and to confirm and update the data, a phone survey was made of those plants that continuously measure and record pH. For some plants no compliance monitoring data is available because they do not have permits, have become inactive, use deep well disposal, or have only recently been issued permits. Fourteen plants continuously measure and record pH, two plants measure pH on a sample collected by a continuous compositing sampler and the remainder measure pH on a grab sample daily or less often. The grab samples are of minimal value in determining pH performance. Data are reported for the outfall containing the effluent from urea production. The outfall usually contains effluent from other operations in addition. Of fourteen plants that continuously measure and record pH, plants 123, 170 and 172 are within the pH range of 6.0 to 9.0 at all times. Of two plants that measure pH on a sample collected by a continuous compositing sampler over a 24 hour period, plants 106 and 149 are within the pH range of 6.0 to 9.0 at all times. Six plants that are not now in compliance have recently installed or plan to install pH control equipment. While the plants performing well on pH control are not the same as those used as a basis for nitrogen limitations, they are typical of plants in the subcategory in that they produce urea by the same methods and thus have the same waste control problems.

The treatment technology on which pH limits are based is two stage neutralization with acid or base followed by diversion for retreatment when needed. This technology will control pH within the range of 6.0 to 9.0 for all plants. Other technology that will reduce the control problem, or in some cases achieve control, includes leak, spill and pollutant loss control; equalization ponds; and recycle of pollutants.

Because the best performing plants are currently achieving pH limitations of from 6.0 to 9.0 utilizing best practicable technology and because EPA is unaware of any more advanced pH control technology for this industry, the pH limitation for BPT, BCT and NSPS is established at:

pH—within the range of 6.0 to 9.0.

Three plants producing urea, and continuously monitoring and recording pH, now achieve this limitation. Plants not in compliance have inadequate or non-existent pH control treatment systems.

(b) Ammonium Nitrate Subcategory (subpart D)

For ammonium nitrate, BPT is based on the average of the plants submitting applicable data. No plants using ion exchange treatment technology were included in this determination. The performance of the plants used in this determination is as follows:

[Pounds per 1,000 lb (kilograms per 1,000 kg)]

Plant	Nitrate nitrogen	Ammonia nitrogen
111	0.0607	0.201
143	0.063	0.184
116	0.0748	0.0243
130	0.178	0.260
138	0.178	0.294
135	0.198	0.096
137	0.379	0.218
131	0.408	0.352
Long term average	0.192	0.204
Average of 30 days	0.37	0.39
Daily maximum	0.67	0.73

For BAT, the average of the best three plants was used. Two of these plants use ion exchange treatment technology but the third achieves good results without its use. The performance of the best plants used in this determination is as follows:

Plant	Nitrate nitrogen lb/1000 lb kg/kkg	Ammonia nitrogen lb/1000 lb kg/kkg
108	0.0124	0.0160
109	0.0186	0.0212
116	0.0748	0.0243
Long term average	0.035	0.021
Average of 30 days	0.07	0.04
Daily maximum	0.12	0.08

NSPS is equal to BAT since there are now plants performing at this level.

Permit compliance monitoring data for 30 plants producing ammonium nitrate have been examined for pH control performance. To find out what treatment methods are used and to confirm and update the data, a phone survey was made of those plants that continuously measure and record pH. For some plants no compliance monitoring data is available because they do not have permits, have become inactive, use deep well disposal, or have only recently been issued permits. Eleven plants continuously measure and record pH, three plants measure pH on a sample collected by a continuous compositing sampler, and the remainder measure pH on a grab sample daily or less often. The grab samples are of minimal value in determining pH performance. Data is reported for the outfall containing the effluent from ammonia nitrate production and usually contains effluent from other operations. Of eleven plants that continuously measure and record pH, plants 123, 157, 170 and 172 are within the pH range of 6.0 to 9.0 at all times. Of three plants that measure pH on a sample collected by a continuous compositing sampler over a 24 hour period, all (plants 106, 143 and 149) are within the pH range of 6.0 to 9.0 at all times. Of the plants that are not presently in compliance, three plan to install pH control equipment. While the plants performing well on pH control are not the same as those used as a basis for nitrogen limitations they are typical in that they produce ammonium nitrate by the same methods and thus have the same waste control problems.

The treatment technology on which pH limits are based is two-stage neutralization with acid or base followed by diversion for retreatment when needed. This technology will control pH within the range of 6.0 to 9.0 for all plants. Other technology that will reduce the control problem, or in some cases achieve control, includes leak, spill, and pollutant loss control; equalization ponds; and recycle of pollutants.

Because the best performing plants are currently achieving pH limitations of from 6.0 to 9.0 utilizing best practicable technology and EPA is unaware of any more advanced pH control technology for this industry, the pH limitation for BPT, BCPCT and NSPS is established at: pH—within the range of 6.0 to 9.0

Four plants producing ammonium nitrate, and continuously monitoring and recording pH, achieve this limitation. Plants not in compliance have inadequate or non-existent pH control treatment systems.

Variability factors related to long-term average

Urea plants	Organic nitrogen		Ammonia nitrogen	
	Maximum average[1]	Maximum for 1 day	Maximum average[1]	Maximum for 1 day
Plant No.:				
104	2.32		2.80	
110	4.05	5.86	2.88	4.22
125	3.05	4.23	1.64	2.17
137	3.70	8.99	2.44	6.45
141	4.68	7.90	3.15	7.95
Average	3.60	6.70	2.60	5.20

Variability factors related to long-term average—Continued

Ammonium nitrate plants	Nitrate nitrogen		Ammonia nitrogen	
	Maximum average[1]	Maximum for 1 day	Maximum average[1]	Maximum for 1 day
Plant No.:				
104	2.07	.....	2.51	.....
125	2.06	2.56	1.64	2.17
132	1.56	.....	1.64	.....
137	2.01	4.25	2.44	6.45
138	2.05	.....	1.86	.....
139	1.78	3.70	1.40	2.13
Average	1.90	3.50	1.90	3.60

[1]For 30 consecutive days.

Appendix B—Summary of Public Participation

The following responded to EPA's request for written comments on the proposed regulations: Agrico Chemical Co., American Cyanamid Co., CF Industries, Inc., Cleary, Gottlieb, Steen and Hamilton, Department of Health, Education, and Welfare, E.I. DuPont De Nemours & Co., The Fertilizer Institute, Hawkeye Chemical Co., Mississippi Chemical Corp., Olin Corp., Phillips Petroleum Co., The Standard Oil Co. (Vistron Corp.).

The following is a summary of significant comments and the Agency's response:

(1) One commenter stated that the regulations for solutions plants do not contain any reference to product concentration.

All data used in developing the regulations were based on (or converted to) 100 percent product concentration, and the regulations accordingly apply to product on a 100 percent basis. Sections 418.31 and 418.41 have been amended to clarify this point.

(2) Several commenters suggested that the sections of the regulation concerning discharges from shipping losses and precipitation runoff be clarified.

The effluent limitations do not include allowances for discharges due to shipping losses or precipitation runoff from outside the battery limits area. The data received were not sufficient to relate these losses to a unit of production. The permiting authority should determine the amount of additional allowance should such an allowance be considered appropriate. Losses occurring within the battery limits, such as leaks, spills and washdown water are being limited by the guidelines even if carried to the plant outfall by rainwater.

(3) A number of commenters requested that the regulations be clarified concerning the coverage of cooling tower blowdown.

The effluent limitations promulgated today do not include an allowance for cooling tower blowdown. Because contamination in cooling tower water is due primarily to airborne pickup, it is not feasible to establish limitations for cooling tower discharge on a production basis. The permitting authority should determine on a case-by-case basis the amount of additional allowance for cooling tower blowdown, should such an allowance be considered appropriate.

(4) Several comenters questioned the feasibility of maintaining pH between 6.0 to 9.0, 100 percent of the time.

In response to this comment, permit compliance monitoring data for urea and ammonium nitrate plants were reviewed. In addition a phone survey was made of those plants that continuously measure and record pH to find out what treatment methods are used and to confirm and update the data. The data (summarized in Appendix A) indicate that 3 of 14 urea plants and 4 of 11 ammonium nitrate plants that continuously measure and record pH are in compliance with the pH 6.0 to 9.0 requirement. The best performing plants do achieve pH of 6.0 to 9.0 at all times and that is the basis for limitations for best practicable control technology currently available, best conventional pollution control technology and new source performance standards.

(5) Several commenters suggested that new source performance standards should be less stringent than best available technology limitations.

Both best available technology limitations and new source performance standards are based on plants presently performing at those levels. Thus, the technology is demonstrated and meets the requirements for new source performance standards.

(6) One commenter requested that operations in which urea is manufactured as an intermediate product and inseparably combined with another operation, such as melamine, be excluded from the regulations.

The commenter did not provide sufficient information to EPA to enable it to determine whether its integrated operation should be excluded from the effluent limitations or treated as a separate category. The effect of such integrated operations on waste water discharges may, however, be considered at the time a permit is issued, and a determination made as to whether such an operation is included in the urea subcategory, or whether a special provision should be incorporated in the permit.

(7) One commenter requested that a distinction be made between old and new urea plants.

The age of plants was considered but does not provide a basis for subdivision. Some of the older plants are among the best performers.

(8) One commenter suggested that organic nitrogen and ammonia nitrogen be considered as a single pollutant parameter since urea can convert to ammonia.

Use or organic nitrogen and ammonia nitrogen as a single pollutant is one possible approach to establishing pollutant limitations for urea. However, the two parameter approach is the one that has been used and it is also satisfactory. Most of the data is submitted in this form and the analysis has been done on that basis. Performance data from operating plants fits the two parameter approach without complications.

(9) Several commenters stated that plants using ion exchange should not be used in determining limitations for urea manufacturing, since EPA has not suggested that ion exchange is an appropriate treatment technology for urea plants.

The ion exchange equipment in use at fertilizer plants reduces the amount of ammonia and nitrate in the effluent but has no significant effect on organic nitrogen. In the urea regulations now promulgated, only the data for organic nitrogen from plants using ion exchange has been used. Data for ammonia nitrogen from these plants have been deleted.

(10) Several commenters requested that data from plant number 140 be deleted from the data base for urea regulations.

Data from plant number 140 have been deleted from the data base. While this plant is performing better than the other plants in the industry, it is doing so partially because it has a source of energy (waste steam from another process) that is not available to other plants in the industry.

(11) Some commenters suggested that plant 112 should not be used in developing the urea regulation because a portion of the waste stream generated in the urea plant is sent to the adjacent ammonium nitrate plant.

It is recognized that the interconnection between the urea and ammonium nitrate operations at plant 112 could result in lower than expected discharges from the urea plant. Plant 112 has been deleted from the determination of the final urea limitation.

(12) Two commenters stated that although ion exchange is an acceptable method of pollution control, the best available technology limitations for ammonium nitrate are too stringent and allow no operating margin.

The best available technology limitations for ammonium nitrate have been revised for other reasons (see comments 16 and 17) resulting in less stringent limitations.

(13) Some commenters said that ion exchange is practical only at ammonium nitrate plants which make solutions.

Ion exchange treatment of waste streams from ammonium nitrate manufacture results in two streams, one of which is acceptable for discharge under the new source performance standards and the best available technology economically achievable limitations. The second stream is a 16 to 22 percent solution of ammonium nitrate. This is a concentration of ammonium nitrate that has value as a fertilizer. Although it may be easier to dispose of this valuable stream in plants that produce and market a solution product, the stream from plants producing solids only can still be upgraded and sold or otherwise directed to a useful fertilizer ap-

plication. Plant 179 which produces solids only, for example, has succeeded in disposing of the dilute regenerate waste stream from its ion exchange treatment system. It is inappropriate to discharge this quantity of ammonium nitrate to the waterways as a pollutant, when it can be used for fertilizer and provide economic credits to pollution control costs or to the economy generally.

(14) Two commenters stated that ion exchange should not be used as a basis for best available and new source technology because it is dangerous, costly and still experimental.

According to a manufacturer's report in January, 1976, eleven major ammonium nitrate producers have selected the Chem-Seps ion exchange system for pollution control. Five of these systems are currently in operation. This indicates that ion exchange is a demonstrated ammonium nitrate waste treatment technology which has been accepted by a significant part of the industry.

In August, 1976, an explosion occurred in one ion exchange unit. EPA discussed both the causes and effects of the explosion with personnel of the affected company. The causes and effects of the explosion were known to the extent that design modifications were made to minimize the possibility of a recurrence and to protect equipment and personnel from an explosion should it occur. The unit was subsequently returned to service and has been operating satisfactorily since that time.

Industry's experience with and commitment to the ion exchange process indicates that it is available and demonstrated technology suitable as a basis for best available technology and new source performance standards.

(15) Several commenters stated that an additional allowance should be made for plants that totally condense neutralizer overheads in the best available technology regulation for ammonium nitrate.

Total condensation of neutralizer overheads is not now being practiced in the industry, although a number of plants condense or collect 15 to 20 percent of the overheads. Some plants that partially condense their overheads are included in the data base. There is no federal air regulation at present that requires total condensation of overheads. Because there is no data available now, the description of the ammonium nitrate subcategory has been amended to exclude discharges from plants that totally condense their neutralizer overheads. When data becomes available the Agency may amend the regulation on this point.

(16) Comments were received suggesting that plant 113 be dropped from the determination of ammonium nitrate guidelines.

Additional information has been received concerning plant 113. This information indicates that the treatment technique employed requires a source of solid fertilizer to concentrate the liquid wastes. For this reason, plant 113 was not used in determining the final ammonium nitrate limitations.

(17) Several comments stated that plant 125 should not be used in determining the ammonium nitrate guidelines because of limitations in the 30 day sampling study on which the data was based.

EPA recognizes the limitations in the data from the 30 day sampling study and has deleted plant 125 from the determination of the final ammonium nitrate limitations.

(18) A number of comments were received concerning the derivation of the variability factors. One comment suggested that EPA had discarded some data because it seemed excessively high. Other comments stated that it appeared that EPA had chosen one set of plants for their low average discharges while a second set of plants had been chosen because of their low variability. One commenter stated that EPA should have used all 12 months of data from plant 138 in calculating the variability factor for that plant.

EPA received comparatively little data which could be used in determining the variability. A number of reports contained only a single figure representing the average discharge over a period of one month and provided no information which could be used to determine variability. Some reports contained monthly averages and could be used for computing only a monthly variability factor. A few reports contained day by day data which could be used for calculating both a monthly and a daily variability factor. In order to use the maximum number of plants in computing the variability factors, no attempt was made to select only those plants which had a lower than average variability. All available data was used to derive the variability factors. The report received by EPA from plant 138 contained complete data for only 11 months. All months for which complete data were received were used in computing the variability factor of this plant.

(19) Several comments stated that the variability factors for plant 125 should not be used in determining the overall variability factors. One comment suggested that EPA had derived the urea variability factor for plant 125 using data for a 30 day sampling study during which the urea units were down 22 of the 60 stream days.

In computing variability factors, EPA used at least 7 months of data and in no case were the results of a brief sampling study used. In deriving the variability factor for urea production at plant 125, figures for organic nitrogen appearing in the total plant effluent from December 1974 to November 1975 were examined. This examination indicated that the discharges during the last 7 months were generally lower than in the first 5 months. Probability plots of the data suggested that the lower discharges were caused by some factor other than ordinary variability. A telephone conversation with the plant revealed that some operational changes had been instituted. Catch basins had been installed and spills to the ground were being collected. The ammonium nitrate neutralizer had been modified to reduce losses to the atmosphere. Since the purpose of a variability factor is to allow for typical variations in the operation of a process, but not to allow for changes in equipment or operation, the variability factors for plant 125 were calculated using the last 7 months of data.

1. § 418.30 is amended to read as follows:

§ 418.30 Applicability; description of the urea subcategory.

The provisions of this subpart are applicable to the manufacture of urea. Discharges attributable to shipping losses and precipitation runoff from outside the battery limits of the urea manufacturing operations, and cooling tower blowdown are excluded.

2. § 418.31 is amended to read as follows:

§ 418.31 Specialized definitions.

For the purposes of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "product" shall mean the 100 percent urea content of the material manufactured.

3. In § 418.32, paragraphs (a) and (b) are amended to read as follows:

§ 418.32 Effluent limitations and guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

* * * * *

(a) The following limitations constitute the maximum permissible discharge for urea manufacturing operations in which urea is produced as a solution product:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Ammonia (as N)	0.95	0.48
Organic nitrogen (as N)	0.61	0.33
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

NOTE.—Metric units: Kilogram/1,000 kg of product; English units: Pound/1,000 lb of product.

(b) The following limitations constitute the maximum permissible discharge for urea manufacturing operations in which urea is prilled or granulated:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Ammonia (as N)	1.18	0.59
Organic nitrogen (as N)	1.48	0.80
pH	(1)	(1)

[1] Within the range 6.0 to 9.0

NOTE.—Metric units: Kilogram/1,000 kg of product; English units: Pound/1,000 lb of product.

4. § 418.33 is amended to read as follows:

§ 418.33 Effluent limitations and guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants

or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

(a) The following limitations constitute the maximum permissible discharge for urea manufacturing operations in which urea is produced as a solution product:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Ammonia (as N)	0.53	0.27
Organic nitrogen (as N)	0.45	0.24

NOTE.—Metric units: Kilogram/1,000 kg of product; English units: Pound/1,000 lb of product.

(b) The following limitations constitute the maximum permissible discharge for urea manufacturing operations in which urea is prilled or granulated:

Effluent characteristics	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Ammonia (as N)	0.53	0.27
Organic nitrogen (as N)	.86	.46

NOTE.—Metric units: Kilogram/1,000 kg of product; English units: pound/1,000 lb of product.

5. In § 418.35, paragraph (a) and (b) are amended to read as follows:

§ 418.35 Standards of Performance for New Sources

* * * * *

(a) The following limitations constitute the maximum permissible discharge for urea manufacturing operations in which urea is produced as a solution product:

Effluent characteristics	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Ammonia (as N)	0.53	0.27
Organic nitrogen (as N)	.45	.24
pH	(1)	(1)

[1]Within the range 6.0 to 9.0.

NOTE.—Metric units: Kilogram/1,000 kg of product; English units: pound/1,000 lb of product.

(b) The following limitations constitute the maximum permissible discharge for urea manufacturing operations in which urea is prilled or granulated:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Ammonia (as N)	0.53	0.27
Organic nitrogen (as N)	.86	.46
pH	(1)	(1)

[1]Within the range 6.0 to 9.0.

NOTE.—Metric units: Kilogram/1,000 kg of product; English units: pound/1,000 lb of product.

6. The following new § 418.37 is added to Subpart C:

§ 418.37 Effluent limitations and guidelines for conventional pollutants representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology.

Effluent characteristic	*Effluent limitations*
pH	Within the range 6.0 to 9.0.

7. § 418.40 is amended to read as follows:

§ 418.40 Applicability; description of the ammonium nitrate subcategory.

The provisions of this subpart are applicable to discharges resulting from the manufacture of ammonium nitrate. Discharges attributable to shipping losses, precipitation runoff from outside the battery limits of the ammonium nitrate manufacturing operations, cooling tower blowdown, and discharges from plants which totally condense their neutralizer overheads are excluded.

8. § 418.41 is amended to read as follows:

§ 418.41 Specialized definitions.

For the purposes of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in 40 CFR Part 401 shall apply to this subpart.

(b) The term "product" shall mean the 100 percent ammonium nitrate content of the material manufactured.

9. § 418.42 of the ammonium nitrate subcategory is amended to read as follows:

§ 418.42 Effluent limitations and guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations. The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed—
Ammonia (as N)	0.73	0.39
Nitrate (as N)	.67	.37
pH	(1)	(1)

[1]Within the range 6.0 to 9.0.

NOTE.—Metric units: kilogram/1,000 kg of products; English units: pound/1,000 lb of product.

10. § 418.43 of the ammonium nitrate subcategory is amended to read as follows:

§ 418.43 Effluent limitations and guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
Ammonia (as N)	0.08	0.04
Nitrate (as N)	.12	.07

NOTE.—Metric units: kilogram/1,000 kg of products; English units: pound/1,000 lb of product.

11. § 418.45 of the ammonium nitrate subcategory is amended to read as follows:

§ 418.45 Standards of performance for new sources.

The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this section, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
Ammonia (as N)	0.08	0.04
Nitrate (as N)	.12	.07
pH	(1)	(1)

[1] Within the range 6.0 to 9.0.

NOTE.—Metric units: kilogram/1,000 kg of product; English units: pound/1,000 lb of product.

12. The following new § 418.47 is added to Subpart D:

§ 418.47 Effluent limitations and guidelines for conventional pollutants representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology.

Effluent characteristic	*Effluent limitations*
pH	Within the range 6.0 to 9.0.

[FR Doc. 78-11082 Filed 4-25-78; 8:45 am]

[7035-01]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER B—PRACTICE AND PROCEDURES

PART 1130—APPLICATIONS FOR MOTOR CARRIER CERTIFICATES AND PERMITS

Correction

AGENCY: Interstate Commerce Commission.

ACTION: Correction of rules.

SUMMARY: Interstate Commerce Commission regulations provide generally that applications for motor carrier certificates or permits shall be filed in accordance with instructions contained in Form OP-OR-9. Although the instructions accompanying that form require that the original and one copy of the application be mailed to the Commission, this requirement is not reflected in the regulation, which provides only that the verified original of each application be filed with the Commission. This amendment is intended to eliminate the disparity between the regulations and the instructions accompanying Form OP-OR-9.

EFFECTIVE DATE: This correction will become effective April 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg, telephone: 202-275-7292.

SUPPLEMENTARY INFORMATION: The first sentence of § 1130.1(b) of title 49 of the Code of Federal Regulations will be revised to read as follows:

§ 1130.1 Applications.

* * * * *

(b) *Filing and service.* The verified original and one copy of each application shall be filed with this Commission, one copy thereof shall be furnished the Regional Operations Director of the Bureau of Operations located in the region wherein applicant is domiciled and one copy shall be delivered, upon written request, by first-class mail, to the Board, Commission, or official (or Governor if there is no Board, Commission or official) having authority to regulate the business of transportation by motor vehicle, of each State in or through which applicant operates or proposes to operate.

* * *

In all other respects the language of part 1130 of title 49 of the Code of Federal Regulations remains unchanged.

This document is promulgated under the authority contained in 49 U.S.C. 304 and 5 U.S.C. 553 and 559. Prior public notice and opportunity for hearing have been dispensed with for the reason that this document deals with matters of agency practice and procedure and comment upon the notice of correction is unnecessary. The correction is made effective immediately to eliminate further confusion.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11273 Filed 4-25-78; 8:45 am]

[7035-01]

SUBCHAPTER D—TARIFFS AND SCHEDULES

[Ex Parte No. MC-77 (Sub-No. 2)]

PART 1310—FREIGHT RATE TARIFFS, SCHEDULES AND CLASSIFICATIONS OF MOTOR CARRIERS

Regulation Governing Restrictions on Service By Motor Common Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Interstate Commerce Commission, in its Notice of Proposed Rulemaking and Order, published September 17, 1974 (39 FR 33379), set forth proposed regulations governing the cancellation of joint routes. It provided that when a tariff proposing the cancellation of a joint route was tendered to the Commission, it should be accompanied by a clear statement of the justfication relied upon to warrant the closing of the route and an affirmation that other carriers in the joint route have been informed of the cancellation. The Commission in its report in this proceeding served found that the proposed rule was warranted. However, certain modifications were made to clarify when the statement or justification would be required and to specify what information should be contained in the notice to the connecting carriers.

DATE: The effective date of the prescribed rule is May 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Martin E. Foley, Director, Bureau of traffic, 202-275-7348, Janice M. Rosenak, Deputy Director, Section of Rates, 202-275-7693, Interstate Commerce Commission, Washington, D.C. 20423.

SUPPLEMENTARY INFORMATION: The Commission has issued a report and order in this proceeding served April 21, 1978, in which it discusses the issues raised by interested parties

in this rulemaking proceeding. In response to these comments, the proposed regulations were amended to provide that the clear statement of justification and notice to connecting carriers would not be required if commodity rates (other then column commodity rates) are canceled and the joint route is kept open for the application of column commodity rates and class rates based on classes or ratings in the governing classification or exceptions thereto. In cases where a statement of justification is required, the carrier must also inform connecting carrier(s) in the joint route of the proposed cancellation, providing basic specified information. If the requirements of the rule are not met, the tariff may be subject to rejection. Specifically, the rule has been amended to read as follows:

§ 1310.8 Routing (rule 8).

* * * * *

(d) *Cancellation of joint routes.* (1) Accompanying the tender to the Commission of any tariff which provides for the cancellation of joint routes (except as provided in (3) below), either by canceling all arrangements in the tariff between certain carriers or by canceling an interchange point there shall be a clear statement of the justification relied upon to warrant the closing of the route.

(2) The statement of justification should be addressed to the Tariff Examining Branch and must affirm that the other carrier in the joint route has been given notice by letter or telegram of the proposed cancellation. This notice shall contain the following information:

(i) The name of the carrier canceling the joint route; (ii) the supplement number of the tariff in which the proposed tariff change is published; (iii) the reasons for the cancellation; and (iv) a provision informing the connecting carrier that it has the right to object to the cancellation by filing a written petition (or by telegram if time does not permit a written response) at least 12 days prior to the effective date of the proposal with the Interstate Commerce Commission, Washington, D.C. 20423, seeking suspension of the proposal and stating the reasons supporting suspension, as provided in the Commission's Rules of Practice (49 CFR 1100.40).

(3) If the proposed joint route cancellation is to apply only to commodity rates (other than column commodity rates), and the joint route is to be kept open for the application of column commodity rates and/or class rates based on classes or ratings in the governing classification or exceptions, then the letter of transmittal accompanying the publication shall contain a statement to that effect. In this case, neither the justification statement nor the affirmance of notification to the other carrier participating in the route is required.

(4) Any tariff subject to this rule which does not meet the specified requirements is subject to rejection.

The report of the Commission will be served upon all parties to the proceeding. Copies will be furnished upon request from the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

H. G. Homme, Jr.
Acting Secretary.

[FR Doc. 78-11311 Filed 4-25-78; 8:45 am]

proposed rules

[7590-01]

NUCLEAR REGULATORY COMMISSION

[10 CFR Parts 2 and 50]

RULES OF PRACTICE

LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

Antitrust Review Procedures

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering amending current regulations to reduce or eliminate the requirements for submission of antitrust information in certain "de minimis" instances and to clarify requirements for antitrust review of applications for licenses for class 103 facilities (commercial facilities) other than power reactors.

DATE: Comment period expires June 26, 1978.

ADDRESS: Written comments should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT:

Mr. Argil Toalston, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone 301-492-8339.

SUPPLEMENTAL INFORMATION: Each applicant for a license for a production or utilization facility under section 103 of the Atomic Energy Act of 1954, as amended, is required by § 50.33a of 10 CFR Part 50, Licensing of Production and Utilization Facilities, to respond to a series of questions provided by the Attorney General of the United States in connection with the review of antitrust matters pursuant to section 105c of the Atomic Energy Act of 1954, as amended. In the case of a nuclear power reactor, several utilities may join in a single application for a license. Some of the participants will hold a very small share of the facility and will be entitled to only a small percentage of the total output of electricity from the facility.

Because participants holding a small share entitling them to a small percentage of the electricity generated by the facility would not normally have a significant competitive impact in their area, the Commission has concluded that such participants entitled to 20 MW(e) or less of power generated should not be required to submit the antitrust information specified in Part 50, unless specifically requested by the Commission to do so. The Commission has selected the 20 MW(e) ownership limit because, under typical increments of installed capacity to meet new load growth, such a limit would normally require the 200 largest utilities in the United States to respond to all or portion of the antitrust questions. The Commission believes that utilities smaller than these generally would have a negligible effect on competition, but under certain circumstances these smaller systems could also be required to submit the information set forth in Appendix L.

The Commission has also concluded that participants entitled to more than 20 MW(e) but less than 80 MW(e) of power generated should be required only to respond to question 9 in Appendix L of Part 50 dealing with neighboring, non-affiliated electric utility systems with peak loads smaller than applicant's and should not initially be required to answer any of the other questions set forth in Appendix L, Part 50. Such an applicant could, of course, subsequently be specifically requested by the Commission to submit all the information required by § 50.33a. The Commission has selected the 80 MW(e) ownership limit because, under typcial increments of installed capacity to meet new load growth, such a limit would normally require the 100 largest utilities in the United States to respond to all of the antitrust questions.

These proposed changes would reduce the burden of preparing antitrust-related data on applicants with a small percentage of ownership in the facility and its output, while at the same time maintaining an adequate standard of antitrust review. The Antitrust Division of the Department of Justice has concurred in the Commission's proposed action.

Other commercial production and utilization facilities in addition to nuclear power reactors are subject to antitrust review requirements. Amendments are proposed to Parts 2 and 50 in order to clarify that the antitrust review associated with construction permit applications for uranium enrichment facilities and fuel reprocessing plants may also call for submission of information by applicants.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974 and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following amendments to Title 10, Chapter 1, Code of Federal Regulations, Parts 2 and 50, is contemplated. All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed amendment should send them to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by June 26, 1978. Copies of comments may be examined in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

1. Paragraph 2.101(a)(5) of 10 CFR Part 2 would be revised to read as follows:

§ 2.101 Filing of application.

(a) * * *

* * * * *

(5) An applicant for a construction permit for a production or utilization facility which is subject to § 51.5(a) of this chapter, and is of the type specified in §§ 50.21(b)(2) or (3) or 50.22 of this chapter or is a testing facility may submit the information required of applicants by Part 50 of this chapter in three parts. One part shall be accompanied by the information required by § 50.30(f) of this chapter, another part shall include any information required by §§ 50.34(a) and, if applicable, 50.34a of this chapter and a third part shall include any information required by § 50.33a. One part may precede or follow other parts by no longer than six (6) months except that the part including information required by § 50.33a shall be sumitted in accordance with time periods specified in § 50.33a. If an applicant for a construction permit for a nuclear power reactor is not required pursuant to § 50.33a of this chapter to file information in accordance with § 50.33a of this chapter, such applicant shall file with the first part of its application an affidavit setting forth facts as to its ownership share in the proposed nuclear power reactor. If it is determined that

any one of the parts as described above is incomplete and not acceptable for processing, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will inform the applicant of this determination and the respects in which the document is deficient. Such a determination of completeness will generally be made within a period of thirty (30) days. Except for the part including information required by § 50.33a, whichever part is filed first shall also include the fee required by §§ 50.30(e) and 170.21 of this chapter and the information required by §§ 50.33, 50.34(a)(1), and 50.37 of this chapter. The Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, will accept for docketing an application for a construction permit for a production or utilization facility which is subject to § 51.5(a) of this chapter, and is of the type specified in §§ 50.21(b)(2) or (3) or 50.22 of this chapter or is a testing facility where one part of the application as described above is complete and conforms to the requirements of Part 50 of this chapter. Additional parts will be docketed upon a determination by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, that they are complete.

2. In § 50.33a of 10 CFR Part 50, paragraph (a) is revised and a new paragraph (e) is added to read as follows:

§ 50.33a Information requested by the Attorney General for antitrust review.

(a)(1) An applicant for a construction permit for a nuclear power reactor, whose ownership in the proposed nuclear power reactor will entitle it to more than eighty megawatts of electricity (80 MW(e)) from the proposed nuclear unit, shall submit the information requested by the Attorney General as described in Appendix L, if the application is for a class 103 permit.

(2) An applicant for a construction permit for a nuclear power reactor, whose ownership in the proposed nuclear power reactor will entitle it to more than twenty megawatts of electricity (20 MW(e)) but no more than eighty megawatts of electricity (80 MW(e)) from the proposed nuclear unit, shall submit the information requested by the Attorney General as described in paragraph 9 of Section II of Appendix L; and, upon request of the Commission, the applicant shall furnish the other information as described in Appendix L.

(3) An applicant for a construction permit for a nuclear power reactor, whose ownership in the proposed nuclear power reactor will entitle it to twenty megawatts of electricity (20 MW(e)) or less from the proposed nuclear unit, is not required to submit the information as described in Appendix L unless specifically requested by the Commission to provide the information.

(4) The information described in paragraphs (a)(1) and (2) of this section shall be submitted as a separate document prior to any other part of the license application as provided in paragraph (b) and in accordance with § 2.101 of this chapter.

* * * * *

(e) Any person who applies for a class 103 construction permit for a uranium enrichment or a fuel reprocessing plant shall submit such information as may be requested by the Attorney General for antitrust review, as a separate document as soon as possible and in accordance with § 2.101 of this chapter.

(Secs. 103, 105, 161, Pub. L. 83-703, 84-1006, 68 Stat. 939, 938, 948, 70 Stat. 1069, 84 Stat. 1472 (42 U.S.C. 2133, 2135, 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841).)

Dated at Washington, D.C. this 20th day of April, 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-11269 Filed 4-25-78; 8:45 am]

[6720-01]

FEDERAL HOME LOAN BANK BOARD

[12 CFR Parts 523, 526, 545, 561, 563 and 564]

[No. 78-251]

FEDERAL SAVINGS AND LOAN SYSTEM

Amendments Concerning Tax and Loan Accounts

APRIL 18, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board proposes to permit Federal savings and loan associations to participate as depositories for Federal taxes and as Treasury tax and loan depositories, as authorized by Pub. L. 95-147 of October 28, 1977. This action is needed because the Board's present regulations do not authorize such participation.

DATE: Comments must be received on or before May 26, 1978.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT:

Rebecca H. Laird, Associate General Counsel, Federal Home Loan Bank Board, 202-377-6446, at the above address.

SUPPLEMENTARY INFORMATION: Pub. L. 95-147 has made it possible for savings and loan associations, including those with Federal charters, to participate in the Treasury tax and loan account system. Previously, only incorporated banks and trust companies were eligible.

The regulatory changes required to enable Federal associations to participate in the Treasury program are minor. Basically, they would explicitly authorize Federal associations to pledge collateral and maintain appropriate withdrawable accounts—tax and loan accounts and note accounts.

The Board proposes to alter a number of its other regulations to fit tax and loan and note accounts into the existing provisions governing liquidity, insurance coverage and premiums, Federal insurance reserve, and borrowings.

Concerning liquidity, both tax and loan accounts and note accounts will be counted in the liquidity base. However, if the collateral pledged by an association against either a tax and loan account or a note account contained liquid assests as defined by the Board, the assets could be counted toward meeting the liquidity requirement notwithstanding the pledge.

Insurance coverage will be $40,000, and will extend only to the tax and loan account (§§ 564.8(c), 561.3). With respect to insurance premiums and FIR, calculations pertaining to tax and loan accounts will be done on an averaged basis, rather than as of year end, to take into account possible large fluctuations in the balances of such accounts. Since note accounts are not considered eligible for insurance, they will not be taken into account for either premium or FIR purposes. Regarding the regulation imposing restrictions on borrowings, note accounts will be exempted from coverage (§ 563.8).

The remaining changes would clarify the status or effects of the new accounts. They would expressly remove note accounts from rate control (§ 526.2-1), and exclude both types of accounts from the prohibition against issuance by insured institutions of demand securities (§ 563.6). In addition, to ensure conformity of terminology and avoid confusion of tax and loan accounts and note accounts with savings accounts or savings deposits, new definitional language would be added (§§ 526.1 (e), (n), (o), 561.11b, 561.11c).

Accordingly, the Board proposes to amend: Part 523 by revising § 523.10 (d) and (e), and adding a new paragraph (j); Part 526 by revising paragraph (e) of § 526.1 and adding thereto

new paragraphs (n) and (o), and adding new § 526.2-1; Part 545 by adding new § 545.24-4; Part 561 by revising § 561.3, and adding new §§ 561.11b and 561.11c; Part 563 by revising § 563.6, adding a new paragraph (e) to § 563.8, and revising §§ 563.13(a)(1) and 563.15(a); and Part 564 by adding new paragraph (c)—all of which to read as set forth below.

§ 523.10 Definitions.

For the purposes of this section, §§ 523.11, and 523.12:

* * * * *

(d) The term "net withdrawable accounts" means the amount of all withdrawable accounts less the unpaid balance of all loans on the security of such accounts, and includes tax and loan accounts.

(e) The term "short-term borrowings" means the amount of all borrowings which are payable on demand or which are due for payment in one year or less, and includes note accounts.

* * * * *

(j) For purposes of this section, assets which otherwise would qualify as liquid assets or short-term liquid assets except that they are pledged as collateral for a note account or a tax and loan account shall continue to qualify as liquid assets to the extent of the liquidity requirement in § 523.11.

§ 526.1 Definitions.

As used in this Part 526:

* * * * *

(e) *Savings account.* The term "savings account" means any deposit, withdrawable or repurchasable share, investment certificate, or other withdrawal account, except a tax and loan account or note account.

* * * * *

(n) *Tax and loan account.* The term "tax and loan account" means an account, the balance of which is subject to the right of immediate withdrawal, established for receipt of payments of Federal taxes and certain United States obligations; such accounts are not savings accounts or savings deposits.

(o) *Note account.* The term "note account" means a note, subject to the right of immediate call, evidencing funds held by depositories electing the note option under applicable U.S. Treasury Department regulations. Note accounts are not savings accounts or savings deposits.

§ 526.2-1 Rate of return payable on note accounts.

Member institutions shall pay a return on note accounts at the rates required by the U.S. Treasury Department.

§ 545.24-4 Tax and loan depositories.

Subject to regulations of the U.S. Treasury Department, Federal associations may serve as depositories for Federal taxes or as Treasury tax and loan depositories, and satisfy any requirement in connection therewith, including maintaining accounts described in §§ 526.1(n) and 526.1(o) of this chapter, and pledging collateral.

§ 561.3 Insured account.

An "insured account" is a savings account, tax and loan account, or checking account held by an insured member in an institution insured by the Corporation. Accounts which by the terms of the contract of the holder with the institution or by provisions of State law cannot be withdrawn or the value thereof paid to the holder until all of the liabilities, including other classes of share liabilities, of the institution have been fully liquidated and paid upon the winding up of the institution are not insurable, and are hereinafter referred to as "nonwithdrawable accounts". Subordinated debt securities and mortgage-backed bonds issued by an insured institution are deemed not to be "accounts", and such securities are not insurable.

§ 561.11b Tax and loan account.

The term "tax and loan account" shall have the meaning given in § 526.1(n) of this chapter.

§ 561.11c Note account.

The term "note account" shall have the meaning given in § 526.1(o) of this chapter.

§ 563.6 Demand securities.

No insured institution may issue any demand securities or advertise or represent that it will pay holders of its securities on demand, except that this section does not apply to checking accounts as defined in § 561.11a of this subchapter, or to tax and loan accounts or note accounts.

§ 563.8 Limitation upon borrowing.

* * * * *

(e) For purposes of this section, note accounts are not borrowings.

§ 563.13 Required amounts and maintenance of Federal insurance reserve and net worth.

(a) Federal insurance reserve requirements. (1) *Minimum required amounts.* After the fiscal year in which a certificate of insurance is issued, each insured institution shall build up its Federal insurance reserve account so that, as of the close of business on the annual closing date following each anniversary of the date of insurance of accounts, such account shall be at least equal to the amount obtained by multiplying the percentage corresponding to such anniversary date, as set forth in the table below, by either (i) the amount of the institution's checking, tax and loan, and savings account balances on such closing date, or (ii) the average of such account balances on such closing date and on one or more of the 4 immediately preceding annual closing dates, provided all such dates are consecutive. In any event, unless otherwise permitted in writing by the Corporation, each insured institution shall build up its Federal insurance reserve account so that, at any one annual closing date prior to the twenty-sixth anniversary of its insurance of accounts, such account shall be at least equal to 5 percent of the institution's checking, tax and loan, and savings account balances on such closing date. For purposes of this section, the amount of tax and loan account balances on an annual closing date shall be the average daily amounts in such accounts during the applicable year. [Table omitted.]

* * * * *

§ 563.15 Insurance premiums.

(a) *General provisions.* Except as provided in paragraph (b) of this section, each institution whose application for insurance is approved by the Corporation shall pay to the Corporation a premium charge for such insurance equal to one-twelfth of one percent of the total amount of all accounts (except note accounts) of the insured members of such institution. Each insured institution shall pay such premium at the time its certificate of insurance is issued by the Corporation and thereafter annually on the anniversary of the issuance of such certificate. The amount of each premium to be paid by an insured institution shall be determined on the basis of the most recent report filed by such institution with the Corporation, except that any insured institution which has not filed such a report within 60 days of any premium anniversary date shall provide more recent information if requested to do so by the Corporation. Any amount contained in any such report covering interest accured, but not due and payable, or dividends declared but not due and distributable, upon an account of an insured member will not be included by the Corporation in the computation of premiums. For purposes of this section, the total amount of a tax and loan account shall be the average daily balance in such account since the institution's last premium anniversary date, unless the account has been es-

tablished after such date, in which case the average shall be calculated from the date of establishment of the account.

* * * * *

§ 564.8 **Public unit accounts.**

* * * * *

(c) This section does not apply to tax and loan accounts.

(Pub. L. No. 95-147 of October 28, 1977. Sec. 4, 82 Stat. 856, Sec. 4, 80 Stat. 824, and Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1425a, 1425b, and 1437). Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464). Secs. 401-405, 407, 48 Stat. 1255-1260, as amended (12 U.S.C. 1724-1728, 1730). Reorg. Plan No. 3 of 1947, 172 FR 4891, 3 CFR, 1943-48 Comp., p. 1071.)

By the Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assisant Secretary.

[FR Doc. 78-11202 Filed 4-25-78; 8:45 am]

[6720-01]

[12 CFR Part 563]

[No. 78-248]

FEDERAL SAVINGS AND LOAN INSURANCE CORP.

Loans Involving Mortgage Insurance

APRIL 18, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed amendments.

SUMMARY: These proposed amendments would modify present regulations which prohibit an FSLIC-insured institution from insuring loans with a mortgage insurance company in which the institution, its service corporation(s), and insiders thereof have an ownership interest in excess of specified limits. The Board believes it may be unnecessary for these limits to apply to ownership of mortgage companies by insured institutions themselves, or their service corporations, and the proposed amendments would therefore exclude such institutional ownership from the regulatory limits. The proposed amendments would also revoke a regulatory exception which permits insured institutions to insist that their loans be insured by a particular private mortgage insurance company. The Board's regulations prohibit insured institutions from requiring that other kinds of insurance relating to their loans be provided by a particular insurer, and the Board believes that mortgage insurance should be brought within this prohibition.

DATE: Comments must be received on or before May 26, 1978.

ADDRESS: Send comments to the Office of the Secretary, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT:

Harry W. Quillian, Associate General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552. Telephone number 202-377-6440.

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board, by Resolution No. 77-445 (42 FR 37822-37823; July 25, 1977) proposed to amend § 563.44(c) of the rules and regulations for Insurance of Accounts (12 CFR 563.44(c)). Section 563.44 prohibits an FSLIC-insured institution from insuring loans with a mortgage insurance company (MIC) in which the institution, its service corporation(s), and insiders thereof have an ownership interest in excess of specified limits, and § 563.44(c) provides an exception for an MIC which was in existence on March 11, 1976, and is entirely owned by insured institutions, no one of which owns more than twenty-five percent of any class of equity securities of the MIC. The only company which fits this description is the Pennsylvania Mortgage Insurance Co. (PAMICO). The proposed amendment would have modified the exception to (1) prevent an insured institution from increasing its investment under the exception and (2) prevent an institution whose interest is presently less than the prescribed maximum limits from increasing its interest to exceed such limits.

The Board received 22 comments from 13 respondents (4 MICs, 2 trade associations, 4 Federally-chartered savings and loan associations, 2 state-chartered associations, and the Pennsylvania Department of Banking).

The views of PAMICO and the Mortgage Insurance Co. of America (MICA) represented the most significant comments of all the respondents. MICA suggested that the Board (1) remove the limitation in § 563.44(c) that all of the equity securities be owned by insured institutions; (2) apply the limited levels of ownership in § 563.44(b)(4) to all insured institutions which acquired equity securities after March 11, 1976, thereby limiting the exception clause to those owning the prohibited levels of that date; and (3) permit a reasonable period over which the four original investors in PAMICO must divest down to the (b)(4) levels or be precluded from doing business with it.

PAMICO suggested that the Board distinguish between individual and institutional ownership in mortgage insurance companies. It argued that, although a high risk of abuse exists when an insured institution insures its loans with an MIC in which insiders of the institution have ownership interests, no such risk exists in a company such as PAMICO, which is wholly owned through a service corporation by FSLIC-insured institutions.

After careful consideration of all comments, the Board has re-examined its policy on this matter and decided that it may be desirable to relieve the restriction on institutional ownership in MICs, and thereby permit development of other companies similar to, and competitive with, PAMICO. The Board believes, however, that relief of this restriction should be accompanied by action to protect borrowers from overreaching by insured institutions requiring that their loans be insured by a particular MIC. The Board therefore also proposed to revoke the exception of private mortgage insurance from the prohibition in § 563.35(a) against insured institutions' requiring borrowers to contract for insurance, among other things, from any particular person or organization.

Since PAMICO would comply with § 563.44(b)(4) as proposed to be amended, § 563.44(c) would be deleted as no longer necessary.

The Board notes that it does not propose to limit investment by insured institutions in MICs or prohibit concentration of mortgage insurance business with any one MIC. However, the Board may later consider imposing such limits if experience demonstrates that they are necessary, or desirable, and what the limits would be.

Accordingly, the Board hereby withdraws Board Resolution No. 77-445. It also proposes to delete paragraph (c) of § 563.44 and amend paragraph (b) thereof and paragraph (a) of § 563.35 to read as set forth below.

1. Delete § 563.44(c) and amend § 563.44(b)(4) to read as follows:

§ 563.44 **Loans involving mortgage insurance.**

* * * * *

(b) *Prohibitions.*

* * * * *

(4) *Investment in mortgage insurance companies.* No insured institution or service corporation affiliate there of shall insure any loan with a mortgage insurance company if the amount of investment in such mortgage insurance company, or any parent company thereof, by directors, officers, and controlling persons of such institution or such affiliates is sufficient to give rise to a conflict of interest in the placement or renewal of mortgage insurance. Absent a compelling justification to the contrary, the Corporation will presume a con-

flict of interest situation to exist on and after January 1, 1977.

(i) If any director, officer, or controlling person of such institution or affiliate holds, directly or indirectly, equity securities of such mortgage insurance company or any parent company thereof having a cost in excess of $50,000, or representing more than one percent of any class of equity securities of such company if its assets are less than $50 million, or representing more than one-half percent of any class of equity securities of such company if its assets equal or exceed $50 million; or

(ii) If all the directors, officers, and controlling persons of such institution and all such affiliates hold in the aggregate, directly or indirectly, equity securities of such mortgage insurance company or any parent company thereof having a cost in excess of $100,000, or representing more than two percent of any class of equity securities of such company whose assets are less than $50 million, or representing more than one percent of any class of equity securities of such company if its assets equal or exceed $50 million.

2. Amend § 563.35(a)(1) to read as follows:

§ 563.35 Restrictions involving loans services.

(a) *Tie-in prohibitions.* No insured institution or service corporation affiliate thereof may grant any loan on the prior condition, agreement, or understanding that the borrower (or, as to private mortgage insurance, the lender) contract with any specific persons or organization for the following:

(1) Insurance services (as an agent broker, or underwriter), except insurance or a guarantee provided by a government agency;

* * * * *

(Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. §§ 1725, 1726, 1730). Reorg. Plan No. 3 or 1947, 12 F.R. 4981, 3 CFR, 1943-48 Comp., p. 1071).

By the Federal Home Loan Bank Board,

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc. 78-11201 Filed 4-25-78; 8:45 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 235]

[Docket No. R-78-531]

ELIMINATION OF SUBSTANTIALLY REHABILITATED PROPERITES FROM SECTION 235 PROGRAM

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

ACTION: Proposed rule.

SUMMARY: The Department of Housing and Urban Development is proposing regulations to eliminate the provision of substantial rehabilitation in the section 235 program. This action represents a tightening of program requirements as they relate to eligible types of dwellings for that program. This action is being proposed as a result of previous problems which have beset the program as they relate to unsatisfactory rehabilitation and the default experience of mortgagors who have utilized section 235 to purchase rehabilitated properties.

DATE: Comments are due on or before May 26, 1978.

ADDRESS: Written comments may be submitted to the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

William A. Rolfe, Director, Single Family Mortgage Insurance Division, Office of Insured and Direct Loan Programs, Department of Housing and Urban Development, Washington, D.C. 20410, 202-426-8914.

Interested persons are invited to participate in this proposed rulemaking by submitting written data, views and suggestions. Communications should identify the subject matter by title and docket number and should be filed with the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. All relevant material received on or before May 26, 1978 will be considered before adoption of the final rule. Copies of comments received will be available for examination during business hours at the above address.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the address listed above.

NOTE.—It is hereby certified that the economic and inflationary impacts of these amendments have been carefully evaluated in accordance with Executive Order 11821.

Accordingly, the Secretary of Housing and Urban Development proposed to amend Part 235 of Chapter II of 24 CFR as follows:

1. Subpart A of the Table of Contents to Part 235 is amended by deleting § 235.16 and the heading thereunder, as follows:

* * * * *

235.16 [Deleted]

* * * * *

2. In § 235.2, paragraph (c) is amended to read as follows:

§ 235.2 Basic program outline.

* * * * *

(c) Assistance will be limited to mortgagors who purchase for occupany new single family or condominum units.

* * * * *

§ 235.5 [Amended]

3. In § 235.5 is amended by deleting paragraph (f).

4. Section 235.15 is revised to read as follows:

§ 235.15 Eligible types of dwellings.

The mortgage shall involve one of the following types of dwellings:

(a) A single family dwelling, concerning which the application for insurance is approved by the Secretary prior to the beginning of construction.

(b) A one-family unit in a condominium project (together with an undivided interest in the common areas and facilities serving the project) which is released from a multifamily project, the construction of which shall have been completed not more than 2 years prior to the filing of the application for assistance payments under Subpart C of this Part. The family unit shall have had no previous occupant other than the mortgagor.

§ 235.16 [Deleted]

5. Section 235.16 is deleted.

6. Section 235.37 is amended to read as follows:

§ 235.37 Limitation on concentration of units in a subdivision.

No mortgage shall be insured on a unit in a subdivision which when added to any other mortgages insured under this section in the subdivision after October 12, 1977, represents more than 40 percentum of the total

number of units in the subdivision, except that the preceding limitation shall not apply to any unit or subdivision located or to be located in an established urban neighborhood or area, where a sound proposal is involved and where an aggregation of subsidized units is essential to a community sponsored overall redevelopment plan, as determined by the Secretary.

In § 235.38, paragraphs (c) and (f) are amended to read as follows:

§ 235.38 Reservations of contract authority.

* * * * *

(c) Builders or developers of subdivisions or condominium projects involving 13 or more subsidized units must apply for preliminary reservations. Application for preliminary reservations may be made as early as the developer desires but not before filing of the request for subdivision approval or other appropriate application. Builders or developers of smaller (12 or less units) subdivisions, may also apply for preliminary reservations.

* * * * *

(f) Builders and developers not required to apply in accordance with paragraph (c) may apply for Section 235 assistance through applications under this Part for convertible conditional commitments for new construction. A convertible commitment, when issued, represents a binding obligation on the Government to execute the assistance payment contract (by insuring the mortgage) provided all applicable requirements are met. The obligation to execute the assistance payment contract will expire within six months of the issue date of the commitment, but can be extended one six months period if construction has been started.

* * * * *

Issued at Washington, D.C., April 18, 1978.

LAWRENCE P. SIMONS,
Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 78-11256 Filed 4-25-78; 8:45 am]

[4310-05]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Part 715]

PERMANENT REGULATORY PROGRAM FOR SURFACE COAL MINING AND RECLAMATION OPERATIONS

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of Surface Mining Enforcement and Reclamation Enforcement (OSM) intends to develop the rules for the permanent regulatory program for surface coal mining and reclamation operations, as required by Section 501(b) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. No. 95-87, 91 Stat. 445, 30 U.S.C. 1201 et seq.). Notice is hereby given that these regulations are being developed in accordance with the outline set forth below.

DATES: An informal public meeting will be held at 9 a.m. on May 9, 1978, in Washington, D.C. Written comments should be received on or before May 15, 1978.

ADDRESSES: The public meeting will be held at the Main Auditorium, Civil Service Commission, 19th and E Streets NW., Washington, D.C. All written comments should be sent to Ronald Drake, Office of Surface Mining, Department of Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Ronald Drake, Office of Surface Mining, Department of Interior, Washington, D.C. 20240, telephone, 202-343-4237.

SUPPLEMENTARY INFORMATION: The public meeting will discuss the following outline of the rules for the permanent regulatory programs. All interested individuals, representatives of organizations and public officials are invited to attend. Those who wish to speak at the meeting are requested to contact Ronald Drake on or before May 5, 1978, in order to be scheduled on the program. Scheduled speakers will be given priority, but all those who attend the meeting will have an opportunity to speak. The meeting will continue, if necessary, on May 10, 1978, at the same time and place, to accommodate all those who wish to be heard. Although the meeting will be informal, oral statements will be limited to 15 minutes. Personnel from OSM will be present to respond to questions. OSM would prefer written statements which will be made a part of the record. All comments, statements and recommendations will be considered in drafting proposed regulations. Once developed, the draft regulations will be published in the FEDERAL REGISTER as proposed rules, allowing opportunity for further comment before final regulations are adopted. Resolution of conflicting public comments and/or rejection of comments on policy or legal grounds are the continuing responsibility of the Secretary of the Interior.

The following outline of the proposed rules for the permanent regulatory program encompasses rules that OSM intends to develop for the following aspects of the permanent program: (1) Permanent performance standards for surface coal mining and reclamation; (2) Standards and procedures for preparing, submitting and approving state programs; (3) Procedures for implementing a Federal program for a State; (4) Standards for Federal inspections and enforcement during the permanent regulatory program; (5) Procedures and standards for applications for, and approvals of, surface mining and reclamation permits as well as application requirements for coal exploration permits; and (6) Provisions for certification and training of blasters. The outline below is a tentative draft of the format for each of these elements of the permanent program.

I. PERFORMANCE STANDARDS FOR SURFACE MINING

OSM proposes that the performance standards requirements in the permanent regulatory program be set forth in a manner which follows a logical mining sequence, i.e., the requirements relating to general obligations, site preparation, mining operations, monitoring of environmental protection measures, reclamation, cessation of operations and, finally, post-mining responsibilities.

A. General Obligations

1. Maximum use of resources.
2. Restoration, including to highest and best use of land.
3. Contemporaneous reclamation.
4. Protection of fish and wildlife.
5. Revegetation responsibility.
6. Responsibility for off-site areas, including avoiding adverse effects on water quality and quantity and air quality through assessment of probable cumulate impact of all anticipated mining in the surrounding area.
7. Permit requirement.

(a) No person shall engage in mining without a permit.

(b) Protection of site and associated areas during activities conducted for preparation of permit applications and reclamation plans.

8. Requirements for environmental protection.

(a) Air quality.
(b) Water quality and quantity.
(c) Scenic values.
(d) Other health and safety standards.

(e) Consistency with local physical, environmental, and climatological conditions.

B. Coal Exploration Operations

1. Coal exploration procedures.
2. Site preparation.
3. Exploration operation standards.
4. Reclamation.
5. Maintenance.
6. Cessation of operations.

C. Site Preparation

1. Signs and markers.
2. Access roads.
3. Drilling for blasting.
4. Support facilities.
(a) Pipelines.
(b) Powerlines.
(c) Facilities.
(d) Pollution incident prevention and control facilities and plans.
5. Hydrologic Controls.
(a) Diversions.
(b) Sediment ponds and other treatment facilities.
(c) Dams and impoundments.
6. Air Resources Controls.
(a) Fugitive emissions.
(b) Stack emissions.
(c) Mobile source emissions.
7. Premining Topsoil and Overburden Handling.
(a) Installation control measures.
(b) Clearing and grubbing.
(c) Stabilizing areas around temporary facilities.
8. Protection of Fish and Wildlife values.
9. Waste, Refuse and Other Residuals—Recycling, Recovery and Disposal Facilities.
10. Installation of environmental Impact Monitoring Systems.
(a) Air resources and noise.
(b) Blasting.
(c) Water resources: (i) Ground water; and (ii) surface waters.
(d) Soils: (i) Stability; and (ii) soil productivity.
(f) Vegetation resources: (i) On-site; and (ii) reference area.
(g) Aquatic life and wildlife.
(h) Record-keeping and reporting systems.
11. Education and training for site personnel in environmental protection requirements.

D. Mining Operations

1. Temporary diversions of water.
2. Topsoil handling.
3. Blasting.
4. Disposal of excess spoil.
(a) Disposal of first cut material.
(b) Disposal in valley or head-of-hollow fills.
(c) Disposal in area other than valley or head-of-hollow fills.
5. Coal removal.
(a) Maximize recovery of coal resource.
(b) Protect the strata below the coal seam as required.
6. Waste, refuse and other residuals handling, transport, storage and disposal.
7. Protection of hydrologic balance.
(a) Sediment ponds and other treatment facilities—operation and maintenance.
(b) Stabilization of surface areas.
(c) Maintenance and protection of boreholes and well seals and plugs.
(d) Protection of re-charge capacity of mine area.
(e) Protecting surface water channels.
8. Protection of underground mining.
9. Road utilization and maintenance.
10. Protection against slides and other damage, including retention of undisturbed natural barrier beginning at elevation of lowest seam to be mined.
11. Protection of air resources.
(a) Stationary sources—operational and maintenance: (i) Stack emissions controls; and (ii) fugitive emissions controls.
(b) Mobile sources.
12. Noise controls (other than blasting).
13. Operation and maintenance of environmental impact monitoring systems.
14. Operation and maintenance of facilities and equipment.
(a) Dams and impoundments.
(b) Waste, refuse disposal areas.
(c) Preparation plants.
(d) Signs and markers.
(e) Explosives and toxic materials handling and storage.
(f) Pollution incident prevention and control equipment.
(g) Operating equipment maintenance.
15. Education and training of site personnel in environmental protection requirements.

E. Reclamation

1. Immediately after coal removal.
(a) Backfilling and compacting covering of highwall.
(b) Cover toxic, acid forming and other material.
(c) Handling waste material: (i) Burial of waste material: (a) processing wastes, tailings and mine wastes; and (ii) burial of waste materials from mine workings or excavations.
2. Rough grading of spoil.
(a) Immediately prior to first planting season: (i) Final grading of spoil; and (ii) topsoil—redistribution.
(b) First planting season: (i) Revegetation; and (ii) standards for measuring success of revegetations.
3. Restoration to suitable land use(s).
(a) Site use.
(b) Compatibility with surrounding areas.
4. Regrading.
5. Stabilization and protection of all surface areas.
6. Protection of hydrologic balance.
(a) Permanent diversions of water-maintenance.
(b) Continuing operation and maintenance of sediment ponds and other treatment facilities.
(c) Seals and maintenance for boreholes and wells.
(d) Restoration or recharge capacity of mined area.
(e) Reclamation and maintenance of surface water encroachments.
(f) Reclamation and maintenace of dams and impoundments.
(g) Reclamation and maintenance of waste and refuse piles.
7. Protection of air resources—maintenance, operation and removal of control systems.
8. Roads-reclamation and maintenance.
9. Protection against slides and other damage.
10. Removal of signs, markers and equipment.
11. Operation, maintenance and removal of environmental impact monitoring systems.
12. Operation, maintenance and removal of pollution incident prevention control systems.
13. Education, training and testing of reclamation personnel.

F. Cessation of Operations

1. Temporary suspension.
2. Completion of operations and permanent abandonment.

G. Special Categories

1. Augering.
2. Anthracite mining.
3. Alaskan coal mining.
4. Alluvial valley floors.
5. Prime farmlands.
6. Mountain-top removal.
7. Special bituminous coal mines.
8. Steep slope mining.
9. Surface mining concurrent with underground mining.

II. Underground Mining

OSM intends to develop permanent environmental protection standards for the surface impacts of underground mining, according to the same process as for surface mining, accounting for the distinct differences between the two methods of mining. Therefore, the outline set forth above for Part 715 will also generally apply to Part 716. In addition, certain other matters related solely to underground mining will be covered, as outlined below.

A. General Obligations

1. Prevention of subsidence, maximization of mine stability and maintenance of value of reasonable foreseeable use of surface lands: (i) Technological and economic feasbility; (ii) planned subsidence; and (iii) standard methods of room and pillar mining.
2. Utilization and development of best available, environmentally sound underground coal extraction technologies.
3. Prevention of fire hazards and other dangers to off-site areas.

B. Site Preparation

1. Measures and monitoring methods to preclude migration of combustible gases.
2. Drift mine installations in acid-bearing or iron-bearing coal seams: (i) Identification of seams; and (ii) preclusion of gravity discharges of water.
3. Integration of site preparation with sealing requirements.

C. Mining Operation

1. Subsidence controls.
2. Concurrent sealing of openings not needed.
3. Concurrent disposal of mine wastes, processing water, tailing, and other wastes into mine workings or excavations.
4. Stabilization and prevention of water pollution from waste piles.
5. Maintenance and operation of refuse piles, dams and impoundments.
6. Maintenance and operation of combustible gas migration-prevention controls.
7. Protection of surface stability from imminent dangers.

D. Reclamation

1. Prevention of subsidence and monitoring uses of land affected.
2. Sealing of openings, maintenance and monitoring of same.
3. Disposal of mine and processing wastes, tailings and other wastes into mine workings or excavations.
4. Stabiliztion, revegetation and prevention of water pollution from waste piles.
5. Maintenance and operation of refuse piles and dams and impoundments.

6. Operation, maintenance and monitoring of combustible gases migration—prevention control.

III. Regulations for Certification and Training of Blasters

A. General Provisions

1. Scope of requirements.
2. Applicability to surface coal mine blasters.
3. Certification responsibility.
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Dated: April 24, 1978.

WALTER N. HEINE,
Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 78-11403 Filed 4-25-78; 8:45 am]

[3810-70]

DEPARTMENT OF DEFENSE

Office of the Secretary

[32 CFR Part 43a]

[DOD Directive 1344.9]

INDEBTEDNESS OF MILITARY PERSONNEL

AGENCY: Office of the Secretary of Defense.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises Department of Defense (DOD) policies regarding the processing of claims of delinquent indebtedness against members of the Armed Forces, incorporating provisions of (a) the Truth in Lending Act, and (b) the recently enacted Fair Debt Collection Practices Act which prohibits debt collection agencies from contacting third parties.

DATES: Written comments must be received on or before May 26, 1978.

ADDRESSES: Office of the Deputy Assistant Secretary of Defense (Military Personnel Policy), Room 3C980, The Pentagon, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT:
Ms. Barbara E. Schoenberger, telephone 202-697-9525 or 697-4054.

SUPPLEMENTARY INFORMATION: In FR Doc. 69-9081 appearing in the FEDERAL REGISTER on August 2, 1969 (34 FR 12627), the Department of Defense published Part 43a to establish DOD guidelines for the Military Departments in the handling and processing of claims of delinquent indebtedness against military members of the Armed Forces. This proposed rule updates Part 43a to incorporate provisions described in the Summary. It also reflects minor editorial adjustments.

Accordingly, we propose to amend 32 CFR Part 43a as follows:

PART 43a—INDEBTEDNESS OF MILITARY PERSONNEL

Sec.
43a.1 Reissuance and purpose.
43a.2 Applicability.
43a.3 Explanation of terms.
43a.4 Responsibilities.
43a.5 General policies.
43a.6 Procedures.
43a.7 Debt processing requirements.
43a.8 Abuse of the processing privilege.
43a.9 Full Disclosure and Standards of Fairness by Creditors.
43a.10 Standards of Fairness.
43a.11 Certificate of Compliance.

AUTHORITY: The provisions of this Part 43a issued under sec. 301, 80 Stat. 379; 5 U.S.C. 301.

§ 43a.1 Reissuance and purpose.

This part (a) reissues part 43a to update Department of Defense policies governing the procedures to be followed by DOD Components in processing claims of delinquent indebtedness against military members of the Armed Forces. Claims for support of dependents, or claims by the Federal, State, of municipal government are not covered in this part; (b) incorporates provisions of the Truth in Lending Act, 15 U.S.C. 1601, and the Fair Debt Collection Practices Act. Pub. L. 95-109.

§ 43a.2 Applicability.

The provisions of this part apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Defense Agencies, and the Unified and Specified Commands (hereafter referred to as "DOD Components").

§ 43a.3 Explanation of terms.

(a) "Just financial obligations," refers to a legal debt acknowledged by the military member in which there is no reasonable dispute as to the facts or the law; or one reduced to judgment which conforms to the Soldiers' and Sailors' Civil Relief Act, Title 50, U.S.C. App. 501 et seq., if applicable.

(b) "A proper and timely manner," means a manner which under the cir-

cumstances does not reflect discredit on the military service.

§ 43a.4 Responsibilities.

(a) The Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) shall establish policies and procedures governing private indebtedness of military personnel.

(b) DOD Components will assure implementation of this part and compliance with its provisions.

§ 43a.5 General policies.

(a) Members of the Armed Forces are expected to pay their just financial obligations in a proper and timely manner. However, DOD Components have no legal authority to require a member to pay a private debt or to divert any part of his pay for its satisfaction, even though the indebtedness may have been reduced to judgment by a civil court. The enforcement of the private obligations of a military member is a matter for civil authorities.

(b) The processing of debt complaints will not be extended to those who have not made a bona fide effort to collect the debt directly from the military member, whose claims are patently false and misleading, or whose claims are obviously exorbitant. Claimants desiring to contact a military member about his indebtedness may obtain the member's military address by writing to the locator service of the Military Department concerned, and enclosing $2.00 as a fee for the service, as provided under 32 CFR 288.

(c) Some States have enacted laws which prohibit creditors from contacting a debtor's employer with respect to indebtedness, or communicating facts on indebtedness to an employer unless certain conditions are met; for instance, reduction of a debt to judgment and obtaining written permission of the debtor. The processing of debt complaints will not be extended to creditors who are in violation of the State law. Commanders may advise creditors of this policy to avoid creditors' inadvertent violation of the State law. This policy will rule, even though a creditor is not licensed to do business in the State where the debtor is located. A similar practice will be instituted in any State enacting a similar law with respect to debt collection.

(d) Under the provisions of the Fair Debt Collection Practices Act (Pub. L. 95-109), contact by a debt collector with third parties, such as commanding officers, for the purpose of aiding debt collection is prohibited without the prior consent of the debtor, or without a court order. Creditors are generally exempt from the Act, but only when they collect on their own behalf.

§ 43a.6 Procedures.

(a) Indebtedness complaints which meet the requirements of this part will be processed by DOD Components as follows:

(1) A review will be made of (i) all available facts surrounding the transaction forming the basis of the complaint; (ii) the member's legal rights and obligations; and (iii) any defenses or counterclaims the member may have.

(2) The member is to be advised (i) what actions should be taken to comply with the policy; (ii) that just financial obligations are expected to be paid in a proper and timely manner; and (iii) that counseling services are available under the Legal Assistance Program (32 CFR 43)

(3) The appropriate commander will advise both the claimant and the member concerned of the DOD policy as to private indebtedness. The commander's response will not undertake to arbitrate any disputed debt, or to admit or deny the validity of the claim. Under no circumstances will it indicate whether any action has been taken against the member as a result of the complaint.

(4) It is incumbent on those submitting indebtedness complaints to show that the disclosure requirements of 15 U.S.C. 1601 and 12 CFR 226 have been met and that the Standards of Fairness, §43a.10, have been applied.

§ 43a.7 Debt processing requirements.

(a) Creditors subject to 12 CFR 226 and assignees claiming thereunder, shall submit with their request for debt processing assistance an executed copy of the Certificate of Compliance, § 43a.11, and a true copy of the general and specific disclosures provided the military member as required by 15 U.S.C. 1601. Requests which do not meet these requirements will be returned without action to the claimant.

(b) A creditor not subject to 12 CFR 226, such as a public utility company (as set forth in 226.3 thereof), shall submit with the request a certification that no interest, finance charge, or other fee is in excess of that permitted by the law of the State in which the obligation was incurred.

(c) A foreign-owned company having debt complaints shall submit with their request a true copy of the terms of the debt (English translation), and shall certify that they have subscribed to the Standards of Fairness, § 43a.10.

§ 43a.8 Abuse of the processing privilege.

DOD Components may promulgate such policies and procedures that will deny to any claimant processing of the claim where:

(a) A claimant, having been notified of the requirements of this part, refuses or repeatedly fails to comply with them, *or*

(b) A claimant, no matter what the merits of the claim, has clearly shown that unreasonable use of the processing privilege is being attempted.

§ 43.a9 Full Disclosure and standards of fairness by creditors.

(a) 15 U.S.C. 1601 prescribes the general disclosure requirements which must be met by those offering or extending consumer credit, and 12 CFR 226 prescribes the specific disclosure requirements for both open-end and installment credit transactions. State regulations, rather than Federal Government requirements, apply to credit transactions when the Federal Reserve Board has determined that the the State regulations impose substantially similar requirements and provide adequate enforcement measures. Regulations of the Federal Reserve Board should be checked to determine whether Federal or State laws and regulations govern.

(b) Credit unions and banks (32 CFR 230, 32 CFR 231, and DOD Instruction 1000.12[1]) operating on military installations shall conform to the Standards of Fairness (§ 43a.10) *before* executing the loan or credit agreement. An on-base credit union or bank that refers a prospective borrower to an off-base credit union or bank belonging to he same credit union or bank system, shall advise the prospective borrower that the Department of Defense requires compliance with the Standards of Fairness *before* executing the loan or credit agreement.

(c) Credit unions chartered to serve DOD personnel but operating off the installation, and any bank, wherever located, which has branch banks operation on a military installation, will be denied debt processing assistance if they do not apply the Standards of Fairness (§ 43a.10) to the loan or credit agreement.

§ 43a.10 Standards of fairness.

(a) No finance charge contracted for, made, or received under any contract shall be in excess of the charge which could be made for such contract under the law of the place in which the contract is signed in the United States by the service member. In the event a contract is signed with a United States company in a foreign country, the lowest interest rate of the State or States in which the company is chartered or does business shall apply. However, interest rates applicable to loans made by overseas military banking facilities to DOD personnel and others authorized to use military banking facilities will be as established by contract between the Department of Defense and the financial institution operating the overseas banking facility.

(b) No contract or loan agreement shall provide for an attorney's fee in

[1]Filed as part of original. Single copies may be obtained, if needed, from U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Attention: Code 901.

the event of default unless suit is filed, in which event the fee provided in the contract shall not exceed 20 percent of the obligation found due. No attorney fees shall be authorized if the attorney is a salaried employee of the holder.

(c) In loan transactions, defenses which the debtor may have against the original lender or its agent shall be good against any subsequent holder of the obligation. In credit transactions, defenses against the seller or its agent shall be good against any subsequent holder of the obligation provided that the holder had actual knowledge of the defense or under conditions where reasonable inquiry would have apprised the holder of this fact.

(d) The debtor shall have the right to remove any security for the obligation beyond state or national boundaries if the debtor or the debtor's family moves beyond such boundaries under military orders and notifies the creditor, in advance of the removal, of the new address where the security will be located. Removal of the security shall not accelerate payment of the obligation.

(e) No late charge shall be made in excess of 5 percent of the late payment, or $5 whichever is the lesser amount. Only one late charge may be made for any tardy installment. Late charges will not be levied where an allotment has been timely filed, but payment of the allotment has been delayed.

(f) The obligation may be paid in full at any time or through accelerated payments of any amount. There shall be no penalty for prepayment and, in the event of prepayment, that portion of the finance charges which has insured to the benefit of the seller or creditor shall be prorated on the basis of the charges which would have been ratably payable had finance charges been calculated and payable as equal periodic payments over the terms of the contract and only the prorated amount to the date of prepayment shall be due. As an alternative the "Rule of 78" may be applied, in which case its operation shall be explained in the contract.

(g) No charge shall be made for an insurance premium or for finance charges for such premium unless satisfactory evidence of a policy, or insurance certificate where state insurance laws or regulations permit such certificates to be issued in lieu of a policy, reflecting such coverage has been delivered to the debtor within 30 days after the specified date of delivery of the item purchase or the signing of a cash loan agreement.

(h) If the loan or contract agreement provides for payments in installments, each payment, other than the down payment, shall be in equal or substantially equal amounts, and installments shall be successive and of equal or substantially equal duration.

(i) If the security for the debt is repossessed and sold in order to satisfy or reduce the debt, the repossession and resale will meet the following conditions; (1) the defaulting purchaser will be given advance written notice of the intention to repossess; (2) following repossession, the defaulting purchaser will be served a complete statement of any obligations and adequate advance notice of the sale; (3) permission will be granted to redeem the item by payment of the amount due before the sale, or instead thereof submit a bid at the sale; (4) there will be a solicitation for a minimum of three sealed bids unless sold at auction; (5) the party holding the security, and all agents thereof, are ineligible to bid; (6) the defaulting purchaser will be charged only those charges which are reasonably necessary for storage, reconditioning and resale; and (7) a written detailed statement of any obligations shall be provided the defaulting purchaser following the resale and any credit balance shall be promptly refunded.

(j) A contract for personal goods and services may be terminated at any time before delivery of the goods or services without charge to the purchaser. However, if goods made to the special order of the purchaser result in pre-production costs, or require preparation for delivery, such additional costs will be listed in the order form or contract. No termination charge will be made in excess of this amount. Contracts for delivery at future intervals may be terminated as to the undelivered portion, and the purchaser shall be chargeable only for that proportion of the total cost which the goods or services delivered bear to the total goods called for by the contract. (This is in addition to the right to rescind certain credit transactions involving a security interest in real estate provided by section 125 of 15 U.S.C. 1601 and 32 CFR 226.9.

§ 43a.11 Certificate of compliance.[3]

I certify that the _____ (Name of Creditor), upon extending credit to _____(Name of Obligor), on _____(Date), complied with the full disclosure requirements of the Truth-in-Lending Act and Regulation Z (or the laws and regulations of State of _____), and that the attached statement is a true copy of the general and specific disclosures provided the obligor as required by law.

I further certify that the Standards of Fairness set forth in § 43a.10 have been applied to the consumer credit transaction to which this form refers. (If the unpaid balance has been adjusted as a consequence, the specific adjustments in the finance charge and the annual percentage rate should be set forth below.)

.....
(Adjustments)

.....

.....
(Date of Certification)

.....
(Signature of Creditor or Authorized Representative)

.....
(Street)

.....
(City, State and Zip Code)

MAURICE W. ROCHE,
Director Correspondence and Directives Washington Headquarters Services Department of Defense.

APRIL 21, 1978.

[FR Doc. 78-11263 Filed 4-25-78; 8:45 am]

[3]This Format may be reproduced locally.

[8320-01]

VETERANS ADMINISTRATION

[38 CFR Part 36]

LOAN GUARANTY

Clarification of the Definition of a Double-Wide Mobile Home

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration is proposing to amend its regulations to expand the definition of double-wide mobile home to include any unit which has a section or sections that unfold along the entire length of the transportable unit. The regulation is being amended in order that the type of double-wide mobile home which unfolds at the home site may be eligible for the higher loan amounts and longer loan terms applicable to double-wide mobile homes of the Veterans Administration mobile home program. It is likely that adoption of the amended regulation will increase the number of double-wide mobile homes which are available for purchase and possibly increase the number of Veterans Administration mobile home loans.

DATES: Comments must be received on or before May 25, 1978. It is proposed to make this amendment effective on the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue NW., Washington, D.C. 20420.

Comments will be available for inspection at the address shown above

during normal business hours until June 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. George D. Moerman, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Administration, Washington, D.C. 20420, 202-389-3042.

SUPPLEMENTARY INFORMATION: Title 38, United States Code establishes two classes of mobile homes: single-wide and double-wide. A double-wide mobile home is eligible for higher loan limits and longer loan terms than a single-wide mobile home. A single-wide mobile home consists of one unit which must have a minimum floor area of at least 400 square feet, and it must be at least 10 feet wide. A double-wide mobile home consists of two or more units which are joined together horizontally at the home site. A double-wide mobile home may also consist of a unit which unfolds along the entire length of the transportable unit. The minimum floor area of a double-wide mobile home is 700 square feet, and it must be at least 20 feet wide.

The current definition of a double-wide mobile home which is contained in § 36.4202(m) excludes mobile homes which are movable on one chassis and have a section or sections that unfold to form a home increased in width to 20 or more feet.

ADDITIONAL COMMENT INFORMATION

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Ave. NW., Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between 8 a.m. and 4:30 p.m. Monday thru Friday (except holidays) until June 5, 1978. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: April 19, 1978.

By direction of the Administrator.

RUFUS H. WILSON,
Deputy Administrator.

In § 36.4202, paragraph (m) is revised to read as follows:

§ 36.4202 Definitions.

* * * * *

(m) *Mobile home.* A movable dwelling unit designed and constructed for year-round occupancy on land by a single family, which dwelling unit contains permanent eating, cooking, sleeping and sanitary facilities. A double-wide mobile home is a movable dwelling designed for occupancy by one family consisting of (1) two or more units intended to be joined together horizontally when located on a site, but capable of independent movement or (2) a unit having a section or sections which unfold along the entire length of the unit.

[FR Doc. 78-11265 Filed 4-25-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 80]

[FRL 862-4]

REGULATION OF FUELS AND FUEL ADDITIVES

Small Refinery Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On January 17, 1977, (42 FR 3183) EPA proposed an amendment to the existing lead phasedown regulations, increasing the allowable average lead level for small refiners (30,000 barrels per day capacity or less) from the 0.5 gram per gallon level required of the rest of the industry to 1.0 gram of lead per gallon of gasoline averaged over each three-month period starting October 1, 1979.

Before EPA finalized this proposed rule, the Congress passed the Clean Air Act Amendments of 1977 preeempting EPA's proposed rule by providing specific relief from EPA's existing lead phasedown regultions for the small refineries of small refiners. That relief, which forms the basis of this proposed rule, is estimated to affect about 5.5 percent of the U.S. gasoline supply and result in a national average gasoline pool lead content of about 0.58 gram per gallon. The previously proposed small refiner relief was projected to affect about 3.2 percent of total gasoline resulting in a national average gasoline pool lead level of about 0.52 gram per gallon. The increase in average lead content (from 0.52 to 0.58 gram per gallon) is not expected to increase the number of Air Quality Control Regions in violation of the proposed ambient air quality standards for lead.

DATES: Comments must be received on or before May 26, 1978.

ADDRESSES: Comments should be submitted the: Office of Air Quality Planning and Standards, Mail Drop 11, Environmental Protection Agency, Research Triangle Park, N.C. 27711, Attention: Mr. Donald F. Walters.

Public comments received and other documents used in the development of the proposed standards comprise the docket required by section 307(d) of the Clean Air Act, as amended in 1977. The docket, numbered OAOPS-78-3, is available for public inspection and copying at: Public Information Reference Unit, room 2922, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. Donald F. Walters, Office of Air Quality Planning and Standards, Mail Drop 11, Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone: 919-541-5341.

SUPPLEMENTARY INFORMATION: On October 1, 1976, following a period of comment and review, EPA formally resumed enforcement of a revised lead phasedown schedule (41 FR 42675, September 28, 1976). The September 28 amendment did not deal with the small refiner issue, but indicated that additional analysis of that issue was necessary.

On January 17, 1977, relief from the existing (September 28th) lead phasedown schedule was proposed for small refiners in the FEDERAL REGISTER (42 FR 3183). Briefly, this proposal required small refiners who were in operation on October 1, 1976, with a capacity of not more than 30,000 barrels per day of crude oil, to meet a maximum average lead standard of 1.0 gpg of lead in gasoline for each three-month period beginning October 1, 1979. This special consideration for small refiners was based on EPA studies including a report entitled "Impact of lead Phasedown Rules on Small Refineries" by Sobotka and Company, Inc., and was designed to equalize the economic impact of the lead phasedown on large and small refineries.

Forty-two written comments on the proposed regulation were received. Based on evaluation of the comments, a final rule was being drafted when it became apparent that it was the intent of Congress to relax the lead phasedown schedule for small refiners. Therefore, EPA delayed the promulagation of its regulation pending Congressional action. EPA is now proposing a regulation implementing the small refiner section of the Clean Air Act Amendments of 1977 (Pub. L. 95-95, 91 Stat. 746) with the following clarifications:

Definitions for "under construction," "owned or controlled," "initial gasoline production level," and "crude oil or bona fide feed stock capacity."

The initial gasoline production level is determined for 1977, unless the refinery can demonstrate that this lowers its initial gasoline production level resulting in a more stringent maximum average lead standard.

The final compliance date of October 1, 1979. There is no interim lead standard of 0.8 gpg on January 1, 1978, as there is for all refineries of refiners with more than 137,500 barrels per day of crude oil or bona fide feed stock capacity, and all refineries with more than 50,000 barrels per day crude oil or bona fide feed stock capacity.

Any refinery, the gasoline production capacity of which was in operation or under construction at any time during the period of October 1, 1975, to October 1, 1976, with crude oil or bona fide feed stock capacity of 50,000 barrels per day or less, which is owned or controlled by a refiner with a total combined crude oil or feed stock capacity of 137,500 barrels per day or less, can produce gasoline with a maximum average lead level determined as follows:

1. Determine the initial gasoline production level (total barrels of gasoline produced in 1977 divided by 365).[1]

2. Determine gasoline production for the calendar year immediately preceding the year for which the lead content standard is being calculated (total barrels of gasoline produced that year divided by 365).

3. Look up the appropriate row in the table below for the "preceding year gasoline production" level determined in (2) and record the corresponding lead content level.

Preceding calendar year gasoline production level barrels per day	Maximum average lead content for initial gasoline production level, grams per gallon
5,000 and under	2.65
5,001 to 10,000	2.15
10,001 to 15,000	1.65
15,001 to 20,000	1.30
20,001 to 25,000	0.80
25,001 or over	0.50

4. Subtract the initial gasoline production level determined in (1) from the preceding calendar production level (2).

5. If (4) is negative, set (4) equal to zero and set (1) equal to (2).

6. Use the following equations to determine the maximum allowable average lead content of gasoline:

$$\text{average lead level} = \frac{.5\ (\text{item 4}) + (\text{item 3} \times \text{item 1})}{(\text{item 2})}$$

To illustrate the maximum average lead content set by this regulation, the following examples will demonstrate the calculation of the allowable lead content for a small refinery under the only three possible scenarios:

a. Gasoline production stays the same as the initial gasoline production level, or

b. Gasoline production increases from the initial gasoline production level, or

c. Gasoline production declines from the initial gasoline production level.

Assume a small refinery of 40,000 barrels per day capacity average which produced 13,000 barrels per day of gasoline in 1977. What is the allowable lead content of gasoline in gpg for 1980 under the three possible scenarios?

a. The refinery produces 13,000 barrels per day of gasoline in 1979.

(1) = 13,000 BPD

(2) = 13,000 BPD

(3) = 1.65 gpg

(4) = 0

(5) = no calculations

(6) = average lead content

$$= \frac{.5X(4) + (3)X(1)}{(2)}$$

$$= \frac{.5X0 + 1.65X13,000}{13,000}$$

= 1.65 gpg

b. The refinery produces 17,000 barrels per day of gasoline in 1979.

(1) = 13,000 BPD

(2) = 17,000 BPD

(3) = 1.30 gpg

(4) = 4,000 BPD

(5) = no calculations

(6) = average lead content

$$= \frac{.5X(4) + (3)X(1)}{(2)}$$

$$= \frac{.5X4,000 + 1.3X13,000}{17,000}$$

= 1.11 gpg

c. The refinery produces 9,000 barrels per day of gasoline in 1979.

(1) = 13,000 BPD

(2) = 9,000 BPD

(3) = 2.15 gpg

(4) = -4000 BPD

(5) = set (4) = 0; set (1) = 9,000 BPD

$$= \frac{.5X(4) + (3)X(1)}{(2)}$$

$$= \frac{.5X0 + 2.15X9,000}{9,000}$$

= 2.15 gpg

The effect of this proposed regulation then would be to permit a relaxed (above 0.5 gpg) lead standard for a quantity of gasoline produced during the prescribed period, calendar year 1977. Any growth in production beyond this initial level would result in a reduction in the allowable average pool lead content.

The Small Refineries Amendments provides that the Administrator of EPA shall promulgate such regulations as he deems appropriate for the period beginning October 1, 1982, "taking into account the experience" under the provisions of the Small Refineries Amendment. In light of the anticipated lead-time requirements of refineries affected by regulations for the post-1982 period, EPA expects that such regulations will be promulgated in late 1979 or early 1980.

The Small Refineries Amendment of the Clean Air Act of 1977 sets a 0.8 gpg upper limit on the average lead content of gasoline produced in any year in a small refinery which produced more than 25,000 barrels per day of gasoline in the preceding calendar year. For small refineries with this level of gasoline production, EPA has found no justification for relaxing the final lead standard of 0.5 gpg required of the nonsmall refineries. Therefore, small refineries with more than 25,000 barrels per day of gasoline production in the preceding calendar year cannot exceed the 0.5 gpg maximum average lead standard as of October 1, 1979.

The scope of this proposed regulation has been restricted to those refineries addressed in the Small Refineries Amendment to the Clean Air Act of 1977. EPA has not broadened the scope of this regulation to provide relief to refiners with greater than 137,500 bpd capacity at their refineries with less than or equal to 50,000 bpd capacity, because review of the equipment configurations of those refineries did not suggest that any remaining subclass of refineries would be at an economic disadvantage because of the existing lead phasedown regulation.

EFFECT OF REGULATION

The EPA proposed Small Refinery Amendment was estimated to affect about 48 refineries producing 3.2 percent of the total U.S. gasoline supply and was projected to increase the average lead concentration in the U.S. gasoline pool in 1980 from 0.5 gpg to 0.52 gpg. Implementing the Small Refineries Amendment of the Clean Air Act Amendments of 1977 as modified in

[1] If a small refinery can demonstrate that the initial gasoline production level determined in (1) is less than a small refinery's gasoline production in the 12 month period immediately preceding October 1, 1976, plus 50 percent of the small refinery's crude oil or bona fide stock capacity under construction on October 1, 1976, then the larger number will be used as the initial gasoline production level.

this proposed rule is estimated to affect about 70 refineries producing about 5.5 percent of the U.S. gasoline supply and will increase the 1980 average gasoline pool lead concentration to about 0.58 gpg. This increase in the average lead concentration is not expected to have a significant effect on ambient lead concentrations due to (1) the general rural nature of small refiners and refinery markets, and (2) the interim nature of these relaxed standards which are expected to remain in effect only through October 1, 1982. Therefore, EPA finds that this proposal does not require an Environmental Impact Statement.

ECONOMIC IMPACT ANALYSIS

EPA has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Analysis under Executive Orders 11821 and 11949 and OMB Circular A-107.

COMMENTS

EPA solicits comments on the technique required to calculate a small refineries' allowable lead content. In particular EPA is interested in comments which address the issues of the possible increase in lead levels and decrease in complexity resulting from a regulation which would simply require refineries to determine their allowable lead level by determining their preceding year gasoline production and going to the table included in this regulation to find their allowable lead content.

Dated: April 19, 1978.

BARBARA BLUM,
Acting Administrator.

It is proposed that 40 CFR Part 80 be amended as follows:

1. By adding five new definitions at the end of § 80.2 to read as follows:

§ 80.2 Definitions

* * * * *

(p) "Small refinery" means a refinery—

(1) The gasoline producing capacity of which was in operation or under construction at any time during the one-year period immediately preceding October 1, 1976, and

(2) Which has a crude oil or bona fide feed stock capacity of 50,000 barrels per day or less, and

(3) Which is not owned or controlled by any refiner with a total combined crude oil or bona fide feed stock capacity greater than 137,500 barrels per day.

(q) "Under construction" means any continuous program of fabrication, erection, or installation of a small refinery with the intent of completion within a reasonable time.

(r) "Initial gasoline production level" means the 1977 average daily gasoline production level of a small refinery (total barrels of gasoline produced in calendar year 1977 divided by 365), unless the small refinery can demonstrate that this is a lower production level than one calculated from the average daily gasoline production level for the 12-month period immediately preceding October 1, 1976, plus 50 percent of its crude oil or bona fide feed stock capacity under construction on October 1, 1976. In the latter instance the initial gasoline production level would be set at the higher of the two calculated production levels.

(s) "Owned or controlled" means leased, operated, controlled, supervised, or in ten percent or greater part owned.

(t) "Crude oil or bona fide feed stock capacity" means that crude oil or bona fide feed stock capacity certified by the Department of Energy.

2. By adding new subsections at the end of § 80.20 to read as follows:

§ 80.20 Controls applicable to gasoline refiners.

(a) * * *

(5) The provisions of paragraphs (a)(1) and (a)(4) of this section shall not apply to any small refinery, as defined in § 80.2(p).

(b) * * *

(1) Gasoline manufactured at a small refinery shall not exceed the average lead content specified in the table below for any three month period (January through March, April through June, July through September, or October through December) beginning October 1, 1979.

[Grams per gallon]

Preceding calendar year average daily gasoline production[1]	Allowable average lead content of gasoline production levels— Up to initial gasoline production level	Greater than initial gasoline production level
5,000 or under	2.65	0.50
5,001 to 10,000	2.15	.50
10,001 to 15,000	1.65	.50
15,001 to 20,000	1.30	.50
20,001 to 25,000	.80	.50
Greater than 25,000	.50	.50

[1]Barrels per calendar day.

(2) For each small refinery, as defined in § 80.2(p), each refiner shall also submit reports as required in paragraph (a)(3) of this section.

(Section 211 (Section 223, Pub. L. 95-95, 91 Stat. 764, 42 U.S.C. 7545(g)) and 301(a) (42 U.S.C. 7602(a), formerly 42 U.S.C. 1857g(a)) of the Clean Air Act as amended.)

[FR Doc. 78-11332 Filed 4-25-78; 8:45 am]

[4110-92]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development Services

[45 CFR Parts 71, 220, and 228]

REGULATIONS GOVERNING CHILD DAY CARE SERVICES UNDER THE SOCIAL SECURITY ACT

Intent To Issue Regulations

AGENCY: Office of Human Development Services, HEW.

ACTION: Notice of intent to issue regulations.

SUMMARY: The Department of Health, Education, and Welfare is planning to revise the Federal Interagency Day Care Requirements which have been known as the FIDCR. Revisions are also planned in the related child care regulations for Title XX and other Social Security Act programs. The Social Security Act authorizes the Department to modify the FIDCR no sooner than 90 days after a Report on the Appropriateness of the FIDCR has been submitted to Congress. The Department plans to submit the Appropriateness Report to Congress in May 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Preston Bruce, Jr. 202-755-7430 or 202-472-7934.

SUPPLEMENTARY INFORMATION:

MAJOR ISSUES

The information in the Appendix describes the background of the Federal government's ten year history in regulating Federally funded day care. In the Department's review of the 1968 FIDCR, a number of specific issues have been identified.

The public has commented on many issues related to the FIDCR during the public meetings on the FIDCR Appropriateness Report. The Department is soliciting extensive public comment on major issues during the development of revised day care regulations.

In revising the FIDCR, the Department will be making decisions on a variety of major issues. The following list does not include all the issues, but it does illustrate the nature of the decisions which will be made.

1. What should be the Department's policy regarding regulations of child day care services?

What are the policy objectives for day care supported under HEW programs? What purpose should Federal standards for day care serve?

What are the critical elements of day care services which the Federal Government should regulate?

What elements of day care service are not appropriate for Federal regulation?

What are the appropriate roles of HEW and State and local governments in establishing and implementing Federal standards?

What are the HEW programs to which the standards should be applied? (A list of programs to which HEW presently intends to apply the standards is included in the Appendix to this Notice.)

2. What type of standards should be established for federally supported child day care?

Should center-based, family day care, group home, and in-home care be regulated? How should standards differ for each form of care?

How should standards differ for infant, toddler, preschool, and school-age care?

Which components of day care services should be regulated? For example, staff/child ratios? staff qualifications? group size? parent involvement? educational services? etc.

How extensive should the standards be for each component to be regulated?

At what level of quality should component standards be established? For example, how many children per staff member will be allowed? How much training and experience will be required of staff?

How specific should the standards be in defining the requirements to be met for acceptable day care services? Should they specify basic objectives, such as safe premises, or should they contain specific requirements, such as number of fire escapes per room?

Assuming that the well-being of children must remain the paramount consideration, what are the likely effects of alternative standards on the supply of care, the cost of care, the quality of care, the employment of non-professionals as caregivers, the variety of quality-cost options available to consumers, enforceability of the standards, and other characteristics of the day care market?

3. What revisions to administrative regulations are necessary to carry out these new standards in Title XX and other programs?

What should be the method and schedule for implementation of the revised standards?

Should technical assistance be extended to State agencies and day care providers to insure compliance?

What should be the roles of the HEW Regional Offices and the States in monitoring compliance?

What reporting requirements should be placed on States? On providers?

What should be the relationship between Federal day care standards and State licensing codes?

Under what conditions should waivers be considered and who should grant them?

Should States or providers be required to give information to parents on the characteristics of day care services, to facilitate parent choice?

What should be the role of paraprofessionals in day care centers? Should special consideration be given to mothers of children attending the centers? Or to mothers receiving Aid to Families with Dependent Children?

Public Participation

A major element in the development of the proposed regulations will be the widespread and active participation of the public. We plan to publish general schedules for public participation in the Federal Register in the Spring of 1978.

The Department has conducted a series of three public meetings in Washington, D.C., Dallas, Tex., and Seattle, Wash., on the FIDCR Appropriateness Report. After publication of the final Appropriateness Report, our present schedule for developing new standards calls for public participation activities which will include:

Spring/Summer 1978. National dissemination of a Summary of the Appropriateness Report, regulatory issues papers, and public information about day care and regulations development for broad public review and comment;

Fall 1978. Public meetings on regulations options papers in every State for substantive public input on regulations development; consultation with appropriate Federal agencies.

Winter 1978-1979. (1) Publication of Notice of Proposed Rulemaking (NPRM) in Federal Register, and (2) national mailing of NPRM and dissemination through organizations concerned with child day care regulations;

Spring 1979. (1) Regional and national hearings on NPRM, and (2) publication of final regulations in Federal Register.

After publication of final regulations, a staff team from the Administration for Children, Youth and Families and the Administration for Public Services within HEW will conduct field briefings on the content of the final regulations and the consideration of public response in the development of final regulations.

In addition to these major activities, a general information service on regulations development will be conducted by the Administration for Children, Youth and Families. Fact sheets, information brochures, and schedules of public events will be sent routinely to interested members of Congress, State agencies, and interested individuals and organizations.

The Department will be developing a mailing list for dissemination of public documents and information on the day care standards. To automatically obtain these documents, interested parties should write to:

Dr. Preston Bruce, Jr., Director, Day Care Division, Administration for Children, Youth and Families, HEW, P.O. Box 1182, Washington, D.C. 20013.

Dated: March 9, 1978.

Arabella Martinez,
Assistant Secretary for Human Development Services.

Approved: April 18, 1978.

Joseph A. Califano, Jr.,
Secretary of Health, Education, and Welfare.

Appendix

Background

Three laws form the basis for the development of the proposed revisions:

(1) *Pub. L. 90-222.* Section 107(a) of Pub. L. 90-222, the Economic Opportunity Amendments of 1967, required the Secretary of Health, Education, and Welfare and the Director of the Office of Economic Opportunity "to coordinate programs under their jurisdiction which provide day care with a view to establishing, insofar as possible, a common set of program standards and regulations, and mechanisms for coordination at the State and local levels." In 1968, the Federal Interagency Day Care Requirements (the FIDCR) were developed in response to this mandate to govern the following day care components:

Day care facilities,
Environmental standards,
Educational services,
Social services,
Training of staff,
Parent involvement,
Administration and coordination, and
Evaluation.

(2) *Pub. L. 93-644.* Section 8(b) of Pub. L. 93-644, the Community Services Act of 1974, requires that "The Secretary (of HEW) shall take all necessary steps to coordinate programs under his jurisdiction which provide day care, with a view to establishing, insofar as possible, a common set of program standards and regulations, and mechanisms for coordination at the State and local levels. Such standards shall be no less comprehensive than the Federal Interagency Day Care Requirements as approved by the Department of Health, Education, and Welfare, the Office of Economic Opportunity, and the Department of Labor on September 23, 1968."

(3) *Pub. L. 93-647.* Pub. L. 93-647, the Social Services Amendments of 1974, added Title XX to the Social Security Act. Title XX provides Federal funding to the States for comprehensive social services programs. Included in the options for services is child day care.

Section 2002(a)(9)(A) of Title XX set standards for in-home day care of children funded under the title. It also incorporated the 1968 FIDCR with several modifications as funding requirements for child day care services provided outside the child's home.

The new standards for in-home care and the Title XX modified FIDCR were made funding requirements for child day care provided under Titles IV-A (Aid to Families with Dependent Children, AFDC, and WIN services) and IV-B (Child Welfare Services) of the Social Security Act by Section 3(f) of the same law.

Since passage of Pub. L. 93-647, Congress has enacted additional legislation affecting the day care requirements imposed by Title XX. Three amendments have suspended

some of the required staff/child ratios under certain conditions. In 1976 and 1977, Congress also authorized an increase in Federal funding of child day care services under Title XX to assist States in meeting the day care requirements.

Appropriateness Report. Section 2002(a)(9)(B) of the Title XX legislation directed the Secretary to submit to Congress a study of the "appropriateness" of the day care requirements imposed by the law and to report any recommendations he may have for modification of them. The law states that "no earlier than ninety days after the submission of the (Appropriateness) report, the Secretary may, by regulation, make such modifications in the requirements imposed by subparagraph A (the day care requirements) as he determines are appropriate."

Purpose of Rulemaking Process. The Federal Interagency Day Care Requirements as modified by Title XX of the Social Security Act and existing regulations governing the administration of child day care services under the Social Security Act will be revised in order to:

(1) Review and take into consideration the findings of the Appropriateness Report;

(2) Clarify Departmental policy regarding standards for child day care and regulations of day care services; and

(3) Consider fully the concerns of the day care public.

The proposed regulations will establish day care standards which will apply to day care services provided under Title XX, IV-B, and IV-A (WIN and Social Services for Guam, Puerto Rico and the Virgin Islands) programs. Administrative provisions to carry out the new standards in these programs will also be set out in the proposed regulations.

PROGRAMS AFFECTED BY PROPOSED REGULATIONS

Four programs authorized under the Social Security Act will be affected by the proposed regulations.

Social Services under Title XX of the Social Security Act. Under the Title XX social services program, States offer at least one social service directed to each of five program goals, and at least three services must be included for recipients of supplemental security income (SSI). Day care services are among the services offered by most States and account for the largest expenditure for a single service offered under the Title XX program.

Child Welfare Services under Title IV-B of the Social Security Act. Child welfare services are public social services which supplement or substitute for parental care and support. The purposes of Title IV-B services are to prevent or remedy harm to children and to protect and promote the welfare of children. The legislative authority includes provision of adequate care for children away from their homes, including day care.

Social Services for Guam, Puerto Rico, and the Virgin Islands under Title IV-A of the Social Security Act. Social services, including child day care services, are provided to persons receiving AFDC in Guam, Puerto Rico, and the Virgin Islands under Title IV-A of the Social Security Act.

Supportive Services of the Work Incentive Program (WIN) under Title IV-A of the Social Security Act. The WIN program is designed to help persons receiving AFDC become self-supporting. Employment and training services are supplemented by necessary supportive services, including day care for children. The WIN program is jointly administered by the Department of Health, Education, and Welfare and the Department of Labor.

These programs served an estimated 893,000 children during 1977, at an estimated cost of more than $800 million.

REGULATORY PROVISIONS

The Department intends to propose two types of regulations:

Child Day Care Standards. The proposed regulations would establish new child day care standards, which would be Federal requirements to be met in the provision of day care services authorized under Titles XX, IV-B, and IV-A of the Social Security Act. The new standards would revise and supercede:

45 CFR Part 71 (the 1968 Federal Interagency Day Care Requirements)

45 CFR Part 228.42 (FIDCR modified by Title XX)

Administrative Provisions. New or revised administrative regulations to carry out the new standards in Social Security Act programs will be developed. New or revised regulations will be proposed for:

45 CFR Part 220, for Title IV-A, social services in Puerto Rico, Guam, and the Virgin Islands, and Title IV-B programs

45 CFR Part 228, for Title XX and Title IV-A (WIN) programs

NEED TO REGULATE

The Federal Interagency Day Care Requirements have been in force for 10 years. The Department, along with day care providers, State agencies, and concerned groups and individuals, has long recognized the need to revise its day care regulations. Revised FIDCR were prepared by the Department in 1972, in connection with proposed welfare reform legislation. The legislation was defeated in Congress, and the 1972 FIDCR were never adopted.

The need to reconsider the requirements was underscored when, in 1974, Congress amended the FIDCR for incorporation into Title XX and called for a study evaluating their appropriateness. The Appropriateness Report will be submitted to Congress in May 1978. It will focus on three main topics: the role of government in day care; the impact of the FIDCR on children, families, caregivers, and others involved; and the economic issues associated with Federal regulation of day care services.

The 1968 FIDCR were based on the best information and expert opinion available at the time. Implementation of the requirements has posed some basic problems for those most affected by them. The language of the requirements is vague and often confusing; some of the requirements are difficult to interpret and enforce; and questions about the validity of certain requirements have never been resolved.

An evaluation of these concerns will be contained in the Appropriateness Report. Proposed regulations will be developed in order to review and take into consideration the report's findings. The development of regulations will insure that the Department's child day care regulations reflect (1) the best information availbale on what constitutes good care for children, and (2) a reexamination of what constitutes appropriate regulation of Federally supported day care. Based on this information and a full hearing of the expectations and views of the public, the Department will clarify its policy regarding day care standards and the regulation of day care services. Through the rulemaking process, the Department will undertake the complex task of establishing requirements for day care services provided under the affected programs.

[FR Doc. 78-11275 Filed 4-25-78; 8:45am]

[6730-01]

FEDERAL MARITIME COMMISSION

[46 CFR Chapter IV]

[Docket No. 78-11]

EXEMPTION OF CERTAIN COLLECTIVE BARGAINING AGREEMENTS

Advance Notice of Proposed Rulemaking

AGENCY: Federal Maritime Commission.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Federal Maritime Commission is considering promulgating a rule under the authority of the Shipping Act, 1916, to exempt certain collective-bargaining agreements between labor unions and multiemployer bargaining units from the pre-implementation approval requirements of Section 15 of that Act, or to grant them interim or conditional approval under that Section. The purpose of this Advance Notice is to solicit comments and information from the public on the nature, scope and operation of such a labor exemption or approval.

DATES: Comments must be submitted on or before May 26, 1978.

ADDRESSES: Comments to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573. Telephone: 202-523-5725.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On March 1, 1978, the Supreme Court of the United States held that irrespective of their effect on competition collective-bargaining agreements as a class are not categorically exempt from the filing requirements of Section 15 of the Shipping Act, 1916, and that "* * * the Commission is the public arbiter of competition in the shipping industry." *Federal Maritime Commission* v. *Pacific Maritime Association*, No. 76-938, decided March 1, 1978 (Slip Opinion at 11, 12). The Supreme Court also recognized that the Commission need not require the filing of all or even most collective-bargaining contracts entered into in the shipping industry. First, Section

15 only applies to collective-bargaining agreements between a union and a multiemployer bargaining unit. Second, not all collective-bargaining agreements between a union and a multiemployer bargaining unit are necessarily subject to the requirements of Section 15. Id. at 15. The vast majority of collective-bargaining arrangements cannot be deemed candidates for disapproval under Section 15 and would be routinely approved even if filed. The Court noted the Commission's authority under Section 35 of the Shipping Act, 46 U.S.C. § 833(a), in appropriate circumstances, to exempt from the Section 15 filing requirements "any class of agreements between persons subject to this chapter or any specified activity of such person * * *" Id. at 16. (Citing *United Stevedoring Corporation* v. *Boston Shipping Association*, 16 F.M.C. 7 (1972).)

The Commission is aware of its responsibilities under Section 15. However, the Commission is also concerned that if all collectively-bargained agreements between unions and multiemployer bargaining units on all U.S. Coasts and the Great Lakes were filed for approval under Section 15, it could result in unnecessary uncertainty and delay in the collective-bargaining process.

Accordingly, the Commission is considering promulgating a rule under the authority of Sections 15, 35 and 43 of the Shipping Act which would grant either interim or conditional approval or would exempt certain classes of collective-bargaining agreements from the pre-implementation filing requirements of Section 15. Consequently, the Commission desires the Comments of interested parties. Additional information is required as to the appropriate nature, scope and operation of such a "labor exemption." For this reason the Commission is publishing this Advance Notice of Proposed Rulemaking to provide the public an opportunity to submit comments on the labor exemption generally and on the issues enumerated below for consideration by the Commission prior to publication of a Proposed Rule upon which the public will again be invited to comment.

ISSUES UPON WHICH COMMENTS ARE REQUESTED

1. Why is it not possible to submit collective-bargaining agreements or portions thereof affecting competition in the maritime industry in sufficient time prior to implementation so as to permit expeditious processing and consideration by the Commission? At the time labor negotiations begin, what would prevent the parties from alerting the Commission respecting new provisions which might have impact upon matters within the Commission's jurisdiction?

2. What types of labor related agreements should qualify for an exemption?

Should the exemption apply to the organic agreement (articles of incorporation and by-laws) creating maritime multi-employer, collective-bargaining units?

3. How should a labor exemption operate?

(a) Is it feasible to exempt, for a specified period of time, certain agreements from the pre-implementation approval requirement of Section 15 where all collective-bargaining agreements (except those between a single maritime employer and a union) would be required to be filed immediately upon ratification? The Commission would then review the agreement to determine whether an exemption should be granted, or, if not, whether the agreement should be approved under the standards of Section 15, or investigated to determine whether the agreement, or any portion thereof, should be disapproved under Section 15. In the event of such an investigation, the proponents of the agreement would bear the burden of going forward with a showing that approval of the agreement is justified under the standards of Section 15.

(b) Is it feasible to grant conditional or interim exemption or approval for agreements meeting certain criteria pending the Commission's final determination under Section 15? Public Comments on such an exemption and the use of conditional or interim approval are requested. The Commission is particularly interested in comments as to the time limitation on the automatic exemption.

(c) Should parties to an agreement retain the option to submit the agreement or portions thereof to the Commission prior to ratification for expeditious consideration under Section 15? Is such a procedure feasible?

(d) To what extent, if any, is the antitrust immunity, granted by Section 15 approval, necessary or desirable for the protection of the parties entering into such labor-related agreements, engaging in negotiations leading up to such agreements, and developing bargaining positions in the negotiations?

(e) On April 4, 1978, the Pacific Maritime Association (PMA) filed with the Commission a Petition for Order Exempting Certain Collective Bargaining Agreements from Section 15. PMA's proposed exemption is as follows:

> Pursuant to Sections 35 and 43, Shipping Act, 1916, 46 U.S.C. 833 and 841(a), an exemption from the filing and approval requirements of Section 15, Shipping Act, 1916, 46 U.S.C. 814, is hereby granted as to the following categories of agreements:
>
> Collective bargaining agreements establishing wages, hours, working conditions and employee benefit plans, or other matters which are the subject of mandatory bargaining, provided:
>
> 1. The collective bargaining is good faith, arms-length bargaining and is a proper subject of union concern, i.e., it is intimately related to or primarily and commonly associated with a bona fide labor purpose.
>
> 2. The union is not acting at the behest of non-labor groups, i.e., there is no conspiracy with management.
>
> 3. The collective bargaining does not involve an undertaking by management and the union to impose terms on entities outside the bargaining unit.
>
> This exemption shall not extend to agreements which allocate the costs of employee benefit plans among employers other than in proportion to the number of manhours worked.
>
> Questions of application of a labor exemption to agreements not covered hereby will be resolved by the Commission on a case by case basis or by further exemption order.

A copy of the entire PMA Petition is available from the Secretary, Federal Maritime Commission. Public Comments on PMA's exemption proposal are requested.

4. The public is invited to submit any other comment relevant to the Commission's consideration of a labor exemption as discussed in this Notice.

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-11321 Filed 4-25-78; 8:45 am]

notices

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.

[3410-02]

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

GRAIN STANDARDS

Utah and Idaho Inspection Points

Statement of considerations. The Utah-Idaho Grain Exchange (Exchange), Ogden, Utah, has requested that, effective July 1, 1978, its designation under the United States Grain Standards Act as amended (7 U.S.C. 71 et seq.) hereinafter the "Act," to operate as an official inspection agency at Ogden, Utah, and Pocatello, Idaho, be canceled. The Exchange also requested that its Odgen, Utah, designated inspection point be transferred to the Utah Department of Agriculture and that its Pocatello, Idaho, designated inspection point be transferred to the Idaho Department of Agriculture.

Pursuant to § 26.101(a) of the regulations (7 CFR 26.101(a)), the Federal Grain Inspection Service (FGIS) proposes to cancel the designation of the Utah-Idaho Grain Exchange to operate as an official agency at Ogden, Utah, and Pocatello, Idaho.

The Utah and Idaho State Departments of Agriculture have been sent applications for designation as official agencies under the Act to perform grain inspection and supervision of weighing functions.

Other interested persons are hereby given opportunity to make application for designation to operate as an official agency at Ogden, Utah, and/or Pocatello, Idaho, pursuant to the requirements in section 7(f)(1)(A) of the Act, as amended (7 U.S.C. 79(f)(1)(A)) and § 26.96 of the regulations (7 CFR 26.96). Persons wishing to apply for designation to operate as an official agency at these points may request appropriate forms from the United States Department of Agriculture, Federal Grain Inspection Service, Compliance Division, Delegation and Designation Branch, 201 14th Street SW., Room 2405, Auditors Building, Washington, D.C. 20250.

NOTE.—Section 7(f) of the Act generally provides that not more than one official agency shall be operative at any one time for any geographic area.

As a point of clarification, it should be noted that the "Act" has been amended by Pub. L. 94-582, effective November 20, 1976, to extensively modify the official inspection system. The amended Act provides that the Administrator of the newly created Federal Grain Inspection Service (FGIS), after conducting investigations and other studies, will designate official agencies at the various interior points. In implementing these provisions, FGIS is currently in the process of reviewing the designations of all agencies or persons presently designated to provide official inspection services. The amended Act further provides that existing agencies may continue to operate without a designation under the new law until the Administrator either grants or denies such designation to them or sets a period of time for their termination, not to exceed November 20, 1978.

Any interested persons who wish to submit views and comments should address said views and comments in writing to the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250.

All such views and comments submitted should be in duplicate and mailed to the Hearing Clerk not later than (30 days after publication), and will be made available for public inspection at the office of the Hearing Clerk during regular business hours. Consideration will be given to views and comments so filed with the Hearing Clerk and to all other information available to the U.S. Department of Agriculture before final determination is made with respect to this matter.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2871, (7 U.S.C. 79(f)(1)); 7 CFR 26.96; 7 CFR 26.101)

Done in Washington, D.C. on April 19, 1978.

D. R. GALLIART,
Acting Administrator.

[FR Doc. 78-11308 Filed 4-25-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Order 78-4-66; Dockets 32143, 31236, 32073, 31242, 31199, 32228]

AUSTIN/SAN ANTONIO-ATLANTA SERVICE INVESTIGATION

Order; Correction

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 14th day of April 1978.

In the matter of Austin/San Antonio-Atanta Service Investigation (Docket 32143); petition of City and Chamber of Commerce of Austin, Tex. (Docket 31236); and applications of Braniff Airways, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., Southern Airways, Inc. (Dockets 32073, 31242, 31199, 32228); under section 407 of the Federal Aviation Act of 1958, as amended.

In FR Doc. 78-10760 appearing at page 16788 in the issue for Thursday, April 20, 1978, both in the second and fourth paragraphs of the third column, change "Docket 31119" to "Docket 31199".

Dated: April 19, 1978.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-11294 Filed 4-25-78; 8:45 am]

[6320-01]

[Order 78-4-132; Docket Nos. 32485, 31967,32008]

Baltimore/Washington-St. Louis Route Proceeding

Order Instituting Proceeding

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 20th day of April, 1978.

On January 9, 1978, Ozark Air Lines filed an application requesting nonstop authority between St. Louis, Missouri, and Washington, D.C., limited to service thorough Dulles International Airport. Additionally, the application seeks modification of Condition (11) of the carrier's certificate for Route 107 to permit single-plane service between St. Louis and New York.[1] Concurrently, Ozark filed a petition for and order to show cause or, in the alternative, a motion for hearing on its application. The applicant proposes to provide three daily nonstop round trips between St. Louis and Dulles at fares 20 to 50 percent under existing DPFI fare levels.[2]

---

[1]Since Ozark seeks St. Louis-Washington nonstop authority in the form of a new segment, the requested amendment of Condition (11) would permit Ozark to serve the St. Louis-New York market on a one-stop basis via Washington, D.C. or Springfield, Illinois.

[2]Ozark proposes a two-tiered price structure. A minimum 20-percent reduction would be available on all flights; some even-

Footnotes continued on next page

Ozark states that existing services in the Washington-St. Louis market are seriously deficient. It asserts that since the withdrawal of Eastern's services in December 1977, the market has ecome the largest *de facto* monopoly market in the United States and points out that TWA, the sole incumbent offering nonstop service, provides five daily nonstop round trips, none of which serve Dulles. In addition to the primary markets, Ozark is proposing, through its service pattern, to extend existing flights and provide first single-plane service between Joplin and Springfield, Missouri, on the one hand, and Washington, D.C. and New York, on the other.

Several answers were filed in response to the motion for hearing. The Dulles International Airport Development Commission, the Commonwealth of Virginia,[3] the City of St. Louis, the Springfield, Missouri Parties,[4] the Department of Justice, the City of Columbia, Missouri, and the Northern Virginia Parties[5] all answered in support.

The State of Maryland filed an answer urging that any proceeding instituted to consider Ozark's St. Louis-Dulles application be scoped to consider also the need for new and improved service between St. Louis and Baltimore-Wahington International Airport (BWI).[6] American Airlines filed an answer contending that the service needs of the St. Louis-Washington market merit the Board's prompt consideration. American, however, argues that there is no reason to confine the proceeding, by prehearing restriction, to service via Dulles Airport. Thus, American urges that its concurrently filed application for nonstop authority between Washington and St. Louis, in Docket 32008, be given comparative consideration with Ozark's Dulles proposal.

TWA, the incumbent, opposed the motion. It states that Ozark has not shown any deficiency of service or proposed service benefits substantial enough to warrant a hearing. TWA asserts that the Washington-St. Louis market is adequately served, despite the absence of competition; that Ozark has made "no convincing demonstration of an immediate need for service at the Dulles Airport"; and that the true fare discounts contained in Ozark's proposal are overstated. Eastern, in its answer, also opposes Ozark's motion. In support of its position, Eastern characterizes Ozark's fare proposal as a "gimmick" merely designed to attract the Board's attention. Additionally, the carrier questions the soundness of Ozark's forecasting techniques and states that it plans to reinstitute competitive service in the Washington-St. Louis market on May 1, 1978.

Ozark filed a consolidated reply, accompanied by a motion to file an otherwise unauthorized document.[7]

The Commonwealth of Virginia, the Iowa Department of Transportation, and the City of St. Louis petitioned for leave to intervene in any proceeding that may be instituted to consider Ozark's application.

We have decided to grant Ozark's motion for hearing. We are instituting the *Baltimore/Washington-St. Louis Route Proceeding* for the purpose of considering whether the public convenience and necessity require competitive nonstop service in the Washington/Baltimore-St. Louis markets. Accordingly, we are consolidating for hearing the applications of Ozark and American in Dockets 31967 and 32008, respectively.

We find that the Board's hearing resources will be employed most efficiently by considering the service needs of all three Baltimore/Washington area airports in one proceeding. Therefore, the authorization of new service via Baltimore/Washington International Airport and/or National Airport will be considered, along with the issue of service through Dulles International. No convincing argument has been made for the imposition of prehearing restrictions limiting service to any of the area airports. The hearing will be the proper forum for resolving whether any authority granted should be restricted to specific airports or whether service to one airport should be made dependent upon the provision of a minimum level of service to any other airport. Our approach here is consistent with that recently taken in our order instituting the *Baltimore/Washington-Houston Low-Fare Route Case*, Order 77-12-115, December 22, 1977.[8]

In accordance with the policy announced in our order instituting the *Chicago-Albany/Syracuse-Boston Com- petitive Service Investigation*, (Order 77-12-50), the offer or failure to offer lower prices will be taken into account in determining whether the public convenience and necessity require the award of new authority, and if so, which carrier(s) should be selected. We therefore expect the instituted investigation to include an examination of the need for and feasibility of various new price/quality options and related issues, as we explained in Order 77-12-50. We repeat, however, that traditional service benefits, including the benefits of city-pair competition, are important issues which will be weighed with price and price/quality considerations. Moreover, as more fully set out in Order 77-12-50, the parties and the judge should focus on whether any new authority should be permissive, whether multiple awards should be made, whether multiple awards may encourage real price competition, and whether they are consistent with the Federal Aviation Act.

Finally, while Ozark has submitted an environmental evaluation along with its motion for hearing, American has not submitted sufficient information for us to determine environmental consequences of its certificate amendment application at this time.

Footnotes continued from last page

ings, a 50-percent reduction of the normal coach fare would be offered.

[3]The Department of Transportation of the Commonwealth of Virginia and the Virginia State Corporation Commission.

[4]The City of Springfield, Missouri, and the Springfield Chamber of Commerce.

[5]Fairfax County Economic Development Authority, Loundoun County Office of Economic Development, Prince William County Economic Development Authority, Committee for Dulles, Fairfax County Chamber of Commerce, Herndon Chamber of Commerce, Loudoun County Chamber of Commerce, Northern Virginia Export-Import Association, and the Washington Air Cargo Association. Columbia and Northern Virginia accompanied their reprective answers with motions requesting leave to file a late-filed document. We will grant the motions.

[6]TWA filed a motion to strike Maryland's answer. TWA argues it is deficient since it is devoted entirely to a request for the expansion of the proceeding to consider the service needs of BWI, rather than to comments on Ozark's specific Dullles proposal. Maryland answered TWA's motion, stating that its answer to Ozark's motion for hearing is in compliance with the Board's Procedural Regulations, and that it is not improper to advocate the appropriate scope of a case in an answer to a motion for hearing. We will deny TWA's motion. As we have stated recently, under the Board's existing rules, any party may answer a motion for hearing and suggest the proper scope of a prospective proceeding. Any party wishing to respond to such an answer may do so by way of a reply accompanied by a motion for leave to file an otherwise unauthorized document. See Order 78-1-20, January 6, 1978, where the Board rejected TWA's objections—substantially the same as those raised again here—that portions of Allegheny's answer to motions for hearing filed by Hughes Airwest and North Central should be dismissed.

[7] We will grant the motion because the reply is directed, in part, to American's request, first raised in its answer, that the scope of any proceeding instituted to consider Ozark opposes American's request. However, we note that a considerable portion Of Ozark's reply is simply argumentative rebuttal to the answers of TWA and Eastern. We once again caution practitioners before the Board that unauthorized documents designed to give the filing party the last word on the matter will not be received.

[8]Since Ozark's proposal includes St. Louis-New York one-stop sertvice via Dulles, the proceeding will consider removal of Ozark's single-plane restriction in the St. Louis-New York market. However, since this case does not involve an investigation of the need for new service between St. Louis and New York, any award in this market will be subject to a one-stop restriction.

Therefore, we will require American to file the information set forth in Part 312 of the Board's Procedural Regulations. We will allow American, and all other carriers filing applications in this proceeding, 30 days from the date of service of this order to file their environmental evaulations.

Accordingly, *it is ordered*, That:

1. The motion of Ozark Air Lines for hearing in Docket 31967 be granted;

2. The motions of Ozark Air Lines, the City of Columbia, Missouri, and the Northern Virginia Parties for leave to file an otherwise unauthorized document be granted;

3. The motion of Trans World Airlines to strike the answer of the State of Maryland be denied;

4. A proceeding to be known as the *Baltimore/Washington-St. Louis Route Proceeding*, Docket 32485, be instituted under sections 204 and 401 of the Federal Aviation Act of 1958, as amended, and be set for hearing before an administrative law judge of the Board at a time and place to be designated later;

5. The proceeding instituted by paragraph 4, above, shall include consideration of the following issues:

(a) Do the public convenience and necessity require the certification of an air carrier or carriers to engage in competitive nonstop air transportation between Baltimore, Maryland/Washington, D.C. and St. Louis, Missouri?

(b) If the answer to (a) is affirmative, which applicant(s) should be authorized to engage in such service?

(c) Do the public convenience and necessity require the modification of Condition (11) of Ozark Air Lines' Certificate for Route 107 to permit singleplane service between St. Louis, Missouri and New York, New York?

(d) What terms, conditions and/or limitations, if any, should be placed on the operations of such carrier(s)?

6. Any authority awarded in this proceeding shall be granted without eligibility for subsidy;

7. The applications of Ozark Air Lines in Docket 31967, and American Airlines in Docket 32008, be consolidated into the proceeding instituted by paragraph 4, above;

8. The Dulles International Airport Development Commission, the Commonwealth of Virginia, the City of St. Louis, the Springfield, Missouri Parties, the Department of Justice, the City of Columbia, Missouri, the Northern Virginia Parties, the State of Maryland, the Iowa Department of Transportation, Trans World Airlines and Eastern Air Lines be made parties to the proceeding instituted by paragraph 4, above;

9. American Airlines and all other carriers filing applications in this proceeding shall file environmental evaluations pursuant to section 312.12 of the Board's Procedural Regulations within 30 days of the date of service of this order;

10. Applications, motions to consolidate and petitions for reconsideration of this order shall be filed within 20 days of the date of service of this order and responsive answers shall be filed within 10 days thereafter; and

11. This order shall be served upon all persons listed in paragraph 8, above, and all persons listed in the service list attached to the petition of Ozark Air Lines for an order to show cause or, in the alternative, motion for hearing, filed in Docket 31967.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[9]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-11297 Filed 4-25-78; 8:45 am]

[6320-01]

[Order 78-4-104; Docket No. 30777; Agreement CAB 27218]

IATA

Agreement Relating to North Atlantic-Africa Passenger Fares; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 19th day of April, 1978.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the Joint Traffic Conferences of the International Air Transport Association (IATA). The agreement was adopted at the Reconvened 96th Joint Meeting of Passenger Traffic Conferences 1 and 2 in Geneva, March 20-22, 1978.

The agreement, which involves fares between the United States and Africa and thus has direct application in air transportation as defined by the Act, would simply extend the existing North Atlantic-Africa fare structure for the two-month period from April 1, 1978, through May 31, 1978, with no change in fares.

We will approve the extension. The agreement proposed here revalidates the present fare structure, which was scheduled to expire March 31, 1978, and maintains the fares we previously approved in Orders 77-3-54, March 9, 1977, and 77-5-91, May 18, 1977. In view of the many innovative low fares recently introduced over the North Atlantic, we would hope that, in subsequent agreements, the carriers will consider a revised North Atlantic-Africa fare structure which incorporates similar reductions and fare innovations.

[9]All Members concurred.

Pursuant to sections 102, 204(a), and 412 of the Act, it is not found that Resolution JT12(96)002, incorporated in Agreement C.A.B. 27218, is adverse to the public interest or in violation of the Act.

Accordingly, *It is ordered*, That:

1. Agreement C.A.B. 27218 is approved; and

2. Tariffs implementing Agreement C.A.B. 27218 shall be marked to expire not later than May 31, 1978.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics board:[1]

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-11295 Filed 4-25-78; 8:45 am]

[6320-01]

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 19th day of April 1978.

[Order 78-4-128; Docket No. 30777; Agreement CAB 27162 R-1 through R-17]

IATA

Agreement Relating to South West Pacific Passenger Fares; Order

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations between various air carriers, foreign air carriers, and other carriers embodied in the resolutions of Traffice Conference 3 of the International Air Transport Association (IATA). The agreement was adopted at the Composite Passenger Traffic Conference held at Cannes during October-November 1977.

The agreement would revise the existing fare structure within the South West Pacific and has direct application in air transportation, as defined by the Act, only insofar as fares to and from American Samoa are concerned.[1] In general, the agreement would increase first-class, normal economy, and promotional fares by five percent, and reduce the maximum-stay restriction on Pago Pago-Auckland/Noumea excursion fares from 30 to 23 days.

We will disapprove the agreement insofar as it applies to/and from American Samoa.

Last year, the Board twice disapproved agreements increasing fares to/and from American Samoa. Orders

[1]All Members concurred.

[1]IATA Resolution 012c defines "South West Pacific" as the area comprised of Australia, New Caledonia, New Hebrides, New Zealand, Papua New Guinea, Tonga, and the Cook, Fiji, Gilbert, Ellice, Royalty, Samoan, Society and Solomon Islands, as well as intermediate islands. The agreement, however, does not cover fares between American Samoa and the Society Islands.

77-2-32, February 4, 1977, and 77-5-13, May 4, 1977. Our decisions were made upon review of data on Samoa operations from Pan American World Airways, Inc. (Pan American), the only U.S. carrier serving the point. We found there was no need for additional revenue.

Pan American is not a party to the agreement before use now an, not surprisingly, has submitted no economic justification in its support, nor have any of the foreign-flag carriers which are parties to the agreement. In these circumstances, we have no basis on which to approve the fare increases to American Samoa and therefore must find that part of the agreement adverse to the public interest.

The Board, pursuant to sections 102, 204(a) and 412 of the Act, makes the following findings:

1. It is found that the following resolutions, which have direct application in air transportation as defined by the Act, are adverse to the public interest and in violation of the Act insofar as they would apply to fares to/from American Samoa:

Agreement CAB	IATA No.	Title	Application
27162:			
R-1	LA14	TC3 Limited Agreement Within South West Pacific (New)	3
R-2	001b II	TC3 Special Effectiveness Resolution (Tie-in)	3
R-3	001bb	Special Escape for TC3 Supersonic Fares	3
R-4	001d	Special Emergency Escape for TC3 Agreements (Readopting and Amending).	3
R-5	001n	Special Escape Within South West Pacific (New)	3
R-6	002pp	Special Readopting Resolution	3
R-7	004f	Restriction of Application for Travel-South West Pacific (Readopting and Amending).	3
R-8	053	TC3 First Class Fares	3
R-9	063	TC3 Economy Class Fares	3
R-10	070a	TC3 Excursion Fares (Readopting and Amending)	3
R-14	076c	TC3 Affinity Own Use and/or Incentive Group Travel (Readopting and Amending).	3
R-15	077f	TC3 Individual Fares for Ships' Crews (Readopting and Amending)	3
R-16	080e	TC3 Individual Inclusive Tour Fares (Readopting and Amending)	3

2. It is not found that the following resolutions, which have direct application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act except insofar as they would apply to fares to/from American Samoa:

Agreement CAB	IATA No.	Title	Application
27162:			
R-1	LA14	TC3 Limited Agreement Within South West Pacific (New)	3
R-2	001b II	TC3 Special Effectiveness Resolution (Tie-in)	3
R-3	001bb	Special Escape for TC3 Supersonic Fares	3
R-4	001d	Special Emergency Escape for TC3 Agreements (Readopting and Amending).	3
R-5	001n	Special Escape Within South West Pacific (New)	3
R-6	002pp	Special Readopting Resolution	3
R-7	004f	Restriction of Application for Travel-South West Pacific (Readopting and Amending).	3
R-8	053	TC3 First Class Fares	3
R-9	063	TC3 Economy Class Fares	3
R-10	070a	TC3 Excursion Fares (Readopting and Amending)	3
R-14	076c	TC3 Affinity Own Use and/or Incentive Group Travel (Readopting and Amending).	3
R-15	077f	TC3 Individual Fares for Ships' Crews (Readopting and Amending)	3
R-16	080e	TC3 Individual Inclusive Tour Fares (Readopting and Amending)	3

3. It is not found that the following resolutions, which have indirect application in air transportation as defined by the Act, are adverse to the public interest or in violation of the Act:

Agreement CAB	IATA No.	Title	Application
27162:			
R-11	071ss	6/28 Day Advance Purchase Excursion Fare Australia-Fiji (New)	3
R-13	072c	TC3 New Zealand/Fiji Early Purchase Individual Contract (Readopting and Amending).	3
R-17	084z	TC3 Group Inclusive Tour Fares South West Pacific (Readopting and Amending).	3

4. It is not found that the following resolution affects air transportation within the meaning of the Act:

Agreement CAB	IATA No.	Title	Application
R-12	072a	TC3 Special Round and Circle Trip Excursion Fares Within the South West Pacific (Readopting and Amending).	3

Accordingly, *It is ordered*, That:

1. Those portions of Agreement CAB 27162 described in finding paragraph one above are disapproved;
2. Those portions of Agreement CAB 27162 described in finding paragraphs two and three above are approved; and
3. Jurisdiction is disclaimed with respect to that portion of Agreement CAB 27162 described in finding paragraph four above.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[2]

PHYLLIS T. KAYLOR,
Secretary.

[2]All Members concurred.

[FR Doc. 78-11296 Filed 4-25-78; 8:45 am]

[3510-25]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

EXPORT MONITORING REPORT FOR COAL AND COKE OF COAL

Week Ending March 24, 1978

Total bitminous coal exports for this week were 550 short tons compared with 24,182 short tons exported the preceding week. All exports were of non-metallurgical coal grades. Coal exports were at the lowest weekly level since the start of the coal strike and compare to normal exports of about 800,000 short tons per week. With the low level of export activity, only a small number of firms reported coal shipments during the week. A breakdown of these exports by volatility, area of destination, and price is, therefore, withheld from this report to prevent disclosure of information deemed to be confidential pursuant to section 7(c) of the Export Administration Act of 1969, as amended.

Exports of coke manufactured from coal for this week were 4,488 short tons compared with 3,359 short tons exported the preceding week and a weekly average of 23,300 short tons for the preceding six weeks. The weighted average price of this commodity for the week was $129.03 per short ton with a reported high and low price of $142.79 and $122.00 per short ton, respectively. No apparent price change is indicated as the high price of $142.79 per short ton reported for this week is the same as that reported for the past ten weeks.

Domestic coal production for the week was 8,565,000 short tons, an increase from the 8,335,000 short tons produced the preceding week. This week's production is at the highest level since the start of the strike. Coal production has been increasing steadily since the week ending January 28 when the lowest weekly production for the strike period was reported at 4,970,000 short tons.

Tons coal consumption for the week was estimated to be 9,431,000 short tons compared with 9,519,000 short tons consumed the preceding week. Coal consumption has consistently decreased each week since the week ending January 21, 1978, when a high for this strike period of 12,183,000 short tons was consumed. Total end-of-week coal inventories were estimated to be 81,986,000 short tons, a decrease of 2,135,000 short tons from the preceding week.

No upward movement in domestic coal prices is noted for the week ending March 24, 1978.

STANLEY J. MARCUSS,
Deputy Assistant Secretary for Trade Regulation.

TABLE 1.—*U.S. exports of bituminous coal and coke of coal, in short tons*

[For week ending Mar. 24, 1978]

Commodity	Exports: Weekly average December 1975	December 1976	November 1977	Week ending Dec. 9, 1977	Dec. 16, 1977	Dec. 23, 1977	Dec. 30, 1977
Low volatile metallurgical coal [1]	NA	NA	***133,877	199,136	96,895	(*)	(*)
Medium volatile metallurgical coal [2]	NA	NA	NA	283,420	118,632	(*)	(*)
High volatile metallurgical coal [3]	NA	NA	NA	47,055	176,827	(*)	(*)
Total metallurgical coal	NA	NA	889,125	*550,459	**436,605	521,109	128,822
Other bituminous coal	NA	NA	158,326	129,424	351,669	59,500	0
Total bituminous coal	1,023,827	1,044,281	1,047,451	679,883	788,274	580,609	128,822
Coke of coal	16,646	7,287	33,179	3,922	9,624	2,843	3,922

Commodity	Average January 1976	January 1977	Week ending Jan. 6, 1978	Jan. 13, 1978	Jan. 20, 1978	Jan. 27, 1978
Low volatile metallurgical coal [1]	NA	NA	(*)	(*)	(*)	(*)
Medium volatile metallurgical coal [2]	NA	NA	(*)	(*)	(*)	(*)
High volatile metallurgical coal [3]	NA	NA	(*)	(*)	(*)	(*)
Total metallurgical coal	NA	NA	174,709	311,331	97,800	262,585
Other bituminous coal	NA	NA	0	0	0	0
Total bituminous coal	834,857	483,983	174,709	311,331	97,800	262,585
Coke of coal	12,326	20,514	4,466	5,062	29,143	30,634

Commodity	Weekly average February 1976	February 1977	Week ending Feb. 3, 1978	Feb. 10, 1978	Feb. 17, 1978	Feb. 24, 1978
Low volatile metallurgical coal [1]	NA	NA	(*)	(*)	(*)	(*)
Medium volatile metallurgical coal [2]	NA	NA	(*)	(*)	(*)	(*)
High volatile metallurgical coal [3]	NA	NA	(*)	(*)	(*)	(*)
Total metallurgical coal	NA	NA	251,327	72,569	139,143	206,762
Other bituminous coal	NA	NA	0	*(R)	0	0
Total bituminous coal	736,138	769,840	251,327	72,569	139,143	206,762
Coke of coal	22,185	12,805	3,998	75,173	43,315	8,595

Commodity	Weekly average March 1976	March 1977	Week ending Mar. 3, 1978	Mar. 10, 1978	Mar. 17, 1978	Mar. 24, 1978
Low volatile metallurgical coal [1]	NA	NA	(*)	(*)	(*)	0
Medium volatile metallurgical coal [2]	NA	NA	(*)	(*)	(*)	0
High volatile metallurgical coal [3]	NA	NA	(*)	(*)	(*)	0
Total metallurgical coal	NA	NA	162,451	102,698	*24,182	0

TABLE 1.—*U.S. exports of bituminous coal and coke of coal, in short tons*—Continued

	Exports					
	Weekly average		Week ending			
	March 1976	March 1977	Mar. 3, 1978	Mar. 10, 1978	Mar. 17, 1978	Mar. 24, 1978
Other bituminous coal	NA	NA	[4](R)	0	0	550
Total bituminous coal	898,473	765,515	162,451	102,698	24,182	550
Coke of coal	19,541	24,320	4,998	4,651	3,359	4,488

[1]22 pct. or less volatile matter.
[2]31 pct. or less and more than 22 pct. volatile matter.
[3]More than 31 pct volatile matter.
[4]Due to a limited number of firms reporting this data, precise figures have been withheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.
[5]Subject to revision. Less than 10,000 short tons of additional bituminous coal may have been exported; the Department of Commerce is seeking to verify this information.
*Includes 20,848 short tons of metallurgical grade coal not identified as to volatility.
**Includes 44,251 short tons of metallurgical grade coal not identified by volatility.
***Partial, in content tons.

NA—Not available.

Sources: Office of Export Administration and Bureau of the Census.

TABLE 2.—*Contracts for export of bituminous coal and coke of coal, in short tons*

[For week ending Mar. 24, 1978]

	Contracts							
	Week ending							
Commodity	Mar. 31, 1978	Apr. 7, 1978	Apr. 14, 1978	Apr. 21, 1978	Apr. 28, 1978	May 5, 1978	Next 6 weeks	Total for 12 weeks
Low volatile metallurgical coal [1]	129,816	116,396	84,216	84,216	124,216	107,216	968,208	1,614,284
Medium volatile metallurgical coal [2]	311,923	134,650	197,750	156,857	277,350	266,450	2,461,844	3,806,824
High volatile metallurgical coal [3]	38,510	42,486	31,510	36,710	57,010	36,710	284,824	527,760
Total metallurgical coal [1]	480,249	293,532	313,476	277,783	458,576	410,376	3,714,876	5,948,868
Other bituminous coal	([4])	([4])	([4])	([4])	([4])	([4])	([4])	([4])
Coke of coal	3,911	3,726	3,440	3,371	3,231	3,311	41,995	62,985

[1]22 pct or less volatile matter.
[2]31 pct or less and more than 22 pct volatile matter.
[3]More than 31 pct volatile matter.
[4]Due to a limited number of firms reporting this data, precise figures have been withheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.

Sources: Office of Export Administration and Bureau of the Census.

TABLE 3.—*U.S. exports by commodity and area of destination, in short tons*

[For week ending Mar. 24, 1978]

	Exports						
	Weekly average			Week ending			
Commodity and area of destination	December 1975	December 1976	November 1977	Dec. 9, 1977	Dec. 16, 1977	Dec. 23, 1977	Dec. 30, 1977
Low volatile metallurgical coal: [1]							
Asia			7,458	111,525	24,808	([4])	([4])
Europe			43,463	40,893	69,440	([4])	([4])
Western Hemisphere			82,956	46,718	2,647	([4])	([4])
Total	NA	NA	**133,877	199,136	96,895	([4])	([4])
Medium volatile metallurgical coal: [2]							
Asia				102,906	93,291	([4])	([4])
Europe				173,711	15,958	([4])	([4])
Western Hemisphere				6,803	9,383	([4])	([4])
Total	NA	NA	NA	283,420	118,632	([4])	([4])
High volatile metallurgical coal: [3]							
Asia				11,331	0	([4])	([4])
Europe				0	76,532	([4])	([4])
Western Hemisphere				35,724	100,295	([4])	([4])
Total	NA	NA	NA	47,055	176,827	([4])	([4])
Total metallurgical coal:							
Asia			377,151	244,762	118,099	134,389	([4])
Europe			269,606	214,604	161,930	206,831	([4])
Western Hemisphere			224,411	*110,093	*112,324	136,928	([4])
Total	NA	NA	***889,125	*550,459	*436,605	521,109	128,822

TABLE 3.—*U.S. exports by commodity and area of destination, in short tons*—Continued

	Exports						
	Week ending						
	Jan. 6, 1978	Jan. 13, 1978	Jan. 20, 1978	Jan. 27, 1978	Feb. 3, 1978	Feb. 10, 1978	Feb. 17, 1978
Low volatile metallurgical coal: [1]							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Medium volatile metallurgical coal: [3]							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	(4)	(4)	(4)	(4)	(4)	(4)	(4)
High volatile metallurgical coal: [3]							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total metallurgical coal:							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
	Week ending						
	Jan. 6, 1978	Jan. 13, 1978	Jan. 20, 1978	Jan. 27, 1978	Feb. 3, 1978	Feb. 10, 1978	Feb. 17, 1978
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	174,709	311,331	97,800	262,585	251,327	72,569	139,143
			Feb. 24, 1978	Mar. 3, 1978	Mar. 10, 1978	Mar. 17, 1978	Mar. 24, 1978
Low volatile metallurgical coal: [1]							
Asia			(4)	(4)	(4)	(4)	0
Europe			(4)	(4)	(4)	(4)	0
Western Hemisphere			(4)	(4)	(4)	(4)	0
Total			(4)	(4)	(4)	(4)	0
Medium volatile metallurgical coal: [3]							
Asia			(4)	(4)	(4)	(4)	0
Europe			(4)		(4)	(4)	0
West Hemisphere			(4)	(4)	(4)	(4)	0
Total			(4)	(4)	(4)	(4)	0
High volatile metallurgical coal: [3]							
Asia			(4)	(4)	(4)	(4)	0
Europe			(4)	(4)	(4)	(4)	0
Western Hemisphere			(4)	(4)	(4)	(4)	0
Total			(4)	(4)	(4)	(4)	0
Total metallurgical coal:							
Asia			(4)	(4)	(4)	(4)	0
Europe			(4)	(4)	(4)	(4)	0
Western Hemisphere			(4)	(4)	(4)	(4)	0
Total			206,762	162,451	102,698	[5]24,182	0
	Weekly average			Week ending			
	December 1975	December 1976	November 1977	Dec. 9, 1977	Dec. 16, 1977	Dec. 23, 1977	De. 30, 1977
Other bituminous coal	NA	NA	158,326	129,424	351,669	59,500	0
Total bituminous coal	1,023,827	1,044,281	1,047,451	679,883	788,274	580,509	128,822
Coke of coal	16,646	7,287	33,179	3,922	9,624	2,843	3,922
				Week ending			
		Jan. 6, 1978	Jan. 13, 1978	Jan. 20, 1978	Jan. 27, 1978	Feb. 3, 1978	Feb. 10, 1978
Other bituminous coal		0	0	0	0	0	0
Total bituminous coal		174,709	311,331	97,800	262,585	251,327	72,569
Coke of coal		4,466	5,062	29,143	30,634	3,998	75,173

TABLE 3.—*U.S. exports by commodity and area of destination, in short tons*—Continued

	Exports					
	Week ending					
	Feb. 17, 1978	Feb. 24, 1978	Mar. 3, 1978	Mar. 10, 1978	Mar. 17, 1978	Mar. 24, 1978
Other bituminous coal	0	0	0	0	0	550
Total bituminous coal	139,143	206,762	162,451	102,698	[5]24,182	550
Coke of coal	43,315	8,595	4,998	4,651	3,359	4,488

[1]22 pct or less volatile matter.
[2]31 pct or less and more than 22 pct volatile matter.
[3]More than 31 pct volatile matter.
[4]Due to a limited number of firms reporting this data, precise figures have been withheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.
[5]Subject to revision. Less than 10,000 short tons of additional bituminous coal may have been exported; the Department of Commerce is seeking to verify this information.
*Includes 44,251 short tons of metallurgical grade coal not identified by volatility.
**Partial, in content tons.
***Includes 17,957 short tons of metallurgical grade coal to destinations not listed above.

NA—Not available.

Sources: Office of Export Administration and Bureau of the Census.

TABLE 4.—*Anticipated exports by commodity and area of destination, in short tons*

[For Week Ending March 24, 1978]

Commodity and area of destination	Contracts							
	Week ending							
	Mar. 31, 1978	Apr. 7, 1978	Apr. 14, 1978	Apr. 21, 1978	Apr. 28, 1978	May 5, 1978	Next 6 weeks	Total for 12 weeks
Total metallurgical: [1]								
Asia	185,968	102,211	87,555	86,462	271,255	208,055	1,631,953	2,573,459
Europe	153,226	140,726	191,826	157,226	153,226	168,226	1,371,353	2,335,809
Western Hemisphere	141,055	50,595	34,095	34,095	34,095	34,095	424,570	752,600
Total	480,249	293,532	313,476	277,783	458,576	410,376	*3,714,876	*5,948,868
Other bituminous	([2])	([2])	([2])	([2])	([2])	([2])	([2])	([2])
Total bituminous coal								([2])
Coke of coal	3,911	3,726	3,440	3,371	3,231	3,311	41,995	62,985

[1]Volatilty data by destination have been withheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.
[2]Less than 100,000 tons. Due to a limited number of firms reporting this data, precise figures have been withheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.
[3]Data withheld to avoid disclosure of data withheld above. See footnote 2.
*Includes 287,000 tons to destinations not listed above.

Sources: Office of Export Administration and Bureau of the Census.

TABLE 5.—*Export prices of bituminous coal and coke of coal, in dollars per short ton*

[Week ending Mar. 24, 1978]

Commodity	Average					
	March 1976	March 1977	November 1977	Weighted average	High	Low
Low volatile metallurgical coal [1]	NA	NA	NA	0	0	0
Medium volatile metallurgical coal [2]	NA	NA	NA	0	0	0
High volatile metallurgical coal [3]	NA	NA	NA	0	0	0
Total metallurgical coal	NA	NA	53.84	0	0	0
Other bituminous coal	NA	NA	35.01	([4])	([4])	([4])
Total bituminous coal	50.79	50.64	50.99	([4])	([4])	([4])
Coke of coal	62.97	57.19	79.70	129.03	142.79	122.00

[1]22 pct or less volatile matter.
[2]31 pct or less and more than 22 pct volatile matter.
[3]more than 31 pct volatile matter.
[4]Due to a limited number of firms reporting this data, precise figures have been withheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.

NA—Not available.

TABLE 6.—*U.S. trade in bituminous coal and coke of coal, in short tons*

[For Week Ending Mar. 24, 1978]

	Weekly average			Week ending			
	December 1975	December 1976	November 1977	Dec. 9, 1977	Dec. 16, 1977	Dec. 23, 1977	Dec. 30, 1977
Imports:							
Bituminous coal [1]	20,097	21,452	31,158	NA	NA	NA	NA
Coke of coal	20,774	28,903	41,267	NA	NA	NA	NA
Exports:							
Bituminous coal [1]	1,023,827	1,044,281	1,047,451	679,883	788,274	580,609	128,822
Coke of coal	16,646	7,287	33,179	3,922	9,624	2,843	3,922
	Average			Week ending			
		January 1976	January 1977	Jan. 6, 1978	Jan. 13, 1978	Jan. 20, 1978	Jan. 27, 1978
Imports:							
Bituminous coal [1]		16,346	27,198	NA	NA	NA	NA
Coke of coal		3,483	5,987	NA	NA	NA	NA
Exports:							
Bituminous coal		834,857	483,983	174,709	311,331	97,800	262,585
Coke of coal		12,326	20,514	4,466	5,062	29,143	30,634
	Weekly average			Week ending			
		February 1976	February 1977	Feb. 3, 1978	Feb. 10, 1978	Feb. 17, 1978	Feb. 24, 1978
Imports:							
Bituminous coal [1]		NA	NA	NA	NA	NA	NA
Coke of coal		NA	NA	NA	NA	NA	NA
Exports:							
Bituminous coal [1]		736,138	769,840	251,327	72,569	139,143	208,762
Coke of coal		22,185	12,805	3,998	75,173	43,315	8,595
	Weekly average			Week ending			
		March 1976	March 1977	Mar. 3, 1978	Mar. 10, 1978	Mar. 17, 1978	Mar. 24, 1978
Imports:							
Bituminous coal [1]		NA	NA	NA	NA	NA	NA
Coke of coal		NA	NA	NA	NA	NA	NA
Exports:							
Bituminous coal [1]		898,473	765,515	162,451	102,698	24,182 [2]	550
Coke of coal		19,541	24,320	4,998	4,651	3,359	4,488

[1]Includes both metallurgical grade and steam coal.

[2]Subject to revision. Less than 10,000 short tons of additional bituminous coal may have been exported; the Department of Commerce is seeking to verify this information.

NA—not available.

Sources: Office of Export Administration and Bureau of the Census.

TABLE 7.—*Bituminous coal and coke of coal* production, consumption, and stocks, in thousand short tons*

[For week ending Mar. 25, 1978]

	Weekly average			Week ending			
	December 1975	December 1976	November 1977	Dec. 10, 1977	Dec. 17, 1977	Dec. 24, 1977	Dec. 31, 1977
Total bituminous coal production**	12,019	12,593	14,798	9,100	5,080	(R) 5,515	5,700
Consumption:							
Metallurgical***	1,519	1,568	NA	1,290	1,368	1,364	1,324
Other bituminous:							
Electric utility	8,414	9,387	NA	9,228	9,550	9,398	8,928
General industry	1,358	1,421	NA	1,330	1,252	1,163	1,146
Total other	9,772	10,808	NA	10,558	10,802	10,561	10,074
Total bituminous	11,291	12,376	NA	11,848	12,170	11,925	11,398
Bituminous coal stocks (end of specified periods):							
Metallurgical***	8,671	9,804	NA	(R) 15,084	14,776	13,982	13,088
Other bituminous:							
Electric utility	109,707	117,468	NA	(R) 146,171	141,691	136,993	131,308
General industry	8,504	6,900	NA	9,495	9,248	8,896	8,425
Total other	118,211	124,368	NA	155,666	150,939	145,889	139,713
Total bituminous	126,882	134,172	NA	170,750	165,715	159,871	152,801
	Weekly average			Week ending			
	January 1976	January 1977	Jan. 7, 1978	Jan. 14, 1978	Jan. 21, 1978	Jan. 28, 1978	Feb. 4, 1978
Total bituminous coal production**	11,627	9,520	5,755	(R) 5,260	(R) 5,045	(R) 4,970	5,440
Consumption:							
Metallurgical***	1,505	1,428	1,291	1,192	1,221	1,161	1,129
Other bituminous:							
Electric utility	9,009	9,730	9,359	9,652	9,763	9,765	9,386
General industry	1,211	1,442	1,220	1,298	1,199	1,152	1,185

TABLE 7.—*Bituminous coal and coke of coal* production, consumption, and stocks, in thousand short tons*

	Weekly average			Week ending			
	December 1975	December 1976	November 1977	Dec. 10, 1977	Dec. 17, 1977	Dec. 24, 1977	Dec. 31, 1977
Total other	10,220	11,172	10,579	10,950	10,962	10,917	10,571
Total bituminous	11,725	12,600	11,870	12,142	12,183	12,078	11,700
Bituminous coal stocks (end of specified periods):							
Metallurgical***	8,115	8,107	11,992	10,900	9,771	8,821	(R) 7,772
Other bituminous:							
Electric utility	104,456	103,883	126,268	119,399	112,535	105,945	(R) 99,244
General industry	6,425	5,960	8,046	7,579	7,246	6,811	6,484
Total other	110,881	109,843	134,314	126,978	119,781	112,756	(R) 105,728
Total bituminous	118,996	117,950	146,306	137,878	129,552	121,577	(R) 113,500

	Week ending						
	Feb. 11, 1978	Feb. 18, 1978	Feb. 25, 1978	Mar. 4, 1978	Mar. 11, 1978	Mar. 18, 1978	Mar. 25, 1978
Total bituminous coal production**	(R) 6,110	6,570	6,680	(R) 7,330	7,580	(R) 8,335	8,565
Consumption:							
Metallurgical***	1,069	1,035	970	969	926	866	890
Other bituminous:							
Electric utility	9,479	8,923	8,660	8,360	8,034	7,474	7,450
General industry	1,189	1,188	1,167	1,222	1,183	1,179	1,101
Total other	10,668	10,111	9,827	9,582	9,217	8,653	8,551
Total bituminous	11,737	11,146	10,797	10,551	10,143	9,519	9,431
Bituminous coal stocks (end of specified periods):							
Metallurgical***	6,888	6,024	(R) 5,479	(R) 4,834	(R) 4,353	(R) 3,993	3,674
Other bituminous:							
Electric utility	92,937	87,692	(R) 83,421	(R) 79,604	(R) 76,697	(R) 74,697	73,109
General industry	6,121	5,882	5,706	5,483	5,352	5,245	5,203
Total other	99,058	93,574	(R) 89,127	(R) 85,087	(R) 82,049	(R) 80,128	78,312
Total bituminous	105,946	99,598	(R) 94,606	(R) 89,921	(R) 86,402	(R) 84,121	81,986

*Data on coke of coal production, consumption, and stocks are not available on a weekly basis.
**More detailed production data are not available.
***More detailed data in terms of volatile content are not available.
(R) Revised.
NA—Not available.

Data source: Department of Energy.

[FR Doc. 78-11143 Filed 4-25-78; 8:45 am]

[3510-03]

Maritime Administration

[Docket No. S-603]

SUWANEE RIVER SPA FINANCE, INC.

Application

Notice is hereby given that Suwannee River Finance, Inc., Suwannee River SPA Finance, Inc. and Suwannee River Phosphate Finance, Inc., all of 10889 Wilshire Boulevard, Los Angeles, Calif. 90024 have filed applications dated March 17, 1978, as amended, with the Maritime Subsidy Board (Board) pursuant to Title VI (46 U.S.C. §§ 1171-1183) of the Merchant Marine Act, 1936, as amended (the Act), for a long-term Operating-Differential Subsidy Agreement to aid in the operation of three new integrated tug barge bulk-type vessels of approximately 39,500 deadweight tons, that will engage in the carriage of liquid phosphoric acid from ports on the East Coast and Gulf Coast of the United States to destinations in the Union of Soviet Socialist Republics, directly or by transhipment, and the carriage of liquid and dry bulk cargoes in the foreign to foreign commerce or the United States import commerce on the regurn voyage to such ports in the United States. The vessels will not carry cargoes subject to the presently existing cargo preference statutes of the United States, including, but not limited to, 10 U.S.C. § 2631, 46 U.S.C. § 1241 and 15 U.S.C. § 616a, unless the agencies administering such statutes determine that the cargoes involved would be otherwise waived to, or allocated for, foreign-flag carriage.

It is intended that the applicants would participate in the carriage of cargoes subject to the cargo preference statutes utilizing U.S.-flag subsidized vessels, but only when it has been determined by the agencies administering the statutes that foreign-flag vessels would otherwise be utilized, that the cargoes would be lifted at rates comparable to the rates offered by foreign-flag vessels and the tonnage lifted by them would not be computed by the agencies involved in a manner which would adversely affect the availability of cargo preference cargoes which are usually carried by U.S.-flag vessels at premium rates. This application supersedes and earlier application by Suwannee River Lines, Inc.

Interested parties may inspect this application in the Office of the Secretary, Maritime Subsidy Board, Room 3099-B, Department of Commerce Building, 14th and F Streets NW., Washington, D.C. 20230.

Any person, firm, or corporation having an interest in such application and who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit such views and comments in writing, in triplicate, to the Secretary, Maritime Subsidy Board, by the close of business on May 10, 1978. The Maritime Subsidy Board will consider such views and comments and take such actions with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.604 Operating-Differential Subsidies (ODS).)

By Order of the Maritime Subsidy Board.

Dated: April 21, 1978.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-11505 Filed 4-25-78; 9:06 am]

[3810-70]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE SCIENCE BOARD TASK FORCE ON COMMAND AND CONTROL SYSTEMS MANAGEMENT

Advisory Committee Meeting

The Defense Science Board Task Force on Command and Control Systems Management will meet in closed session on June 6-7, 1978, in the Pentagon, room 3E282.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

The Task Force is examining possible improvements in the process by which the Department of Defense plans for, develops and acquires Defense command and control systems.

In accordance with section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Task Force meeting concerns matters listed in section 552b(c) of Title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Service, Department of Defense.

APRIL 21, 1978.

[FR Doc. 78-11259 Filed 4-25-78; 8:45 am]

[3910-01]

Department of the Air Force

AIR FORCE RESERVE OFFICERS TRAINING CORPS (AFROTC) SUBCOMMITTEE OF THE AIR UNIVERSITY BOARD OF VISITORS

Meeting

APRIL 24, 1978.

The Air Force Reserve Officers Training Corps (AFROTC) Subcommittee of the Air University Board of Visitors will hold an open meeting on May 11, 1978, at 1:15 p.m. in the AFROTC Conference Room, Building 500, Maxwell Air Force Base, Ala.

The purpose of this meeting is to give the subcommittee an opportunity to present to the Commandant AFROTC and the Commander AU a report of the findings and recommendations concerning the AFROTC program.

For further information on this meeting contact Meriwether Gordon, Coordinator, AFROTC Subcommittee of the Air University Board of Visitors, Headquarters Air Force Reserve Officers Training Corps (AFROTC/ACME), telephone 205-293-5961.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc. 78-11533 Filed 4-25-78; 10:08 am]

[3128-01]

DEPARTMENT OF ENERGY

[DOE/EIS-0007-D]

LOW BTU COAL GASIFICATION FACILITY AND INDUSTRIAL PARK, GEORGETOWN, SCOTT COUNTY, KY.

Availability of Draft Environmental Impact Statement

Notice is heregy given that the U.S. Department of Energy (DOE) has issued a draft Environmental Impact Statement, DOE/EIS-0007-D, Low Btu Coal Gasification Facility and Industrial Park, Georgetown, Ky. The statement was prepared pursuant to implementation of the National Environmental Policy Act of 1969 to support the proposed construction and operation of a low Btu coal gasifier in the Georgetown Industrial Park in Scott County, Ky. The facility will supply low Btu gas for industrial, commercial, and school facilities in the Georgetown area. The project is a component of the DOE Fossil Energy Program to increase coal utilization.

Copies of the draft Environmental Impact Statement have been distributed for review and comment to appropriate Federal Kentucky State and local agencies, and other organizations and individuals who are known to have an interest in this program or the proposed site.

Copies of the statement are available for public inspection at the DOE public document rooms located at:

DOE Headquarters, 20 Massachusetts Avenue NW. Washington, D.C.
Albuquerque Operations Office, National Atomic Museum, Kirtland Air Force Base East, Albuquerque, N. Mex.
Chicago Operations Office, 9800 South Cass Avenue, Argonne, Ill.
Chicago Operations Office, 175 West Jackson Boulevard, Chicago, Ill.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nev.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tenn.
Richland Operations Office, Federal Building, Richland, Wash.
San Francisco Operations Office, 1333 Broadway, Oakland, Calif.
Savannah River Operations Office, Savannah River Plant, Aiken, S.C.

Comments and views concerning the draft Environmental Impact Statement are requested from other interested agencies, organizations and individuals. Single copies of the statement will be furnished for review and comment upon request addressed to W. H. Pennington, Director, Office of NEPA Coordination, Mail Station E-201, U.S. Department of Energy, Washington, D.C. 20545, 301-353-4241. Comments should be sent to the same address.

In accordance with the guidelines of the Council on Environmental Quality, those submitting comments on the draft Environmental Impact Statement should endeavor to make their comments as specific, substantive, and factual as possible without undue attention to matters of form in the impact statement. However, it would assist in the review of the comments if the comments were organized in a manner consistent with the structure of the draft Environmental Impact Statement. Commenting entities may recommend modifications and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts.

Copies of comments received on the draft Environmental Impact Statement will be placed in the above referenced locations for inspection and will be considered in the preparation of the final Environmental Impact Statement, if received within 60 days of this notice.

Dated at Washington, D.C. this 21st day of April 1978.

For the United States Department of Energy.

WILLIAM S. HEFFELFINGER,
Director of Administration.

[FR Doc. 78-11277 Filed 4-25-78; 8:45 am]

[3128-01]

Economic Regulatory Administration

LAUREL PROJECT, SOUTHEASTERN POWER ADMINISTRATION

Order Confirming and Approving Short-Term Rate

Notice is hereby given that the Assistant Administrator for Utility Systems, Economic Regulatory Administration has issued the Order published below confirming and approving a short-term rate for the Laurel Project, Southeastern Power Administration.

In the matter of: Laurel Project, Southeastern Power Administration ex rel. Resource Application, EPA

Docket No. SEPA 78-1 and Supplement No. 1.

ORDER CONFIRMING AND APPROVING SHORT-TERM RATE

Pursuant to section 301(b) of the Department of Energy Organization Act (the Act), Pub. L. 95-91, the function to confirm and approve rates for power marketed by the Southeastern Power Administration was transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-4, effective October 1, 1977, 42 FR 60726 (November 29, 1977), the Secretary of Energy delegated his confirmation and approval authority to the Administrator of the Economic Regulatory Administration (ERA or the Administrator). The Administrator has delegated his authority to the Assistant Administrator for Utility Systems, Economic Regulatory Administration.

BACKGROUND

On November 28, 1977, the Assistant Secretary for Resource Applications (RA or the Assistant Secretary) requested that the Administrator of ERA confirm and approve a short-term rate for the sale of power from the Laurel Project, Southeastern Power Administration to East Kentucky Power Cooperative, as contained in Contract No. 89-00-1501-564, for a period beginning on November 1, 1977, and ending on January 31, 1978.

The Laurel Project began commercial operation as a hydroelectric generating facility on October 25, 1977. It is Southeastern Power Administration's (SEPA) intention to sell one-half of the project output to East Kentucky Power Cooperative and to sell the other half to eight municipal customers in Kentucky. The power to these municipal customers is to be transmitted through the facilities of Kentucky Utilities Company. To date, however, the parties have been unable to complete a contract for the wheeling of this power to the eight municipal customers. Therefore, SEPA is selling the entire hydroelectric output to East Kentucky Cooperative at the following rate:

$56,000 per calendar month for capacity, plus 10.0 mills per kilowatthour for energy declared and made available.

The Assistant Secretary has stated that under average generating conditions the proposed short-term rate will yield sufficient revenues to comply with the statutory requirements and repay the investment in power facilities at the Laurel Project over a 50 year period.

Notice of ERA's intention to act on the Assistant Secretary's request invited interested persons to submit written comments relevant to the proposed short-term rate, 42 FR 64406 (December 23, 1977). On February 6, 1978, the Assistant Secretary filed an amendment to the request which asked that ERA confirm and approve the short-term rate for an additional three month period ending April 30, 1978. ERA consolidated this amendment with the Assistant Secretary's request of November 28, 1977 and afford interested persons the opportunity to submit additional written comments and to make oral presentations at a public hearing, 43 FR 7686 (February 24, 1978).

DISCUSSION

The cities of Barbourville, Corbin, and Falmount, Kentucky and the Frankfort Electric and Water Plant Board (Kentucky Municipals), who constitute four of the eight municipal customers, filed joint written comments in response to the two Notices and made an oral presentation at the public hearing. No other interested persons or parties filed written comments or made oral presentations.

The Kentucky Municipals principal written and oral comments address factors which they believe should be considered in the development of long-term rates, and issues that have arisen because SEPA and Kentucky Utilities Company have not yet entered into a contract for the wheeling of Laurel Project power to the municipal customers. The Kentucky Municipals state that they have no objection to the proposed short-term rate so long as the confirmation and approval of such rate does not prejudice the development of a final rate. The Kentucky Municipals suggest, however, that the short-term rate might be inappropriate, discriminatory and contrary to statutory intent if maintained for an extended period of time.

ERA is cognizant of the issues raised by Kentucky Municipals. However, only the proposed short-term rate is at issue in this proceeding. In reaching a decision on this short-term rate adjustment, ERA does not intend to prejudice the position of any individual customer or class of customers with regard to a final rate and is specifically not prejudging the structure of a final rate.

ERA finds that the short-term rate as proposed by RA is at a level that will yield sufficient revenues to comply with the statutory requirements and that it is therefore appropriate to confirm and approve the Assistant Secretary's requests for a short-term rate for power sold to East Kentucky Cooperative from the Laurel Project for the period of November 1, 1977 through April 30, 1978.

ORDER

Pursuant to the authority set forth above, the Assistant Administrator for Utility Systems, Economic Regulatory Administration Orders:

1. The short-term rate proposed by the Assistant Secretary which consists of a $56,000 per month capacity charge plus a 10.0 mills per kilowatthour energy charge for the sale of power from the Laurel Project is hereby confirmed and approved;

2. The short-term rate shall be effective for the period of November 1, 1977, through April 30, 1978;

3. The Assistant Secretary for Resource Applications shall cause a copy of this Order to be distributed to all parties on the service list.

Issued in Washington, D.C., this 21st day of April 1978.

DOUGLAS C. BAUER,
Assistant Administrator for Utility Systems, Economic Regulatory Administration, Department of Energy.

[FR Doc. 78-11331 Filed 4-25-78; 8:45 am]

[3128-01]

SOUTHERN CALIFORNIA GAS CO.

Extension of Comment Period on Gas Utility Use of Propane; Request for Comment

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Extension of comment period on Gas Utility use of propane.

SUMMARY: At 43 FR 11250 (March 17, 1978), the Economic Regulatory Administration (ERA) of the Department of Energy announced the availability of the petition from the Southern California Gas Co. to the Federal Energy Administration (FEA) for a waiver of the restrictions on the purchase and use of propane for gas utilities use. Comments concerning the request for a waiver of the restrictions on propane for gas utility use were requested by April 17, 1978.

Subsequently, the ERA has received requests from interested parties for an extension of the comment period to allow additional time to prepare and submit written comments. Therefore, the ERA is hereby extending the comment period through April 28, 1978. Comments received from interested parties after this date will be considered by the ERA to be late. The petitioner, the Southern California Gas Co., will be given through May 12, 1978 to respond to any other party submitting comments.

All interested parties submitting written comments must certify to the ERA that a complete copy of the comment (with confidential information deleted) has been served upon the petitioner as follows:

Mr. James A. Rooney, Manager, Federal Governmental Affairs, Southern California Gas Co., 1150 Connecticut Avenue NW., Suite 717, Washington, D.C. 20036, telephone 202-452-9550.

The comment procedures and ERA contact persons remain as announced in the original notice.

Issued in Washington, D.C., April 21, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 78-11280 Filed 4-25-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket No. AR61-2, and AR69-1, et al.]

AREA RATE PROCEEDING (SOUTHERN LOUISIANA AREA)

Filing

APRIL 18, 1978.

Take notice that by letter dated December 21, 1977, Transcontinental Gas Pipe Line Co. (Transco) filed with the Commission its proposed plan of refund pursuant to Opinion No. 598. On January 12, 1978, Transco supplemented its filing by nothing the applicability of these refunds to two additional rate settlements. On January 31, 1978, Transco filed its tabulation of the total amount of refunds due to each customer.

Transco further reports in the January 12 letter that it has received refunds from producers totaling $1,575,397.56 in the period from November 29, 1977, and attached a schedule detailing the refunds. Transco states that copies of its letters are being sent to all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filings should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before May 5, 1978. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11236 Filed 4-25-78; 8:45 am]

[6740-02]

[Docket Nos. AR61-2 and AR69-1, et al.]

AREA RATE PROCEEDING, ET AL. (SOUTHERN LOUISIANA AREA)

Filing of Refund Distribution Plan

APRIL 19, 1978.

Take notice that on November 29, 1977, Tennessee Gas Pipeline Co., a Division of Tenneco Inc. (Tennessee), filed its plan for distribution of refunds received from its producer-suppliers pursuant to the Commission order of September 23, 1977, in these proceedings. Tennessee states that as November 18, 1977, it had received total refunds (principal and interest) of $13,248,125.69

Tennessee requests permission to flow-through to its customers $12,989,136.41 of the refunds by means of a credit to the Unrecovered Purchased Gas Cost Account maintained pursuant to its PGA clause. Tennessee states that it will retain the remaining $258,989.28 of the refunds in accord with its Settlement Agreement in Docket Nos. G-11980, et al.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 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 May 5, 1978. 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; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11237 Filed 4-25-78; 8:45 am]

[6740-02]

[Docket No. CP78-266]

BEAR CREEK STORAGE CO. ET AL.

Application

APRIL 18, 1978

Take notice that on March 31, 1978, Bear Creek Storage Co. (Bear Creek) P.O. Box 82, Bienville, La. 71008, Southern Natural Gas Co. (Southern), P.O. Box 2563, Birmingham, Ala. 35202, and Tennessee Gas Pipeline Co., a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Tex. 77001 (Applicants), filed in Docket No. CP78-266 a joint application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction, development, and operation of a natural gas storage field and related facilities by Bear Creek; the capitalization and amortization by Bear Creek of the cost of base gas and related injection fuel gas; the sale and delivery of natural gas, and for permission and approval to abandon gas production, all as more fully set forth in the application on file with the Commission and open to public inspection.

Bear Creek requests authorization to develop and operate the Pettit limestone formation in the Bear Creek Field located in Bienville Parish, La., as an operation gas storage facility. Specifically, Bear Creek proposes the following:

(a) The acquisition of all necessary mineral, royalty, and working interests, and all storage, surface and other rights and interests necessary to develop and operate the Pettit Reservoir of the Bear Creek Field as a gas storage facility.

(b) The drilling, construction and operation of a total of 52 injection-withdrawal wells, 2 salt water disposal wells and 3 observation wells in the Bear Creek Field, together with certain wellhead measuring equipment and other ancillary facilities.

(c) The conversion into observation wells of 4 existing wells in the Bear Creek Field.

(d) The reworking for the purpose of insuring pressure integrity of 8 existing wells owned by Southern and others extending through the Pettit Reservoir into deeper formations and the reworking of 7 existing dually completed wells owned by Southern and others for the purpose of eliminating the ability of those wells to produce from the Pettit Reservoir.

(e) The construction and operation of a central plant in the Bear Creek Field which would consist of an approximately 28,000 horsepower compressor station, dehydration facilities, and other ancillary facilities necessary to the operation of the storage field.

(f) The establishment of a delivery point together with necessary metering facilities (to be called the Bear Creek Area Delivery Point) for the receipt and the redelivery of gas. Such delivery point shall consist of two interconnections, one between the proposed facilities of Bear Creek and the existing facilities of Southern and the other between the proposed jointly-owned Southern-Tennessee Bear Creek Pipeline (the subject of an application being filed concurrently herewith in Docket No. CP78-267) and the proposed facilities of Bear Creek.

(g) The construction and operation of certain field pipeline facilities, as proposed herein, to connect the central plant to the various injection-withdrawal wells proposed to be drilled and constructed. The field lines will consist of approximately 7 miles of 14-inch O.D. pipeline, 3.4 miles of 12¾-inch O.D. pipeline, 6.2 miles of 10¾-inch O.D. pipeline, 8.3 miles of 8⅝-inch O.D. pipeline and 0.6 mile of 6⅝-inch O.D. pipeline.

(h) The receipt from Southern and Tennessee of approximately 49,900,000 Mcf of cushion gas plus necessary in-

jection fuel gas (estimated to be approximately 576,000 Mcf) at the rates proposed in this application and the accompanying exhibits.[1]

(i) The capitalization of the cost of said base storage gas and related injection fuel gas at the price set out in this application and the accompanying exhibits and the subsequent amortization of the same through the rates of Bear Creek by equal annual transfers of said gas to a trust account for the benefit of the consumers served by Southern and Tennessee.

(j) The injection into and withdrawal annually from the Pettit Reservoir as top storage gas of an additional approximate 65,000,000 Mcf of natural gas to enable Bear Creek to utilize the Pettit Reservoir at its proposed storage design volume, estimated to be approximately 114,900,000 Mcf. The injection and withdrawal of such total top storage gas volume shall be shared equally by Southern and Tennessee.

(k) The operation as proposed in this application and in the accompanying exhibits of the Pettit Reservoir to provide a storage service pursuant to and at the rates set out in the proposed tariff.

Southern and Tennessee request the issuance of certificates authorizing the transfer and/or sale of a total of approximately 49,900,000 Mcf of gas to be utilized as cushion gas plus approximately 576,000 Mcf of related fuel gas to Bear Creek for use in Bear Creek's proposed storage facility and the annual delivery to Bear Creek of top storage gas (and related fuel gas). Specifically, Southern and Tennessee request certificates authorizing the following:

(a) The sale to Bear Creek of approximately (i) 22,745,000 Mcf of base storage gas and approximately 299,550 Mcf of related fuel gas by Tennessee and (ii) 22,745,000 Mcf of base storage gas by Southern (including approximately 1,754,000 Mcf of recoverable reserves currently in the Pettit Reservoir) and approximately 276,450 Mcf of related fuel gas by Southern and (iii) by transfer to Bear Creek, of 4,410,000 Mcf of non-recoverable reserves currently acquired or to be acquired in the Pettit Reservoir by Southern at the prices and under the conditions specified in the Natural Gas Sales Agreement among Bear Creek, Southern and Tennessee and the Bear Creek Sale and Transfer Agreement between Southern and Bear Creek.

(b) The delivery to Bear Creek at the Bear Creek Area Delivery Point by Southern and Tennessee each of volumes of top storage gas up to one-half of the capacity of the Pettit Reservoir (less cushion gas) when filled to its proposed total storage design volume. Such top storage gas inventory is estimated to be approximately 32,500,000 Mcf for Southern and 32,500,000 Mcf for Tennessee. Such volumes delivered to Bear Creek will be stored and subsequently redelivered by Bear Creek to Southern and Tennessee at the Bear Creek Area Delivery Point. Both Southern and Tennessee would furnish and deliver to Bear Creek fuel gas volumes, as specified in the proposed Bear Creek tariff for the injection and withdrawal of their storage gas and volumes of gas to compensate Bear Creek for lost gas, if any.

(c) The establishment of an interconnection between the proposed Bear Creek Pipeline, being filed for contemporaneously herewith, and the proposed Bear Creek storage facilities to permit the delivery and receipt of injection and withdrawal volumes at Bear Creek for the account of Tennessee and Southern.

(d) The establishment of an interconnection between Southern's existing Bienville Compressor Station facilities and the proposed Bear Creek storage facilities to permit Southern to deliver directly and receive injection and withdrawal volumes at Bear Creek.

(e) The operation of the Bear Creek Storage Field for Bear Creek by Southern as operator under the Bear Creek Operating Agreement.

Southern also requests an order authorizing the transfer to Bear Creek of the Pettit Reservoir of the Bear Creek Field and abandonment of service related thereto.[2]

The application states that the Bear Creek Field is located approximately sixteen miles south of the city of Arcadia in Bienville Parish, La., and has been actively producing gas field since 1940. The application further states that the Pettit formation has been carefully studied by Applicants in terms of its historical production, geology, injectivity and withdrawal capabilities and has been found to be a well-defined closed gas reservoir, with essentially no energy derived from water influx. Applicants have concluded that the Pettit Reservoir is well suited to meeting Bear Creek's need in providing the storage service proposed herein to Southern and Tennessee, it is said.

It is stated that Bear Creek would utilize approximately 49,900,000 Mcf as cushion gas to provide the requested storage service to Southern and Tennessee, and that at present Southern owns approximately 66 percent of the working interest in the Pettit Reservoir Area and would proceed to acquire the remaining working interests and royalty interests, in the field. It is estimated that the remaining reserves in place in the Pettit Reservoir as of April 1, 1979, would consist of approximately 4,410,000 Mcf of non-recoverable gas and 1,754,000 Mcf of recoverable gas, it is said. It is indicated that under the natural gas sales agreement and the Bear Creek sale and transfer agreement, Southern would transfer to Bear Creek the estimated 4,410,000 Mcf of non-recoverable gas in the Pettit Reservoir and Southern and Tennessee would each sell to Bear Creek for base storage gas one-half of the remaining 45,490,000 Mcf required for cushion gas. It is further indicated that of the 22,754,000 Mcf which Southern would sell to Bear Creek, approximately 1,754,000 Mcf would consist of the recoverable reserves Southern now owns and would acquire in the Pettit Reservoir. It is stated that both Southern and Tennessee would sell Bear Creek the fuel gas needed to inject their respective sales of base storage gas.

The application states that upon completion, the proposed Bear Creek Field gas storage facility would provide a maximum top storage capacity of approximately 65,000,000 Mcf, and that volumes injected for top storage would be available for withdrawal from Bear Creek at an average daily withdrawal rate of approximately 430,000 Mcf per day over a 151-day withdrawal period. It is estimated that the withdrawal rate under normal operating conditions would be up to approximately 500,000 Mcf per day, and that the facilities and the field are designed to be capable, however, under optimum conditions of withdrawals of up to approximately 900,000 Mcf per day.

Applicants indicate that the estimated cost of constructing Bear Creek's proposed facilities is $187,281,156,

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[1] Tennessee and Southern are each requesting herein authorization to sell to Bear Creek approximately 22,745,000 Mcf of base storage gas pursuant to the Natural Gas Sales Agreement and to have such volume injected by Bear Creek for base storage gas; however, Southern's volume for injection shall be reduced by the amount of recoverable reserves in place at the time Bear Creek acquires from Southern necessary interests in the Bear Creek Field (estimated to be approximately 1,754,000 Mcf as of April 1, 1979).

The total cushion gas volume of approximately 49,900,000 Mcf includes an estimated 4,410,000 Mcf of non-recoverable reserves presently contained in the Pettit Reservoir.

[2] Southern will sell its working interest in the Pettit Reservoir and the following four well bores completed in the Pettit Reservoir to Bear Creek:

(1) P SU F; Hodge-Hunt Lumber Co. No. A-1.

(2) P SU H; Hodge-Hunt No. D-1.

(3) P SU J; T. A. Loe, et al., No. 1.

(4) P SU B; Commercial Real Estate No. 1.

A negligible volume of gas is produced from the Pettit Reservoir by Franks Petroleum Inc. (Franks) and sold to United Gas Pipe Line Co. (United). This interest would be acquired and arrangements would be made with United to deliver the remaining recoverable reserves attributable to Franks' interest to United.

which cost Bear Creek anticipates would be financed initially from bank loans which would be repaid from cash from current operation and from permanent financing.

It is asserted that Southern is in the process of acquiring the necessary rights-of-way, lands, leases, permits and other storage rights and interests necessary to the proposed field pipeline routes and to develop and utilize the Bear Creek Field and portions of the surface area in the Bear Creek Field as a storage facility, and that upon issuance of the certificate requested herein, Southern would transfer all necessary mineral, royalty, surface and working interest rights to Bear Creek.

It is stated that the gas currently being produced for sale to Southern or being produced by Southern from the Pettit Reservoir is sold by Southern as part of its general system sales. It is further stated that the Pettit Reservoir would be approximately 99 percent depleted by April 1, 1979; therefore, Southern requests permission to abandon service from the remaining recoverable reserves in the Pettit Reservoir so that the formation may be utilized for the proposed storage service. Loss of the remaining production would have only a *de minimis* effect on Southern's system sales, it is said.

The application states that in order to provide this vitally needed storage service to Southern and Tennessee, Bear Creek must purchase from Southern and Tennessee and inject into storage the additional cushion gas necessary to provide deliverability for the proposed top working storage volumes. Southern and Tennessee propose to sell this gas to Bear Creek and, in order to provide uniformity of treatment to the customers of Southern and Tennessee, further propose to make such sale and to have Bear Creek purchase such gas at the higher of Tennessee's or Southern's then average resale price. It is stated that upon receipt of the authorization requested herein, Tennessee and Southern would avoid the need to increase their rates to their respective customers, which increase would otherwise result from delivery of volumes of cushion gas for injection by Bear Creek and commensurate decreased sales. Such rate increase is avoided when the proposed procedure is approved since Bear Creek would incur the costs therefor and capitalize and amortize the same, it is asserted.

Applicants indicate that in order to accommodate favorable financing, an alternate arrangement is proposed to achieve the equivalent of depreciation and/or amortization of investment and thereby substantially improve cash flow. Applicants propose to establish a trust for the benefit of the consumers served by Southern and Tennessee and to transfer 1/15th of the base storage gas per year for 15 years to that trust. Accordingly, authorization is sought herein by Applicants to include in their respective rates a cost of the gas transferred to such trust. Applicants indicate that at the end of the 15-year period the trust would hold the entire amount of base storage gas and would continue to hold the same until appropriate cessation of the storage services is authorized, and that upon such authorization the trust would withdraw the recoverable base storage gas (not to include the 4,410.00 Mcf of non-recoverable gas now contained in the Pettit Reservoir) for delivery to the beneficiaries of said trust.

The application states that Bear Creek agrees to pay Southern and Tennessee a rate per Mcf to be determined as described below for Tennessee:

For each month in which Base Storage Gas is sold by Southern or Tennessee to Bear Creek, Southern and Tennessee would determine the average revenue per Mcf each would have received for the sale of such gas had the gas not been sold to Bear Creek. In making such determinations for such month, reference would be made to the selling company's curtailment plan, then current average cost of gas and the then currently effective commodity, one-part rates and other contractual prices. The rate per Mcf to be paid by Bear Creek for Base Storage Gas would be the higher of the rates determined above by Southern or Tennessee.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 9, 1978, 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 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. 78-11238 Filed 4-25-78; 8:45 am]

[6740-02]

[Docket No. ER78-308]

BOSTON EDISON CO.

Filing

APRIL 18, 1978.

Take notice that Boston Edison Co. ("Edison") on April 12, 1978, tendered for filing an initial contract between Edison and the Reading (Massachusetts) Municipal Light Department. Edison states that under the contract, Reading will purchase power from three gas turbine generating units at Edison's Medway Station 446 in Medway, Mass.

Edison further states that the contract was negotiated by Edison and Reading in connection with the settlement filed on January 16, 1978, in the following Boston Edison Co. proceedings: Docket No. E-8855, Docket No. ER76-90, Docket No. ER76-854 and Docket No. ER77-84.

Edison requests an effective date of May 1, 1978, and therefore requests waiver of the Commission's notice requirements.

Edison also states that copies of this filing have been mailed to Reading and to all persons receiving copies of the settlement agreement described above.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 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 May 1, 1978. 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 application are on file with the Com-

mission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11239 Filed 4-25-78; 8:45 am]

[6740-02]

COLUMBIA GULF TRANSMISSION CO.

[Docket No. CP74-204]

Third Petition To Amend Certificate

APRIL 18, 1978.

Take notice that on March 23, 1978, Columbia Gulf Transmission Co. (Columbia Gulf), P.O. Box 683, Houston, Tex. 77001, and Natural Gas Pipeline Co. of America (Natural), 122 South Michigan Avenue, Chicago, Ill. 60603, filed in Docket No. CP74-204 a third petition to amend the certificate issued March 3, 1977, in that docket to add a new exchange point, all as more fully set forth in the petition.

Columbia Gulf and Natural state that said certificate authorized a transportation and exchange arrangement under which Natural would make available to Columbia Gulf pipeline delivery capacity from its entitlement in the system of Stingray Pipeline Co. (Stingray) to transport gas available to Columbia Gulf in the West Cameron Area, Offshore Louisiana, and Columbia Gulf would make available to Natural pipeline delivery capacity from its entitlement in the Blue Water Project which is jointly owned by Columbia Gulf and Tennessee Gas Pipeline Co.

Columbia Gulf and Natural now propose to add an additional exchange point at the interconnection of Natural's facilities with the U-T Offshore System's pipeline at Johnson Bayou, Cameron Parish, La. Columbia Gas Transmission Corp., Columbia Gulf's affiliate, will have gas available at said interconnection which can be used to balance gas being exchanged by Columbia Gulf and Natural in the West Cameron Area and the Eugene Island Area, Offshore Louisiana.

Any person desiring to be heard or to make any protest with reference to said application, on or before May 9, 1978, should 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 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. 78-11240 Filed 4-25-78; 8:45 am]

[6740-02]

[Docket No. CP73-331]

EL PASO NATURAL GAS CO.

Corrected Notice of Tariff Filing

APRIL 19, 1978.

On April 14, 1978, the subject tariff filing was inadvertently noticed under Docket No. RM77-14. The purpose of this notice is to correct that error.

Take notice that on April 6, 1978, El Paso Natural Gas Co. ("El Paso") tendered for filing and acceptance the following tariff sheets to special Rate Schedule X-31 contained in El Paso's FERC Gas Tariff, Third Revised Volume No. 2:

Fifth Revised Sheet No. 493
Third Revised Sheet No. 494
Fifth Revised Sheet No. 498
Fourth Revised Sheet No. 499

Special Rate Schedule X-31 is comprised of the San Juan Gathering Agreement ("Gathering Agreement") dated January 31, 1974, as amended, between El Paso and Northwest Pipeline Corp. ("Northwest") providing for the gathering of natural gas in the San Juan Basin area of northwestern New Mexico and southwestern Colorado.[1] El Paso states that the tendered tariff sheets will revise Exhibits A, B, C and D attached to special Rate Schedule X-31, and will add wells and units to the Gathering Agreement to reflect changes which have occurred in each party's respective operations during the twelve (12) month period preceding February 1, 1978. The basis for said additions is a Letter Agreement between the parties dated February 1, 1978, amending the Gathering Agreement.

El Paso states that inasmuch as the Gathering Agreement comprises special Rate Schedule X-31 to El Paso's Third Revised Volume No. 2 tariff and as well, special Rate Schedule X-24 to Northwest's Original Volume No. 2 tariff, the concurrent effectiveness of the revised Exhibits to El Paso's and Northwest's said special rate schedules is desirable. El Paso further states that Northwest will file its tariff tender of the identical revisions to Exhibits A, B, C and D to Northwest's special Rate Schedule X-24 on April 7, 1978, and will request therein an effective date coincident with the effective date authorized for El Paso's revised tariff sheets tendered as a part of the instant filing. El Paso has requested that the tariff sheets tendered herewith, as well as the aforementioned tariff sheets tendered by Northwest on April 7, 1978, be made effective as of May 7, 1978.

El Paso states that a copy of each of the tendered tariff sheets has been mailed to Northwest Pipeline Corp.

Any person desiring to be heard or to make any protest with reference to said tariff tender should, on or before May 9, 1978, 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 any 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. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11241 Filed 4-25-78; 8:45 am]

[6740-02]

[Docket No. CP77-289]

EL PASO NATURAL GAS CO.

Amendment to Application

APRIL 18, 1978.

On October 1, 1977, pursuant to the provisions of the Department of

[1] The Gathering Agreement was necessitated by the divestiture of El Paso's former Northwest Division System to Northwest effective as of January 31, 1974. Authorization for such gathering arrangement was granted by Federal Power Commission order issued September 21, 1973, at Docket Nos. CP73-331, et al.

Energy Organization Act (DOE Act), Public Law 95-91, 91 Stat. 565 (August 4, 1977), and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.

Take notice that on April 6, 1978, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Tex. 79978, filed in Docket No. CP77-289 an amendment to its application filed herein on March 8, 1977, pursuant to Section 7(c) of the Natural Gas Act so as to authorize Applicant to operate certain existing facilities and to sell, deliver and transport natural gas as necessary in effectuating the Clay Basin Interim Storage Arrangements for an extended period of time through September 30, 1980, all as more fully set forth in the amendment on file with the Commission and open to public inspection.

It is indicated that Applicant and Mountain Fuel Resources, Inc. (Resources) were granted temporary certificates in the instant docket and Docket No. CP76-285, respectively, authorizing the construction and installation, but not operation, of certain facilities in the Clay Basin Field for use in implementing the Clay Basin Interim Storage Arrangements, and that pursuant to the Federal Power Commission's order of July 1, 1977, Applicant and Resources were granted temporary certificates to operate the Clay Basin facilities. It is further indicated that pursuant to the order of September 30, 1977, Applicant, Northwest Pipeline Corp. (Northwest), and Clay Basin Storage Co. (Storage Company) were granted temporary certificates in Docket No. CP77-512 and the instant docket to maintain and operate through October 31, 1977, and thereafter remove, the temporary facilities which each had installed pursuant to the FPC's order of March 17, 1977. It is stated that on October 27, 1977, Applicant filed a petition to amend the FPC's orders of March 17, 1977, and September 30, 1977, as amended, so as to allow Applicant to retain in place and operate, as necessary the Clay Basin Booster compressor station through April 30, 1978, and that by telegram dated October 31, 1977, Applicant advised the Commission that it intended to continue the operation, as necessary, of the Clay Basin Booster compressor station pursuant to Section 2.70 of the Commission's General Policy and Interpretation through April 30, 1978, or until the issuance of the extended temporary certificate authority for such operation, as requested in Applicant's petition to amend order filed October 27, 1977, unless advised by the Commission to the contrary. To Applicant's knowledge, no further action has been taken by the Commission in regard to Applicant's petition filed October 27, 1977, it is asserted.

The amendment states that the parties to the Clay Basin Storage Arrangement have entered into various agreements extending the term arrangements whereby protection can be afforded to the Priority 1 and 2 requirements of Applicant's East of California (EOC) customers for a period extending through September 30, 1980. The amendment further states that from time to time during the period ending April 30, 1980, Applicant would have available quantities of natural gas which would be sold in satisfaction of the Priority 3, 4, and 5 requirements of its customers systemwide. The extended Clay Basin Interim Storage arrangements proposed herein, in conjunction with other Applicant storage arrangements, is designed to provide a means to store and subsequently to utilize such quantities for the protection of service to the Priority 1 and 2 requirements of Applicant's EOC customers.

It is indicated that pursuant to a letter agreement dated March 15, 1978, which amends the Interim Storage Agreement dated July 6, 1977, between Applicant and Storage Company, Applicant would continue to sell certain quantities of natural gas to Northwest, for Storage Company's account. Applicant anticipates that up to a total of approximately 22.5 Mcf of additional gas (over and above those quantities injected and to be injected through April 30, 1978, under the presently authorized interim storage arrangements) would be made available for storage by Applicant, as a systemwide Priority 2 classification, it is stated. It is further stated that Storage Company would continue to pay Applicant a rate equivalent to the rate in effect at the time of sale under Rate Schedule G of Applicant's FERC Gas Tariff, original volume No. 1, for all sales made to it.

Applicant indicates that it, Northwest and Storage Company have entered into a first amendment to Clay Basin Gas Transportation and Exchange Agreement dated March 13, 1978, amending the gas transportation and exchange agreement dated March 24, 1977, between the parties, which agreement provides that Northwest would continue to accept deliveries of natural gas from Applicant for Storage Company's account on a best efforts basis at various delivery points in the San Juan Basin area, through April 30, 1980. It is stated that such transported quantities are not to exceed the daily capacity avilable in Northwest's transmission facilities for the receipt and transportation of Storage Company's gas as such capacity may exist from time to time. Northwest would continue to deliver equivalent quantities on a Btu basis to Resources of the existing point of interconnection between Northwest's facilities and Resources' Clay Basin lateral pipeline for injection and storage by Resources in the Clay Basin Field for Storage Company's account, it is said.

It is stated that Northwest, during the term of the extended arrangements, would redeliver to Applicant for Storage Company's account through September 30, 1980, quantites of gas equivalent on a Btu basis to the quantities which Northwest previously received from Applicant and transported and delivered to Resources for Storage Company's account. It is further stated that except as otherwise mutually agreed, Northwest would not on any day be required to redeliver to Applicant quantities of natural gas exceeding 250,000 Mcf to Applicant for Storage Company's account.

It is indicated that pursuant to Resources' Clay Basin Interim Storage Service Rate Schedule S-2, as amended and restated, dated March 15, 1978, between Applicant, Storage Company, Resources and Northwest, Resources would continue to accept delivery on a best efforts basis of the natural gas volumes transported and delivered to Resources by Northwest, for Storage Company's account, and to transport and inject such gas into the Clay Basin Field during the extended period. It is stated that pursuant to such agreement, Resources would withdraw such gas from time to time through April 30, 1980, for redelivery to Northwest for Storage Company's account in order that Northwest, in turn, may redeliver equivalent volumes of gas by exchange to Applicant to assist Applicant in protecting EOC Priority 1 and 2 service; such withdrawal and redelivery by Resources to be on a best efforts basis, subject to its prior commitments to Northwest with respect to the withdrawal capacity of the Clay Basin Field. Applicant states that none of Storage Company's gas remaining in its storage account after April 30, 1980, would be phsyically withdrawn and redelivered to Northwest; rather, Storage Company would exchange any such volumes with Northwest, transferring title to such volumes to Northwest in place in the Clay Basin Field and Northwest would redeliver equivalent volumes to Applicatn at the San Juan Basin delivery point, all pursuant to said gas transportation and exchange agreement, as amended, with the transfer of title to, and redelivery of all such gas to and by Northwest to be completed prior to October 1, 1980.

It is indicated that as compensation for the extended storage service, Re-

sources would charge Storage Company a two-part rate comprised of (I) a commodity charge of $0.0025 for each Mcf delivered to resources by Northwest for Storage company's account for injection and storage during each billing month and of $0.0100 for each Mcf withdrawn from storage by Resources and delivered to Northwest for the account of Storage Company during each billing month; (II) a demand charge equal to Storage Company's proportionate share of Resources' monthly cost of service; and (III) a pass-through charge equal to Storage Company's proportionate share of Northwest's carrying costs applicable to the cushion gas owned by Northwest and used by Storage Company to support its working gas volume in the Clay Basin Field.

Applicant proposes to transport and deliver the quantities of gas received from Northwest for Storage Company's account for the protection of Priority 1 and 2 service to Applicant's EOC customers during the 1978-80 heating seasons and thereafter for the period extending through September 30, 1980, for use in connection with Applicant's other long-term storage projects.

It is stated that Applicant, Storage Company and its major EOC distributor customers, namely, Arizona Public Service Co. (APS), Southern Union Co. (Southern Union), Southwest Gas Corp (Southwest) and Tucson Gas & Electric Co. (T&E) (TG&E) (EOC Distributors) have entered into letter agreements dated March 15, 1978, providing for the continued purchase by the EOC Distributors of the quantities of gas so received from Applicant for Storage Co.'s account on terms and conditions which permit the effective utilization of such gas in a manner which would contribute to the protection of service of the Priority 1 and 2 requirements of all EOC customers during the 1978-79 and 1979-80 heating seasons and thereafter. Storage Company would continue to sell said quantities of gas to the EOC Distributors at a rate equivalent to the rate in effect at the time of delivery for Applicant's own sales of natural gas at the respective sales point locations, it is said.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before May 2, 1978, 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. Persons who have heretofore filed need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11242 Filed 4-25-78; 8:45 am]

[6740-02]

[Docket No. E-9574]

FLORIDA POWER & LIGHT CO.

Withdrawal of Application

APRIL 19, 1978.

Take notice that on March 31, 1978, Florida Power & Light Co. (FP&L), filed a Notice of Withdrawal of its application in Docket No. E-9574. FP&L requests the Commission's approval of FP&L's withdrawal of its application, as amended, for authorization to acquire the electric system assets of the City of Vero Beach, Fla.

Any person desiring to be heard or to protest said withdrawal of application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before May 3, 1978. 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. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11243 Filed 4-23-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket No. RI77-85]

Goldking Production Co.

Order Granting Petition for Special Relief

APRIL 17, 1978.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (August 4, 1977), and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.

The "savings provisions" or section 705(b) of the DOE Act provide that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of these proceedings were specifically transferred to the FERC by section 402(a)(1) of the DOE Act.

The joint regulation adopted on October 1, 1977 by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR ——, provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

On May 11, 1977, Goldking Production Co. (Petitioner) filed a petition for special relief pursuant to section 2.76 of the Commission's General Policy and Interpretations (18 C.F.R. § 2.76) for the sale of natural gas produced from all of the working interest in the Ballard and Cordelle No. 1 Krenek Well, Bonus Field, Wharton County, Tex. to Texas Eastern Transmission Corp. (Texas Eastern).

On October 25, 1977, petitioner amended its petition for special relief to request a reduction in the total rate from $1.161 per Mcf to $1.0548 per Mcf. Petitioner holds a small producer certificate issued in Docket No. CS71-898 pursuant to which natural gas attributable to all of the working interest in the Ballard and Cordelle No. 1 Krenek Well is being sold.

Notices of the petition for special relief and the amendment thereto in Docket No. RI77-85 were issued June 29, 1977 and November 4, 1977, respectively. Such notices were published in the FEDERAL REGISTER respectively on July 8, 1977 at 42 FR 35200 and November 14, 1977 at 42 FR 58973. No petitions to intervene or protests have been filed.

Petitioner has shown that the investment cost necessary for recompletion and re-equipping the well is $60,261. Based on its analysis of data filed by Petitioner and verified during a field investigation on January 5, 1978, Staff accepts Petitioner's stated remaining net book value and cost in investment. Petitioner's total estimated production expenses over a 1 year life are $30,527. Based on its analysis of the data submitted by Petitioner, Staff estimates there are gross re-

serves of 141,000 Mcf remaining to be recovered over 1 year, and concludes that 106,093 Mcf are attributable to Petitioner's net working interest in the Ballard and Cordelle No. 1 Krenek Well.

Staff used the above costs and reserves in a traditional cost study to derive a total rate of $1.0548 per Mcf, which allows Petitioner to recover his cost plus a 15 percent rate of return, over a 1 year project life. Staff concluded that the requested rate is cost supported.

Upon consideration of the data submitted by Petitioner and Staff's analysis thereof, we conclude that the proposed rate is cost justified.[1]

The Commission finds: (1) The petition for special relief filed by Goldking meet the criteria set forth in section 2.76 of the Commission's General Policy and Interpretations.

(2) It is in the public interest to grant Petitioner's request for special relief.

The Commission finds: (A) The petition for special relief of Goldking Production Co. is hereby granted.

(B) Goldking Production Co. is authorized to collect a total rate of $1.0548 per Mcf at 14.73 psia for the sale of natural gas produced from all of the working interest in the Ballard and Cordelle No. 1 Krenek Well, Bonus Field, Wharton County, Tex., effective upon the date of completion of the work or the issuance of a Commission order herein, whichever is later, subject to Goldking Production filing a statement signed by Texas Eastern that the work has been completed to its satisfaction within 30 days of the effective date.

(C) This order is further conditioned upon the filing by Goldking Production Co., within 30 days of the effective date specified in paragraph (B) above, of an appropriate rate change filing in accordance with Section 154.94 of the Commission's Regulations under the Natural Gas Act (18 CFR § 154.94).

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

Goldking Production Co., docket No. RI77-85, Ballard and Cordelle No. 1 Krenek well bonus field, Wharton County, Tex.

[Unit cost of gas]

Line No. and item (a)	Amount (b)
1. Net working interest:	
2. Gas—Mcf at 14.73 [1]	106,093
3. Cost of Production:	
4. Return [2]	$5,897
5. DD&A [3]	66,987
6. Production expense [4]	30,527
7. Regulatory expense [5]	106
8. Total cost of production	103,517
9. Unit cost of gas (cents per M ft [3]):	
10. Cost of production [6]	0.9757
11. Production tax [7]	.0791
12. Total unit cost	1.0548

[1]See Appendix A.

[1]141,000 minus 3,360 times 0.7708.
[2]Line 7 of sheet 3 times 0.15.
[3]Line 6 of sheet 2.
[4]Based on $9,000 compression expense approximately $8,200 ad valorem tax and $13,327 operating expense.
[5]Line 2 times 0.1 cent per M ft [3].
[6]Line 8 divided by line 2.
[7]7.5 pct of line 12.

[Investments and allocation of costs]

Line No. and item (a)	Amount (b)
1. Investment:	
2. Remaining net book value	$8,726
2. Remaining net book value	60,261
3. Recompleting and equipping well	60,261
4. Total investment	68,987
5. Less salvage value [1]	2,000
6. Depreciable investment	66,987
7. Depreciation per unit of production [2]	63.14

[1]From filing.
[2]Line 6 divided by 106,093.

Average investment and annual rate base

Line No. and year (a)	Annual N.W.I. production (1,000 ft [3]) (b)	Beginning of year investment (c)	Decpreciation [1] (d)	End of year investment (e)	Average investment [2] (f)
1. Average investment:					
2. 1977	106,093	$68,987	$66,987	$2,000	$35,494
3. Average annual investment [3]					35,494
4. Annual rate base:					
5. Average annual investment					35,494
6. Average annual working capital allowance [4]					3,816
7. Total annual rate base					39,310

[1]Column (b) times line 7 of sheet 2.
[2]Column (c) plut column (e) divided by 2.
[3]Column (f) of line 2 divided by 1 yr productive life.
[4]0.125 times line 6 of sheet 1 divided by 1 yr productive life.

[FR Doc. 78-11098 Filed 4-25-78; 8:45 am]

[6740-02]

[Docket No. ES78-31]

IOWA POWER & LIGHT CO.

Application

APRIL 19, 1978.

Take notice that on April 13, 1978, the Iowa Power & Light Co. (Applicant) filed an application with the Commission pursuant to Section 204 of the Federal Power Act seeking authorization to issue up to 500,000 shares of its Common Stock (par value $10 per share), 300,000 of which will be issued pursuant to its Tax Reduction Act Employee Stock Ownership Plan, and 200,000 shares of which will be issued pursuant to its Employee Stock Purchase Plan.

Applicant is incorporated under the laws of the State of Iowa, with its principal business office at Des Moines, Iowa and is an operating electric and gas utility primarily engaged in the generation, transmission, distribution and sale at retail of electric energy and in the purchase, distribution and sale at retail of natural gas in central and southwestern Iowa.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 5, 1978, 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 Procedure (18 CFR 1.8, 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 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. The application is on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11244 Filed 4-25-78; 8:45 am]

[6740-02]

[Docket No. ER78-309]

LOUISIANA POWER & LIGHT CO.

Cancellation

APRIL 18, 1978.

Take notice that on April 13, 1978, Louisiana Power & Light Co. (LP&L) tendered for filing a notice of cancellation of Rate Schedule FERC No. 57, an electric system interconnection agreement between LP&L and the Town of Homer, La. LP&L states that it has entered into an operating agreement with Homer whereby it will furnish power and operate and maintain the electric system on a retail basis.

LP&L proposes that the cancellation be made effective as of March 17, 1978, the date on which it began retail service to Homer, and therefore requests waiver of the Commission's notice requirements.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 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 May 1, 1978. 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. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11245 Filed 4-25-78; 8:45 am]

[6740-02]

[Docket Nos. ER78-70 and ER78-71]

PENNSYLVANIA POWER AND LIGHT CO.

Extension of Time

APRIL 18, 1978.

On April 6, 1978, Pennsylvania Power and Light Co. (PP&L) filed a motion to extend certain procedural dates set by Ordering Paragraphs (E), (F), and (G) of the Commission Order issued December 23, 1977, in the above referenced proceeding.

Upon consideration, notice is hereby given that the procedural dates established by the December 23, 1977 Order are modified as follows:

Filing of case-in-chief, by PP&L, April 21, 1978.
Service of top sheets by Staff, July 20, 1978.
Initial conference, July 31, 1978, at 10 a.m. (ET).

All further procedural dates will be established by a Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11246 Filed 4-25-78; 8:45 am]

[6740-02]

PHILADELPHIA ELECTRIC CO.

Commission Visit

APRIL 18, 1978.

Take notice that on May 2, 1978, Chairman Charles B. Curtis, Commissioners Georgiana Sheldon, George R. Hall and Matthew Holden, Jr. members of the Federal Energy Regulatory Commission, as well as other Staff personnel of the Federal Energy Regulatory Commission will visit certain electric facilities owned by the Philadelphia Electric Co.

The facilities to be visited are Conowingo Hydroelectric Project, the Muddy Run Pumped Storage Project, and the Peach Bottom Nuclear Power Station Visitors Center. All facilities are located on the Susquehanna River in Maryland and Pennsylvania and owned by the Philadelphia Electric Co.

The purpose of the visit is to provide the Commissioners and other FERC personnel the opportunity to view the physical facilities of electric plants and observe the operation of the facilities. The proposed viewing of the facilities enumerated in this notice is in no way associated with any pending proceeding now before the Federal Energy Regulatory Commission involving either the physical facilities to be visited or the Philadelphia Electric Co.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11235 Filed 4-25-78; 8:45 am]

[6740-02]

[Docket Nos. ER77-422, ER78-20 and ER78-49; ER78-68].

PUBLIC SERVICE CO. OF OKLAHOMA AND OKLAHOMA GAS AND ELECTRIC CO.

Notice Granting Further Extension of Time

APRIL 18, 1978.

On April 11, 1978, Oklahoma Gas and Electric Co. (OG&E) filed a motion to extend further the time for filing appropriate cost support data in compliance with Ordering Paragraph (B) of the Commission Order issued November 30, 1977, in Docket Nos. ER77-422, ER78-20 and ER78-49. A previous extension of time was granted by Notice issued March 21, 1978. The instant motion states that the Southwestern Power Administration and Commission Staff Counsel do not oppose the requested extension.

Upon consideration, notice is hereby given that a further extension of time is granted to and including June 15, 1978, within which to comply with Ordering Paragraph (b) of the November 30, 1977 Order by filing appropriate cost support data.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-11247 Filed 4-25-78; 8:45 am]

[6740-02]

[Docket No. CP78-258]

TEXAS EASTERN TRANSMISSION CORP.

Pipeline Application

APRIL 18, 1978.

Take notice that on March 27, 1978, Texas Eastern Transmission Corp. (Applicant), P.O. Box 2521, Houston Tex., 77001, filed in Docket No. CP78-258 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity auhorizing the construction and operation of pipeline facilities for purchase and transportation of natural gas produced from West Cameron Block 280, offshore Louisiana. Applicant proposes to install and operate 0.19 mile of 16-inch pipeline extending from the "B" platform of Union Oil Co. to its proposed 30-inch Cameron Loop, all in West Cameron Block 280, and 1.5 miles of 10-inch pipeline between the "B" and "C" platform. The cost of these facilities is estimated to be $4,006.000. Installation and operation of the pipeline facilities will enable Applicant to purchase approximately 115,000 Mcfd. of additional gas supplies being developed by Union Oil Co.

Any person desiring to be heard or to make any protest with reference to said application, on or before May 9, 1978, should 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 sub-

ject 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 this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the mattter 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. 78-11248 Filed 4-25-78; 8:45 am]

[6740-02]

[Docket No. CP78-252]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Pipeline Application

APRIL 18, 1978.

Take notice that on March 23, 1978, Transcontinental Gas Pipe Line Corp. (Applicant), Post Office Box 1396, Houston, Tex. 77001, filed in Docket No. CP78-252 an application pursuant to section 7 of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission, for a certificate of public convenience and necessity authorizing Applicant to construct and operate pipeline facilities in the Ship Shoal and South Pelto Areas, offshore Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to construct, install and operate a supply lateral extending in an easterly direction from its existing southeast Louisiana Gathering System at Ship Shoal Blocks 65 and 70 to South Pelto Block 13, consisting of about 15.1 miles of 20-inch pipeline, 0.4 miles of 16-inch pipeline, 2.9 miles of 12-inch pipeline, four purchase meter stations and a manifold platform at Ship Shoal Block 70. Applicant states that the proposed facilities will be utilized to attach new gas supply sources in the South Pelto Area, offshore Louisiana.

The total estimated cost of the proposed facilities is $17,500,000 to be financed initially through short-term loans and available cash.

Applicant states that construction of the proposed facilities is scheduled to commence in August, 1978.

Any person desiring to be heard or to make any protest with reference to said application, on or before May 9, 1978, should file with the Federal Energy Regulatory Commission, Wash- ington, 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 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. 78-11249 Filed 4-25-78; 8:45 am]

[6740-02]

[Docket No. CP78-205]

UNITED GAS PIPE LINE CO.

Pipeline Application

APRIL 18, 1978.

Take notice that on March 21, 1978, United Gas Pipe Line Co. (United), P.O. Box 1478, Houston, Tex. 77001 filed an amendment to this application pursuant to Section 7(c) of the Natural Gas Act, in Docket No. CP78-205 heretofore filed on February 27, 1978 to provide for the construction of facilities in Rapides Parish, La. as more fully described in the application which is on file with the Federal Energy Regulatory Commission (Commission) and open to public inspection.

United states that pursuant to a transportation agreement dated December 20, 1977 between Michigan Wisconsin Pipe Line Co. (Mich-Wis) and United, United will be required to construct 0.1 mile of 10-inch pipe line and a 10-inch dual tub meter station to effectuate the proposed transportation. Cost of the proposed facilities are estimated to be $343,330 and will be located at a point in Rapides Parish, La.

Any person desiring to be heard or to make any protest with reference to said application, on or before May 9, 1978, should 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 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. 78-11250 Filed 4-25-78; 8:45 am]

[6740-02]

[Docket No. ER78-294]

UPPER PENINSULA POWER CO.

Filing

APRIL 18, 1978.

Take notice that Upper Peninsula Power Co. (Upper Peninsula) on April 8, 1978, tendered for filing Addendum A to the contracts between Upper Peninsula Power Co., the Alger Delta Cooperative Electric Association, and Ontonagon County Rural Electrification Association dated December 29, 1971.

Upper Peninsula states that the Agreement entered into on December

29, 1971, by and between the Alger Delta Cooperative Electric Association and Upper Peninsula for the agreement for wholesiae service by the Alger Delta Cooperative Electric Association from Upper Peninsula shall be changed as follows:

Capacity and Contract Demand—Article VII, Page 3: Customer has requested termination of point of service designated No. 5 on Exhibit A entitled "Fuller Park".

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 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 May 1, 1978. 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 application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 11234 Filed 4-25-78; 8:45 am]

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 888-7]

GUAM—SOLE ON PRINCIPAL SOURCE AQUIFER AREA DESIGNATION

Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice of Determination; Northern Ground Water System of Guam.

SUMMARY: The Administrator of the Environmental Protection Agency has determined, according to the provisions of Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300f, 300h-3(e); 88 Stat. 1660 et. seq.; Pub. L. 93-523), that the northern ground water system of Guam is a principal source of drinking water for the island of Guam and that, if the ground waters were contaminated, a significant hazard to public health would exist.

EFFECTIVE DATE: April 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Regional Administrator, Environmental Protection Agency, Region IX, 215 Freemont Street, San Francisco, Calif. 94105, 415-556-2320.

SUPPLEMENTARY INFORMATION: The Safe Drinking Water Act was enacted on December 16, 1974. Section 1424(e) of the Act states:

"(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."

On November 20, 1975 the Honorable Ricardo J. Bordallo, Governor of Guam, petitioned the Environmental Protection Agency to designate the northern ground water system of Guam under the provisions of Section 1424(e) of the Act. The petition proposed that the area north of the southern municipal boundaries of Agana, Agana Heights and Chalan Pago-Ordot be designated.

A Notice of Receipt of this petition and a request for comments were published in the FEDERAL REGISTER on April 26, 1976. On June 7, 1976, the Regional Administrator, Region IX, sent copies of the above notice to several Federal agencies. Comments were subsequently received from two agencies. On November 11, 1976, the Regional Administrator requested several agencies to comment on a draft document supporting the designation. Comments have been received from four agencies. In general, the comments received by EPA acknowledge that the ground water system of northern Guam is a principal source of drinking water and the ground waters should be protected from contamination. In view of the apparent agreement among Federal agencies and the Government of Guam that the northern ground waters are a principal source of drinking water and that they should be protected from contamination, EPA elected not to hold a public hearing on the designation.

Notice is hereby given that pursuant to Section 1424(e) of the Safe Drinking Water Act (Pub. L. 93-523) the Administrator of the Environmental Protection Agency has determined that the northern ground water system of Guam is a principal source of drinking water for the island of Guam and that, if the ground waters were contaminated, a significant hazard to public health would exist.

On the basis of information available to EPA and that presented by local and Federal agencies, the Administrator has made the following findings which are the basis for the determination noted above:

1. The northern ground water system of Guam is the principal source of drinking water for about 75,000 people (69 percent of Guam's 1975 population). Currently water treatment practice by the Government of Guam is limited to disinfection. Alternative sources of drinking water are available. However, their capacity to meet the total demands of Guam has not been fully evaluated and their development could represent a substantial commitment of time and fiscal resources.

2. The ground water system is vulnerable to contamination through the recharge zone. Contamination would pose a significant hazard to those people dependent on the system for drinking water.

One of the determinations which the Administrator must make in connection with the designation under Section 1424(e) is that the area's sole or principal source aquifer, "* * * if contaminated, would create a significant hazard to public health * * *" EPA does not construe this provision to require a determination that projects planned or likely to be constructed will in fact create such a hazard; it is sufficient to demonstrate that approximately 75,000 people depend upon the northern ground water system as their principal source of drinking water and that the system is vulnerable to contamination through its recharge zone. Obviously, if the drinking water source for 75,000 people were contaminated, a significant hazard to public health would exist.

EPA is cognizant of the existing local controls to prevent contamination. While the existence and effectiveness of local controls are clearly relevant to the need for EPA review of Federal financially-assisted projects, Section 1424(e) does not make designation contingent upon the absence of local controls. Therefore, these factors do not properly bear on the decision whether or not to designate the northern ground water system of Guam. They do, however, influence the review process established by Section 1424(e).

This notice is concerned with those ground waters north of the southern municipal boundaries of Agana, Agana Heights and Chalan Pago-Ordot with dissolved solids concentrations less than 10,000 parts per million. Section 1424(e) of the Act requires that after publication of the Administrator's decision, "* * * 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 * * *" The recharge zone in the case of Guam's northern ground water system is the area north of the Adelup-Pago fault, which is closely approximated by the municipal boundaries of Agana, Agana Heights and Chalan Pago-Ordot. The zone is interrupted by the Agana River basin, a portion of the Fonte River basin and raised volcanic (i.e., penetrating the overlying limestones) formations in the Mataguac Hill and Mount Santa Rosa area. Water from the Agana and Fonte Rivers may enter the ground waters through seepage from channel beds, and runoff from the exposed volcanic formations in the Mataguac Hill and Mt. Santa Rosa area enters the ground waters through infiltration. The Pago River flows along the eastern portion of the Adelup-Pago fault. Although precise measurements are not available, some water from the Pago River may enter the northern ground waters through seepage from the stream bed.

The portions of the Pago and Fonte River basins south of the Adelup-Pago fault are being designated as a streamflow source zone. Water from these areas may enter the northern ground waters through stream bed seepage.

Both the recharge zone and the streamflow source zone constitute the designated area. Federally assisted projects within this area are subject to Section 1424(e) review requirements. On September 29, 1977, EPA published proposed regulations for review of projects in areas designated under 1424(e). These proposed regulations will be implemented as interim guidelines for reviewing projects in Guam until promulgated during 1978. A copy of the proposed regulations is available at EPA Region IX offices.

The EPA will periodically review the factors upon which the designation of the northern ground-water system of Guam is based. If appropriate, EPA will reconsider the designation and publish notice of the Administrator's determination in the FEDERAL REGISTER.

The information upon which the above findings are based is available to the public and may be inspected during normal hours at the Office of the Environmental Protection Agency, Region IX, 215 Freemont Street, San Francisco, California 94111. The available information includes:

1. A map outlining the recharge zone and streamflow source zone (i.e., the designated area).

2. A technical support document for designation of the northern ground water system of Guam under Section 1424(e) of the Safe Drinking Water Act.

3. A description of the interim project review guidelines.

The above information is also available at the U.S. Environmental Protection Agency, Public Information and Reference Unit, Room 2922, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

EPA, Region IX, is working with the Federal agencies that may be impacted by this determination. It is anticipated that interagency procedures will be developed whereby EPA will be notified of proposed commitments for projects which may contaminate the northern ground-water system of Guam. EPA, Region IX, will rely to the maximum extent possible on existing and future local mechanisms to control contamination and review projects which may degrade the northern ground-water system of Guam.

Dated: April 21, 1978.

BARBARA BLUM,
Acting Administrator.

[FR Doc. 78-11404 Filed 4-25-78; 8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Notice of Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by section 311 (p)(1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certificates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

In addition, notice is also given that the operators indicated by an asterisk (*) have established evidence of financial responsibility, with respect to the vessels indicated, as required by subsection (c) of section 204 Trans-Alaska Pipeline Authorization Act, and have been issued Federal Maritime Commission Certificates of Financial Responsibility (Alaska Pipeline) pursuant to Part 543 of Title 46 CFR.

Certificate No.	*Owner/Operator and Vessels*
01011	Aktieselskabet Det Ostasiatiske Kompagni: *Boringia.*
01150	Chevron Transport Corp.: *Chevron Frankfurt.*
02194	Compagnie Generale Maritime: *Renoir.*
02209	Flota Mercante Grancolombiana S.A.: *Ciudad De Quito*
02367	Canadian Pacific (Bermuda) Ltd.: *Fort Walsh.*
02713	T. L. James Co., Inc.: *BT-128.*
02935	Cable & Wireless, Ltd.: *Edward Wilshaw.*
02956	Ashland Oil, Inc.: *Ellis 1302, STC-2005, STC-2506, Christy-211.*
03137	Cunard Steamship Co., Ltd.: *Atlantic Project, Atlantic Prosper.*
03273	Dunlap Towing Co.: *ZB-301.*
03855	Prometheus Shipping Corp.: *Spyrakis.*
03915	Mobil Oil Corp.: *Mobil Mount Vernon.*
04262	Eddie Steamship Co., Ltd.: *Panamax Jupiter.*
04601	American Tunaboat Association: *Charger.*
04625	American Commercial Lines, Inc.: *Joe Bobzien.*
05581	Latvian Shipping Co.: *Lielupe.*
05691	Canadian Tugboat Co., Ltd.: *Jervis Crown, CZ-1.*
06038	Suomen Hoyrylaiva Osakeyhtio Finska Angfartygs Aktiebolaget: *Pollux*
06510	Compagnie Nationale Algerienne De Navigation: *Ben M'Hidi, Touggourt, Tebessa, Ouarsenis.*
07269	Nemuro Daiichi Gyogyo Seisan Kumiai: *Fukuyoshi Maru No. 8.*
07577	Atlantic-Mediterranean Shipping Corporation: *Tipu.*
07640	Exxon Co., U.S.A.: *Exxon Galveston.*
08131	Empresa Navegacion Caribe: *24 De Febrero.*
08196	Nortramp I/S: *Nordhval.*
08474	Knossos Shipping Inc.: *Atlantico.*
08475	Thessaly Shipping Inc.: *Pacifico.*
08948	VEB Deutfracht/Seereederei: *Weimar, Ernst Moritz Arndt.*
09311	National Steel & Shipbuilding Co.: *AFDL-37.*
09423	TEH-HU Cargocean Management Co., Ltd.: *Victorious.*
10829	Egyptian Navigation Co.: *Alagmi.*
11011	Power Corp. Of Canada, Ltd.: *Jean Parisien.*
11349	Dutth Harbor Seafoods, Ltd.: *Dipper, Viceroy.*
11948	Ardgowan Shipping Co., Ltd.: *Illyric.*
12434	United Arab Shipping Co. (S.A.G.): *Al Fujairah, Arafat, Fathulkhair, Tabuk.*
12734	Ritchie Towing Co., Inc.: *GWG 208.*
12996	Ocean Marine Services Partnership No. 1: *Ocean King, Ocean Marlin.*
13009	Italia Crociere Internazionali S.P.A.: *Leonardo Da Vinci.*
13040	Part Rederiet Star 6, Torshavn Paroe Islands: *Star Ocean.*
13110	Belco Petroleum Corp. Of Peru: *GAF—1, BC-1191, Susan Lynn, Elizabeth, BB-1.*
13182	Lesue Shipping Inc.: *Leslie B.*
13200	Canal Freight Lines, Inc.: *STCO-202, STCO-201, STCO-200.*
13229	Jaczon Rederij En Haringhandel N.V.: *Klipper.*
13258	Williams Drilling Co., a Division of Elpac Inc.: *Williams Rig No. 2, Williams Rig No. 3, Williams Rig No. 5, Williams Rig No. 6, Williams Rig No. 7, Williams Rig No. 8, Williams Rig No. 9, Williams Rig No. 11.*
13343	Seaarland Shipping Management Ges. M.B.H.: *Montreux.*
13423	Afran Bahamas Ltd.: *Afran Stream.*
13456	Radiant Claude Inc.: *Atlantic Freezer.*
13462	Coroneta Line Co., Ltd.: *Mati.*
13469	Capitol Maritime Inc.: *Nassiouka.*
13494	Rema Reederei GMBH & Co. KG: *Fonnes.*
13507	Trade Banner Line Inc.: *Trade Master.*
13531	Heliopsis Inc.: *Unas.*
13579	Taylor Corp., Ltd.: *Miranda.*
13593	Maritime Co. Esperides, S.A.: *Nireus.*
13594	Ace Auto Line Co., Ltd.: *Haul Akarita.*
13595	Hae Chang Fisheries Co., Ltd.: *Hae Chang No. 101.*
13596	Alkaid Shipping Co., Ltd.: *Alvega.*
13597	CONTI-OSG Associates (II): *Continental Trader.*
13599	Ocean Aries Tankship Co., S.A.: *Bokuho.*
13600	Autoshipping Ltd.: *Constantia.*
13601	Pantheon Shipping Co., S.A.: *Maroudio.*
13604	Fourth Shipmor Associates: *Overseas Washington.*
13605	RKS Heavy Trans: *Mammoth Scan.*
13606	Koushin Kaiun Kabushiki Kaisha: *Blue Shimonoseki.*
13608	Farpespan, S. L.: *Ancorda D'Ouro.*
13611	Sociedad Cooperativa de Produccion Pesquera Atun Mexicanos, S.C.L.: *Cuauhtemoc.*
13614	P.C. 2902 Inc.: *PC-2506.*
13615	Westminster Dredging Co., Ltd.: *W. D. Seaway.*
13623	Akritas Shipping Co., S.A.: *Akritas.*
13624	Amfitriti Shipping Co., S.A.: *Amfitriti.*
13625	Killini Shipping Co., S.A.: *Amethyst.*
13626	Navegantes Primeros Oceanica, S.A.: *Maria.*

Certificate No.	Owner/Operator and Vessels
13627	Transworld Marine Carriers Ltd.: *Gherestos.*
13631	Efxinos Shipping Co., Ltd.: *Aspaki.*
13634	Mufair Ltd.: *Saint James.*
13638	Virtuous Transport Ltd.: *Faro.*
13639	Pescamar de Centroamerica, S.A.: *Boruca, Cariari.*
13640	Pesqueras Galaico Gaditanas, S.A.: *Valle de Asua.*
13643	Halliburton Ltd.: *Halliburton 220.*
13647	Sofis Shipping Co., Ltd.: *Zakynthos.*
13650	St. John's Guild Corp.: *The Floating Hospital.*
13654	North Clipper Shipping Co., Ltd.: *Atlantic Heritage.*
13655	Trader Shipping Co., Ltd.: *Atlantic Hawk.*
13682	Tidewater Timbo, Inc.: *Glorita Tide.*
13692	Arkhangelsk Hydrographic Branch of Hydrographic Enterprise of Ministry of Merchant Marine: *Georgij Maksimov.*
13717	Compania de Navegacion Portal, S.A.: *Nana.*
13719	Star International Shipping, Inc.: *Gina Star, Carmilla Star.*
13723	Maco, S.A.: *Bulk Queen.*
99001	Atlantic Richfield Co.:* *Arco Enterprise, Arco Endeavor, Sinclair Texas, Arco Fairbanks, Arco Juneau, Arco Anchorage, Arco Prudhoe Bay, Arco Sag River, Arco Heritage.*
99007	Exxon Corp.:* *Exxon Galveston.*
99013	Mobil Oil Corp.:* *Mobiloil.*
99020	Sound Shipping Inc.:* *Prince William Sound.*
99021	Gulf Oil Corp.:* *American Independence.*
99023	Montpelier Tanker Co.:* *Montpelier Victory.*
99024	Mount Vernon Tanker Co.:* *Mount Vernon Victory.*
99025	Mount Washington Tanker Co.:* *Mount Washington.*
99026	Cove Trading Inc.:* *Cove Trader.*
99027	Queensway Tankers, Inc.:* *Stuyvesant.*
99028	United Tanker Corp.:* *Eagle Charger, Eagle Leader.*
99029	Shipco 668 Inc.:* *Tonsina.*
99030	Chevron U.S.A. Inc.:* *Chevron Arizona, Chevron Hawaii, Chevron Mississippi, Chevron California, Chevron Oregon, Chevron Washington, Chevron Colorado, Chevron Louisiana.*
99031	Harbor Tug & Barge Co.:* *Barge 21, Barge 23, Barge 50, Barge 51.*
99032	Bay Cities Transportation Co.:* *Barge 22, Barge 16, Barge 24.*
99033	San Diego Transportation Co.:* *Barge 450-1, Barge 450-2, Barge 450-3, Barge 450-4, Barge 450-5.*
99034	Puget Sound Tug & Barge Co.:* *Barge 19.*
99035	United Towing Co.:* *Barge 25.*
99036	Cove Tankers Corp.:* *Mount Navigator, Mount Explorer, Cove Communicator.*
99037	Shipco 2295, Inc.:* *Atigun Pass.*
99038	Hess Oil Virgin Islands Corp.:* *Thatch Cay, Sandy Cay, Salt Cay.*
99039	Dixie Carriers, Inc.:* *Offshore 1402, Offshore 2402, Offshore 2404, Offshore 2405, Barge 103, Offshore 2403.*
99041	Second Shipmore Associates:* *Overseas Ohio.*
99041	Texaco Inc.:* *Texaco Georgia, Texaco Rhode Island, Texaco Maryland, Texaco Massachusetts, Texaco Connecticut, Texaco Florida, Texaco New York, Texaco California, Texaco Kansas, Texaco Minnesota, Texaco Montana, Texaco Mississippi, Texaco New Jersey, Texaco North Dakota, Texaco Wisconsin.*
99042	Keystone Tankship Corp.:* *Golden Gate.*
99043	Penn Tanker Co.:* *Ogden Champion, Ogden Challenger.*
99044	Connecticut Transport, Inc.:* *Connecticut.*
99045	Willamette Transport, Inc.:* *Ogden Willamette.*
99046	Wabash Transport, Inc.:* *Ogden Wabash.*
99047	Shipco 2296 Inc.:* *Keystone Canyon.*
99048	Kristel Tankers Inc.:* *Kansas.*

By the Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-11307 Filed 4-25-78; 8:45 am]

[4110-02]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

NATIONAL ADVISORY COUNCIL ON EXTENSION AND CONTINUING EDUCATION

Meeting

AGENCY: National Advisory Council on Extension and Continuing Education.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Extension and Continuing Education and its Selection Committee. It also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (5 U.S.C. Appendix 1, 10(a)(2). This document is intended to notify the general public of their opportunity to attend, with exception of a three-hour period for a closed meeting of the Selection Committee from 9 a.m. to 12 Noon on May 10, 1978.

DATE: Meeting: May 10 and 11, 1978.

ADDRESS: Old Town Holiday Inn, 480 King Street, Alexandria, Va.

FOR FURTHER INFORMATION CONTACT:

Richard F. McCarthy, Associate Director, National Advisory Council on Extension and Continuing Education, 425 13th Street NW., Suite 529, Washington, D.C. 20004, Telephone 202-376-8888.

The National Advisory Council on Extension and Continuing Education is authorized under Pub. L. 89-329. The Council is required to report annually to the President, the Congress, the Secretary of HEW, and the Commissioner of Education in the preparation of general regulations and respect to policy matters arising in the administration of Part A of Title I (HEA) including policies and procedures governing the approval of State plans under Section 105; and to advise the Assistant Secretary of HEW on Part B (Lifelong Learning activities) of the title. The Council is required to review the administration and effectiveness of all Federally supported extension and continuing education programs.

The meeting of the Council will be open to the public beginning on May 10 at 2 p.m. until 5:30 p.m.; and on May 11, from 9 a.m. to 12 Noon.

The agenda for the meeting will include the following items:

1. Reveiw of Council position and testimony regarding title I of the Higher Education Act;

2. Review of Council statements regarding Federal continuing education policies;

3. Consideration of recommendations to be included in twelfth annual report to the President; and,

4. Review and approval of abbreviated annual report to the President on June 30 (fuller Special Report to be submitted during summer).

On Wednesday, May 10, from 9 a.m. to 12 Noon, the meeting of the Selection Committee will be closed to the public in order for the Committee to review and take action on applicants for the Council's executive director position. The meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and under the exemptions contained in the Government in Sunshine Act, section 552b(c) (2) and (6) of Title 5, U.S.C. (Pub. L. 94-409).

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of Title 5, U.S.C. 552b(c) will be available to the public within fourteen days of the meeting.

All records of the Council proceedings are available for public inspection at the Council's staff office, located in Suite 529, 425 13th Street NW., Washington, D.C.

Due to limited space, guests will be seated during the public meeting on a first-come basis by calling the Council Office.

Office: 202-376-8888.

Dated: April 7, 1978.

RICHARD F. MCCARTHY,
Associate Director.

[FR Doc. 78-11229 Filed 4-25-78; 8:45 am]

[4110-07]

Social Security Administration

ADVISORY COUNCIL ON SOCIAL SECURITY

Public Meeting

AGENCY: Advisory Council on Social Security, HEW.

ACTION: Notice is hereby given, pursuant to Public Law 92-463, that the Advisory Council on Social Security, established pursuant to section 706 of the Social Security Act, as amended, will meet on Thursday, May 11, 1978, from 9 a.m. to 5 p.m. in Room 800 of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, D.C. The meeting will be devoted to the topic of social security benefits. The meeting is open to the public.

Individuals and groups who wish to have their interest in the social securi-

ty program taken into account by the Council may submit written comments, views, or suggestions to Mr. Lawrence H. Thompson.

FOR FURTHER INFORMATION CONTACT:

Mr. Lawrence H. Thompson, Executive Director of the Advisory Council, P.O. Box 17054, Baltimore, Md. 21235. Telephone inquiries should be directed to Mr. Edward F. Moore, 301-594-3171.

(Catalog of Federal Domestic Assistance Program Numbers 13.800-13.807 Social Security Program.)

Dated: April 21, 1978.

LAWRENCE H. THOMPSON,
Executive Director, Advisory Council on Social Security.

[FR Doc. 78-11469 Filed 4-25-78; 8:45 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Docket No. NFD-618; FDAA-553-DR]

INDIANA

Major Disaster and Related Determinations

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disastor for the State of Indiana (FDAA-553-DR), dated March 29, 1978, and related determinations.

DATED: March 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank J. Muckenhaupt, Chief, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, 202-634-7825.

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on March 29, 1978, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Indiana resulting from severe storms and flooding beginning about March 15, 1978, 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 Indiana.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Robert E. Connor of the Federal Disaster Assistance Administration to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of Indiana to have been adversely affected by this declared major disaster.

The Counties of : Adams and Allen.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance)

WILLIAM, H. WILCOX,
Administrator, Federal Disaster Assistance Administration.

[FR Doc 78-11327 Filed 4-25-78; 8:45 am]

[4210-01]

[Docket No. NFD-617; FDAA-552-DR]

NEBRASKA

Major Disaster and Related Determinations

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FDAA-552-DR), dated March 24, 1978, and related determinations.

DATED: March 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank J. Muckenhaupt, Chief, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, 202-634-7825.

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); Notice is hereby given that on March 24, 1978, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Nebraska resulting from severe storms, ice jams, snowmelt, and flooding beginning about March 13, 1978, 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 Nebraska.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Robert E. Connor of the Federal Disaster Assistance Administration to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of Nebraska to have been adversely affected by this declared major disaster.

The Counties of: Cass, Colfax, Dodge, Douglas, Jefferson, Nuckolls, Platte, Sarpy, Saunders, and Thayer.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

WILLIAM H. WILCOX,
Administrator, Federal Disaster Assistance Administration.

[FR Doc. 78-11326 Filed 4-25-78; 8:45 am]

[4210-01]

[Docket No. NFD-619; FDAA-552-DR]

NEBRASKA

Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of major disaster declaration for the State of Nebraska (FDAA-552-DR), dated March 24, 1978.

DATED: April 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank J. Muckenhaupt, Chief, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, 202-634-7825.

NOTICE: The Notice of major disaster for the State of Nebraska dated March 24, 1978, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 24, 1978:

The Counties of:

Buffalo, Cuming, Custer, Merrick, Nance, Sherman, Valley, and Washington.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance)

WILLIAM H. WILCOX,
Administrator, Federal Disaster Assistance Administration.

[FR Doc. 78-11328 Filed 4-25-78; 8:45 am]

[4210-01]

[Docket No. NFD-620; FDAA-552-DR]

NEBRASKA

Amendment to Notice of major Disaster Declaration

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of Major disaster declaration for the State of Nebraska (FDAA-552-DR), dated March 24, 1978.

DATED: April 12, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank J. Muckenhaupt, Chief, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, 202-634-7825.

NOTICE: The Notice of major disaster for the State of Nebraska dated March 24, 1978, and amended on April 5, 1978, is hereby further amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 24, 1978:

The Counties of:

Knox, and Pierce.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance)

THOMAS R. CASEY,
Acting Administrator, Federal Disaster Assistance Administration.

[FR Doc. 78-11329 Filed 4-25-78; 8:45 am]

[4210-10]

Office of Interstate Land Sales Registration

[Docket Nos. N-78-868, ED-78-1-IS]

ASPEN RUN, ET AL.

Hearing

In the matter of: Aspen Run, Kamar, Inc., and Ralph L. Rigler, President, Respondent, OILSR No. 0-3439-24-57, Docket No. ED-78-1-IS.

Pursuant to 15 U.S.C. 1706(b) and 24 CFR 1710 .45(a) and 1720.120 Notice is hereby given that:

1. Aspen Run, Kamar, Inc. and Ralph L. Rigler, president, its officers and agents, hereinafter referred to as "respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90448) (15 U.S.C. 1701, seq.) received a notice of suspension dated March 22, 1978, which was sent to the developer pursuant to 15 U.S.C. 1706(b), 24 CFR 1710.45(a) and 1720.120 based on information obtained by the Office of Interstate Land Sales Registration showing that the statement of Record and Property Report for Aspen Run, Kamar Inc., Baltimore, Md., contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The respondent filed an answer received April 10, 1978, in response to the order of suspension.

3. In said answer the respondent requested a hearing on the allegations contained in the order of suspension.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(b) and 24 CFR 1710.45(a) and 1720.120, *It is hereby ordered,* That a public hearing for the purpose of taking evidence on the questions set forth in the order of suspension will be held before Judge James W. Mast, in Room 7143, HUD Building, 451 Seventh Street, SW., Washington, D.C. at 10 a.m., April 28, 1978.

5. The following time and procedure is applicable to such hearing: The parties are directed to file all affidavits and a list of all witnesses with the Hearing Clerk, HUD Building, Room 10278, Washington, D.C. 20410 on or before April 26, 1978. Copies of all documents filed should be served at the same time on all parties of record.

6. The respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against respondent, the allegations of which shall be deemed to be true, and an order suspending the statement of record, herein identified, shall be issued pursuant to 24 CFR 1710.45(a).

This notice shall be served upon the respondent forthwith pursuant to 24 CFR 1720.120.

By the Secretary.

Dated: April 17, 1978.

JAMES W. MAST,
Chief Administrative Law Judge.

[FR Doc. 78-11324 Filed 4-25-78; 8:45 am]

[4210-01]

[Docket Nos. N-78-869, 78-30-IS]

SUNLAND ET AL.

Hearing

In the matter of Sunland, Sunland Associates, A General Partnership, and S. P. Putnam, General Partner, Respondent, OILSR No. 0-1646-656-32 and A, Docket No. 78-30-IS.

Pursuant to 15 U.S.C. 1706(e) and 24 C.F.R. 1720.165(b) Notice is hereby given that:

1. Sunland, Sunland Associates, A General Partnership and S. P. Putnam, General Partner, its officers and agents, hereinafter referred to as "Respondent," being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1701, et seq.) received a Notice of Proceedings and Opportunity for Hearing dated March 14, 1978, which was sent to the developer pursuant to 15 U.S.C. 1706(e), and 24 C.F.R. 1720.165(b) based on information obtained by the Office of Interstate Land Sales Registration showing that the statement of Record and Property Report for Sunland, located in Clallam County, Washington, contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received April 3, 1978, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 C.F.R. 1720.160(d): *It is hereby ordered,* That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7143, Department of HUD, 451 Seventh Street SW., Washington, D.C. on June 8, 1978 at 10 a.m.

5. The following time and procedure is applicable to such hearing: The parties are directed to file all affidavits and a list of all witnesses with the Hearing Clerk, HUD Building, Room 10278, Washington, D.C., 20410 on or before May 15, 1978. Copies of all documents filed should be served at the same time on all parties of record.

6. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 C.F.R. 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 C.F.R. 1720.440

By the Secretary.

Dated: April 18, 1978.

JAMES W. MAST,
Chief, Administrative Law Judge.

[FR Doc. 78-11325 Filed 4-25-78; 8:45 am]

[1505-01]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[26299; Colorado 22771K]

COLORADO

R/W Application for Pipeline

Correction

In FR Doc. 78-3188, appearing at page 5077 in the issue of Tuesday, February 7, 1978, in the public lands description for Moffat County shoud read as follows:

MOFFAT COUNTY

T. 12N., R. 95W.
Sec. 14, Lots 3, 4, S½;
Sec. 23, N½NE¼;
Sec. 24, N½N½,SE¼NE¼.

[1505-01]

[23734 J and K]

COLORADO

Notice of R/W Application for Pipeline, Northwest Pipeline Corp.

Correction

In FR Doc. 78-9812, appearing at page 15501 in the issue of Thursday, April 13, 1978, the public land description for Sixth Principal Meridian, Rio Blanco County, Colo. should read as follows:

SIXTH PRINCIPAL MERIDIAN, RIO BLANCO COUNTY, COLO.

T. 2 S., R. 103 W.,
Sec. 1: SW¼NW¼, N½SW¼;
Sec. 2: Lots 1, 2, and 3, SE¼NE¼, SE¼SW¼, S½SE¼, SE¼NW¼.
T. 1 S., R. 103 W.,
Sec. 34: SE¼SW¼, N½SE¼, SW¼SE¼;
Sec. 35: NW¼SW¼, S½SW¼.

[4310-55]

Fish and Wildlife Service

THREATENED SPECIES PERMIT

Receipt of Application

Applicant: John T. Bucherie, 1175 Wynneswood Drive, West Palm Beach, Fla. 33409.

The applicant wishes to apply for a Captive Self-Sustaining Population permit authorizing the purchase and sale in interstate commerce, for the purpose of propagation, those species of pheasants listed in 50 CFR section 17.11 as [T(C/P]. Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-2311. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address by May 26, 1978. Please refer to the file number when submitting comments.

Dated: April 21, 1978.

DONALD G. DONAHOO
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-11271 Filed 4-25-78; 8:45 am]

[4310-55]

THREATENED SPECIES PERMIT

Receipt of Application

Applicant: Howard G. Green, P.O. Box 147, Polk, Nebr. 68654.

The applicant wishes to apply for a Captive Self-Sustaining Population permit authorizing the purchase and sale in interstate commerce, for the purpose of propagation, those species of pheasants listed in 50 CFR section 17.11 as [TC/P]. Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-2312. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address by May 26, 1978. Please refer to the file number when submitting comments.

Dated: April 21, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 11272 Filed 4-25-78; 8:45 am]

[4310-55]

ENDANGERED SPECIES PERMIT

Receipt of Application

Applicant: James D. Lazell, Jr., Massachusetts Audubon Society, Lincoln, Mass. 01773.

The applicant requests a permit to salvage within the state of Massachusetts dead specimens of endangered species including the eastern cougar (*Felis concolor cougar*), Atlantic Ridley sea turtle (*Lepidochelys kempii*), hawksbill sea turtle (*Eretuochelys imbricata*), leatherback sea turtle (*Dermochelys coriacea*), Indiana bat (*Myotis sodalis*) and Florida panther (*Felis concolor coryi*).

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-1771. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address by May 26, 1978. Please refer to the file number when submitting comments.

Dated: April 21, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-11292 Filed 4-25-78; 8:45 am]

[4310-55]

ENDANGERED SPECIES PERMIT

Receipt of Application

Applicant: Gordon Rodda, Langmuir Laboratory, Cornell University, Ithaca, N.Y. 14853.

The applicant requests a permit to capture, mark and release American alligators (*Alligator mississippiensis*) in Polk, Osceola, and Highlands Counties, Fla., for scientific purposes. Alligators will be displaced for study on the homing behavior. Humane care and treatment during transport has been indicated by the applicant.

Documents and other information submitted with this application are available to the public during normal business hours in Room 534, 1717 H Street NW., Washington, D.C., or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-2376. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address by May 26, 1978. Please refer to the file number when submitting comments.

Dated: April 21, 1978.

DONALD G. DONAHOO,
Chief, Permit Branch,
Federal Wildlife Permit Office.

[FR Doc. 78-11293 Filed 4-25-78; 8:45 am]

[4310-84]

Office of the Secretary

[INT DES 78-13]

PROPOSED UPPER GILA-SAN SIMON ES AREA, SAFFORD DISTRICT, ARIZONA, LIVESTOCK GRAZING MANAGEMENT PROGRAM

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for a proposed livestock grazing management program in the Upper Gila-San Simon ES area, Arizona. The proposal involves intensive management of grazing on 1,040,329 acres of public lands; ephemeral management of grazing on 250,000 acres of public lands; and deferment of grazing on 4,104 acres of public lands. In addition, the proposal calls for the construction of range improvements to facilitate grazing management, including three detention dams for erosion control and sediment retention. The Department of the Interior invites written comments on the draft statement to be submitted within 45 days of this notice to the Arizona State Director, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Ariz. 85073.

A limited number of copies are available upon request to the Arizona State Director at the above address.

Public reading copies will be available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, Interior Building, 18th and C Streets NW., Washington, D.C. 20240, telephone: 202-343-5717.

Arizona State Office, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Ariz. 85073, telephone: 602-261-3831.

Safford District Office, Bureau of Land Management, 1707 Thatcher Boulevard, Safford, Ariz. 85546, telephone: 602-428-4040.

Notice is also given that oral and/or written comments will also be received at formal public hearings held at the following locations:

Safford—May 23—7 p.m. (till completion of testimony). Graham County Courthouse.

Tucson—May 24—7 p.m. (till completion of testimony). Pima County Board of Supervisors Hearing Room, First Floor, 111 W. Congress.

Phoenix—May 25—1 p.m. and 7 p.m. (till completion of testimony). Maricopn County Supervisors Auditorium, 205 W. Jefferson.

An administrative law judge will preside over the hearings. Witnesses presenting oral comments should limit their testimony to ten (10) minutes. Written request to testify orally should be submitted to the Arizona State Director, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Ariz. 85073, before the close of business May 19, 1978.

Comments on the draft environmental statement, whether written or oral, will receive equal consideration in preparation of a final environmental statement.

Dated: April 24, 1978.

LARRY E. MEIEROTTO,
Deputy Assistant Secretary of the Interior.

[FR Doc. 78-11518 Filed 4-25-78; 9:18 am]

[4410-01]

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

MANUFACTURE OF CONTROLLED SUBSTANCES

Registration

By Notice dated February 28, 1978, and published in the FEDERAL REGISTER on March 7, 1978 (43 FR 9380), Ganes Chemicals, Inc., Lessee of Siegfried Chemical, Inc., Industrial Park Road, Pennsville, N.J. 08070, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances listed below:

Drug:	*Schedule*
Amobarbital	II
Pentobarbital	II
Secobarbital	II
Methaqualone	II

No comments or objections having been received, and pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations § 1301.54(e), the Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substances listed above is granted.

Dated: April 20, 1978.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc. 78-11302 Filed 4-25-78; 8:45 am]

[4410-01]

MANUFACTURE OF CONTROLLED SUBSTANCES

Registration

By Notice dated February 24, 1978, and published in the FEDERAL REGISTER on March 3, 1978 (43 FR 8861), Mallinckrodt Inc., Department CB, Mallinckrodt and Second Streets, St. Louis, Mo. 63147, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of controlled substances listed below:

Drug:	*Schedule*
Codeine	II
Dihydrocodeine	II
Oxycodone	II
Diphenoxylate	II
Hydrocodone	II
Methadone	II
Methadone (Inter.)	II
Morphine	II
Thebaine	II
Opium extracts	II
Opium fluid extracts	II
Opium tinctures	II
Opium powders	II
Opium granulated	II

No comments or objections having been received, and pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations § 1301-54(e), the Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substances listed above is granted.

Dated: April 20, 1978.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc. 78-11303 Filed 4-25-78; 8:45 am]

[4410-01]

MANUFACTURE OF CONTROLLED SUBSTANCES

Application

Pursuant to 21 U.S.C. 823(a)(1), and § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on March 28, 1978, Parke, Davis and Co., 188 Howard Avenue, Holland, Mich. 49423, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic class of controlled substances listed below:

Drug:	*Schedule*
Oxycodone	II
Methylphenidate	II
Methaqualone	II
Pentobarbital	II

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon is accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1216.47.

Any such comments, objections or requests for a hearing may be addressed to the Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than May 26, 1978.

Dated: April 20, 1978.

PETER B. BENSINGER,
Administrator, Drug Enforcement Administration.

[FR Doc. 78-11304 Filed 4-25-78; 8:45 am]

[4410-01]

MANUFACTURE OF CONTROLLED SUBSTANCES

Application

Pursuant to 21 U.S.C. 823(a)(1), and § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR) this is notice that on March 17, 1978, Penick Corp., 530 New York Avenue, Lyndhurst, N.J. 07071, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	*Schedule*
Alphacetylmethadol	I
Diphenoxylate	II
Methadone	II
Methadone-intermediate	II
Concentrate of poppy straw	II

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47

Any such comments, objections or requests for a hearing may be addressed to the Administration, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washigton, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than May 26, 1978.

Dated: April 20, 1978.

PETER B. BENSINGER,
Administrator,
Drug Enforcement Administration.

[FR Doc. 78-11305 Filed 4-25-78; 8:45 am]

MANUFACTURE OF CONTROLLED SUBSTANCES

Application

Pursuant to 21 U.S.C. 823(a)(1), and § 1301.43 (a) of Title 21 of the Code of Federal Regulations (CFR) this is notice that on March 17, 1978, Penick Corp., 158 Mount Olivet Avenue, Newark, N.J., made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	*Schedule*
Pholodine	I
Alphacetylmethadol	I
Codeine	II
Dihydrocodeine	II
Oxycodone	II
Diphenoxylate	II
Hydrocodone	II
Meperidine	II
Methadone	II
Methadone-intermediate	II
Morphine	II
Tebaine	II
Opium extracts	II
Opium fluid extracts	II
Opium tinctures	II
Opium powders	II
Opium granulated	II
Mixed alkaloids	II
Concentrate of poppy straw	II
Phenazocine	II
Fentanyl	II

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative (Room 1203), and must be filed no later than May 26, 1978.

Dated: April 20, 1978.

PETER B. BENSINGER,
Administrator,
Drug Enforcement Administration.

[FR Doc. 78-11306 Filed 4-25-78; 8:45 am]

[7537-01]

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

MUSIC ADVISORY PANEL

Amended Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Planning Section) to the National Council on the Arts which was scheduled for April 25, 1978, from 9:30 a.m. to 6 p.m.; April 26, 1978, from 9:30 a.m. to 6 p.m.; April 27, 1978, from 9 a.m. to 6:30 p.m.; and April 28, 1978, from 9 a.m. to 5 p.m., in room 1422 of the Columbia Plaza Office Building, 2401 E Street Northwest, Washington, D.C. 20506, and was listed on page 15020 of Vol. 43, No. 69 of the FEDERAL REGISTER, is changed as follows:

An amended portion of the meeting will be open to the public. The meeting will open on April 25, 1978, from 9:30 to 12:30 p.m., and on April 26, 1978, from 9:30 a.m. to 3:45 p.m. The topic of discussion will include guidelines and policy matters.

The remaining sessions of this meeting on April 25, 1978, from 12:30 p.m. to 6:30 p.m.; April 26, 1978, from 3:45 p.m. to 6 p.m. April 27, 1978, from 9 a.m. to 6:30 p.m., and April 28, 1978, from 9 a.m. to 5 p.m., are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

APRIL 21, 1978.

[FR Doc. 78-11268 Filed 4-25-78; 8:45 am]

[7537-01]

NATIONAL COUNCIL ON THE ARTS

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on May 12, 1978, from 9 a.m.-5:30 p.m.; May 13, 1978, from 10 a.m.-5:30 p.m.; and May 14, 1978, from 9 a.m.-1 p.m., in the Presidential Room of the Mayflower Hotel, 1127 Connecticut Avenue Northwest, Washington, D.C.

A portion of this meeting will be open to the public on May 12, 1978, from 9 a.m.-5:30 p.m.; May 13, 1978, from 10 a.m.-11:30 a.m.; and May 14, 1978, from 9 a.m.-11:30 a.m. The topics of discussion will include: Museum Program Review and Guidelines, Artists-in-Schools Guidelines, and Composer/Librettist Guidelines; reports to the Council; and policy matters.

The remaining sessions of this meeting on May 13, 1978, from 11:30 a.m.-5:30 p.m.; May 14, 1978, from 11:30 a.m.-1 p.m. are for the purpose of Council review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the FEDERAL REGISTER March 17, 1977, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National En-

dowment for the Arts, Washington, D.C. 20506, or call 202-634-6070.

JOHN H. CLARK,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

APRIL 21, 1978.

[FR Doc. 78-11267 Filed 4-25-78; 8:45 am]

[7555-01]

NATIONAL SCIENCE FOUNDATION

DIRECTORATE FOR SCIENTIFIC, TECHNOLOGICAL, AND INTERNATIONAL AFFAIRS

Program of Science Resources; Manpower, Funding, and Output Analyses

APRIL 14, 1978.

Summary: the National Science Foundation announces its on-going program for Science Resources: Manpower, Funding, and Output Analyses. Awards will be for in-depth analyses and integration of data of the Division of Science Resources Studies on scientific and technical personnel and the funding of scientific and technological activities, and for related studies, for Scientific and Technological Manpower forecasting efforts; and for development of new measures of outputs of scientific and technological activity, especially of indicators of technological innovation. The average award is expected to be in the $25,000-$50,000 range.

The deadline for proposals to be funded fiscal year 1979 is December 15, 1978. Doctoral candidates may be principal investigators in proposals received from universities and colleges. For copies of the program announcement or further information contact the following personnel in the Division of Science Resources Studies:

National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Funding: Mr. Norman Friedman, telephone 202-634-4625.

Manpower: Mr. Morris Cobern, telephone 202-634-4654.

Science Indicators: Dr. Donald Buzzelli, telephone 202-634-4682.

M. REBECCA WINKLER,
Committee Management Coordinator.

APRIL 21, 1978.

[FR Doc. 78-11299 Filed 4-25-78; 8:45 am]

[7555-01]

SUBCOMMITTEE ON LINGUISTICS

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Linguistics of the Advisory Committee for Behavioral and Neural Sciences.

Date: May 17 and 18, 1978.

Time: 9 a.m.-5 p.m. each day.

Place: Room 1224, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of Meeting: Part open. Open—May 18, 9 a.m. to 12 noon. Closed—May 17, 9 to 5; May 18, 12 to 5.

Contact Person: Dr. Paul G. Chapin, Program Director, Linguistics Programs, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202-254-6326.

Summary minutes: May be obtained from the Committee Management Coordinator, Division of Personnel and Management, Room 248, National Science Foundation, Washington, D.C. 20550.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in Linguistics.

Agenda: Closed—May 17, all day and May 18, 12 noon to 5 p.m. to review and evaluate research proposals and projects as part of the selection process for awards. Open—May 18, 9 a.m.-12 noon. General discussion of the current status and future plans of the Linguistics Program.

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 mataters are within exemptions (4) and (6) of 5 U.S.C. 5526(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 Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

MAY 21, 1978.

[FR Doc. 78-11300 Filed 4-25-78; 8:45 am]

[7555-01]

SUBCOMMITTEE FOR POLITICAL SCIENCE

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee for Political Science.

Date and time: May 18, and 19, 1978—9 a.m. to 5 p.m.

Place: Room 421, National Science Foundation, 1800 G Street NW., Washington, D.C.

Type of meeting: Closed.

Contact person: Dr. Richard E. Dawson, Program Director, Political Science Program, Room 316, National Science Foundation, Washington, D.C. 20550; 202-632-4348.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Political Science.

Agenda: To review and evaluate research proposals and projects 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 Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 78-11298 Filed 4-25-78; 8:45 am]

[7555-01]

SUBCOMMITTEE ON REGULATORY BIOLOGY OF THE ADVISORY COMMITTEE FOR PHYSIOLOGY, CELLULAR AND MOLECULAR BIOLOGY

Notice of 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 Regulatory Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and Time: May 17, 1978 (7 p.m. to 10:30 p.m.) May 18, 19, 1978, 8:30 a.m. to 6 p.m. each day.

Place: Room 321, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Betty M. Twarog, Program Director, Regulatory Biology Program, Room 333, National Science Foundation, Washington, D.C. 20550; 202-632-4298.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in regulatory biology.

Agenda: To review and evaluate research proposals and projects 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 Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determina-

tions by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 78-11301 Filed 4-25-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Revised Notice of Meeting

The meeting notice for the meeting to be held on May 4-6, 1978 (published on April 19, 1978—FEDERAL REGISTER Volume 43, p. 16575) is revised to correct the address where documents are available for public inspection as indicated below:

INDIAN POINT NUCLEAR GENERATING STATION, UNIT 3

White Plains Public Library, 100 Martine Avenue, White Plains, N.Y. 10601.

Dated: April 20, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-11209 Filed 4-25-78; 8:45 am]

[7590-01]

[Docket No. 50-99]

BABCOCK & WILCOX CO.

Proposed Renewal of Facility Operating License

The Nuclear Regulatory Commission (the Commission) is considering renewal of Facility Operating License No. R-47 issued to the Babcock & Wilcox Co. (the licensee) for operation of the Lynchburg Pool Reactor, a pool-type research reactor located in Lynchburg, Va.

The renewal would extend the expiration date of Facility Operating License No. R-47 to September 4, 1998, in accordance with the licensee's application for renewal, dated March 3, 1978.

Prior to renewal of Facility Operating License No. R-47, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations.

By May 26, 1978, the licensee may file a request for a hearing and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to renewal of the subject facility operating license. Petitions for leave to intervene must be filed under oath or affirmation in accordance with the provisions of section 2.714 of 10 CFR Part 2 of the Commission's regulations. A petition for leave to intervene must set forth the interest of the petitioner in the proceeding, how that interest may be affected by the results of the proceeding, and the petitioner's contentions with respect to the proposed licensing action. Such petitions must be filed in accordance with the provisions of this FEDERAL REGISTER notice and section 2.714, and must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, by the above date. A copy of the petition and/or request for a hearing should be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

A petition for leave to intervene must be accompanied by a supporting affidavit which identifies the specific aspect or aspects of the proceeding as to which intervention is desired and specifies with particularity the facts on which the petitioner relies as to both his interest and his contentions with regard to each aspect on which intervention is requested. Petitions stating contentions relating only to matters outside the Commission's jurisdiction will be denied.

All petitions will be acted upon by the Commission or licensing board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel. Timely petitions will be considered to determine whether a hearing should be noticed or another appropriate order issued regarding the disposition of the petitions.

In the event that a hearing is held and a person is permitted to intervene, he becomes a party to the proceeding and has a right to participate fully in the conduct of the hearing. For example, he may present evidence and examine and cross-examine witnesses.

For further details with respect to this action, see the application for license renewal dated March 3, 1978, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 18th day of April 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-11208 Filed 4-25-78; 8:45 am]

[7590-01]

[Docket Nos. 50-269, 50-270 and 50-287]

DUKE POWER CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 60, 61, and 57 to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, issued to Duke Power Company which revised Technical Specifications for operation of the Oconee Nuclear Station Unit Nos. 1, 2 and 3, located in Oconee County, S.C. The amendments are effective February 8, 1978.

These amendments revise the Technical Specifications to permit on a one time basis, the Unit 3 Reactor Building Valve 3RBS to be inoperable for 72 consecutive hours. This valve had failed during a surveillance test and an emergency Technical Specification change was requested by the licensee which would permit continued full power operation of Unit 3 while for 72 hours while the valve was repaired.

The application for these amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, negative declaration, or environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated February 8, 1978, (2) Amendment Nos. 60, 60 and 57 to Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW, Washington, D.C. 20555 and at the Oconee County Library, 201 South Spring, Walhalla, S.C. 29691. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 8th day of March 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-11211 Filed 4-25-78; 8:45 am]

[7590-01]

[Docket Nos. STN 50-488; 50-489; 50-490]

DUKE POWER CO.; (PERKINS NUCLEAR STATION, UNITS 1, 2 AND 3)

Memorandum and Order

On April 11, 1978, the Nuclear Regulatory Commission acted to amend Table S-3 of 10 CFR Part 51 to remove the value contained therein for releases of radon and to clarify that Table S-3 does not include health effects from the effluents described. 43 FR —.

Staff and Applicant now urge the Board to permit them to file affidavits concerning the environmental effects of radon releases. Intervenor asserts the need for cross-examination of this issue; Staff and Applicant oppose.

In amending Table S-3, the Commission amended footnote 1 to read in part as follows:

. . . However, there are other areas that are not addressed at all in the Table. Table S-3 does not include health effects from the effluents described in the Table, or estimates of releases of Radon-222 from the uranium fuel cycle. These issues which are not addressed at all by the Table may be the subject of litigation in individual licensing proceedings. . . .

Further, in *Northern States Power Company, et al.* (Tyrone Energy Park, Unit 1) ALAB-464, 7 NRC — (March 17, 1978) the Appeal Board affirmed a Licensing Board decision not to accept affidavits offered by the Staff on the radon issue subject, however, to all parties rights to move to reopen the record should they deem it advisable in light of subsequent Commission action. The Appeal Board stated that because the Commission's rule against challenging its regulations could inhibit any attempt to litigate the radon issue, this right had to be reserved to all parties.

As indicated, the Commission has now acted to open the radon issue to litigation in individual licensing proceedings. In light of this and the Appeal Board's ruling in *Tyrone*, no basis exists for eliminating Intervenor's right to cross-examine Applicant's and Staff's witnesses on the radon issue.[1]

Accordingly, it is ordered that the record herein is reopened and an evidentiary hearing will be held on Tuesday, May 16, 1978, at 9:30 a.m. in the Commission's Hearing Room, 5th Floor, East-West Towers, 4350 East-West Highway, Bethesda, Maryland, at which evidence will be received on environmental considerations of releases of Radon-222 associated with the uranium fuel cycle.

It is so ordered.

The Atomic Safety and Licensing Board.

Dated at Bethesda, Md., this 14th day of April 1978.

FREDERIC J. COUFAL,
Chairman.

[FR Doc. 78-11210 Filed 4-25-78; 8:45 am]

[7590-01]

[Docket No. 50-277/278]

PHILADELPHIA ELECTRIC CO.

Corrected; Granting an Exemption From the Requirements of General Design Criterion 50, "Containment Design Basis", of Appendix A to 10 CFR Part 50

On March 29, 1978, a "Notice of Granting An Exemption From the Requirements of General Design Criteria 50, 'Containment Design Basis', of Appendix A to 10 CFR Part 50", was published on page 43 F.R. 13111. The First paragraph of the Notice made reference to Peach Bottom Atomic Power Station Units Nos. 1 and 2. The Units that should have been referenced are Peach Bottom Atomic Power Station Units Nos. 2 and 3.

Dated at Bethesda, Md., this 20th day of April 1978.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3 Division of Operating Reactors.

[FR Doc. 78-11212 Filed 4-25-78; 8:45 am]

[7590-01]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.142, "Safety-Related Concrete Structures for Nuclear Power Plants (Other Than Reactor Vessels and Containments)," describes a method acceptable to the NRC staff for complying with the Commission's regulations with regard to safety-related concrete structures other than reactor vessels and containments for nuclear powerplants. This guide endorses ACI Standard 349-76, "Code Requirements for Nuclear Safety-Related Concrete Structures." Reactor vessels and containments are treated by ACI Standard 359-74, "Code for Concrete Reactor Vessels and Containments," which is being endorsed by other regulatory guides.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Public comments on Regulatory Guide 1.142 will, however, be particularly useful in evaluating the need for an early revision if received by June 23, 1978.

Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

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

Dated at Rockville, Md., this 18th day of April 1978.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc. 78-11214 Filed 4-25-78; 8:45 am]

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[1] See also *Metropolitan Edison Company, et al.* (Three Mile Island Nuclear Station, Unit No. 2) ALAB-465, 7 NRC — (March 27, 1978) in which the Appeal Board remanded ". . . the radon issue to the Licensing Board with directions to reopen the record to receive new evidence, to hold such further hearings on that evidence as may be required and to render a supplemental initial decision." (Slip op. p. 3)

[7590-01]

[Docket No. 50-29]

YANKEE ATOMIC ELECTRIC CO.

Granting of Relief From ASME Section XI Inservice Inspection (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Yankee Atomic Electric Co. The relief relates to the inservice inspection (testing) program for the Yankee Nuclear Power Station (Yankee-Rowe) (the facility) located in Rowe, Franklin County, Mass. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

Relief is granted, on an interim basis, pending completion of a more detailed review, from compliance with certain inservice inspection and testing requirements determined to be impractical for the facility because compliance would result in hardships and unusual difficulties without a compensating increase in the level of quality or safety.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the letter granting relief. Prior public notice of this action was not required since the granting of this relief from ASME Code requirements does not involve a significant hazards consideration.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement of negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the licensee's submittal dated December 19, 1977, (2) the request for relief dated February 16, 1978, and (3) the Commission's letter to the licensee dated March 13, 1978. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Greenfield Public Library, 422 Main Street, Greenfield, Mass. 01581. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 13th day of March 1978.

For the Nuclear Regulatory commission.

DENNIS L. ZIEMANN,
Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-11213 Filed 4-25-78; 8:45 am]

[7590-01]

ASSESSMENT OF ENVIRONMENTAL IMPACTS OF URANIUM MILLS IN AGREEMENT STATES

Technical Assistance for Agreement States To Conduct Environmental Assessments

SUMMARY

As part of its comprehensive program to strengthen public health and safety regulation of uranium mills, the Commission has decided to offer technical assistance to Agreement States, on a temporary, trial basis, to assist them in assessing the environmental impacts of their uranium mill licensing. The program will be an interim one, allowing the Commission to complete other efforts aimed at resolving key, long-term mill tailings problems. The purpose of this statement is to articulate the Commission's reasons for this offer of assistance. Background information and an explanation of policy options considered but not selected by the Commission are contained in the Appendix to this statement.

DETAILED STATEMENT

Section 274i of the Atomic Energy Act authorizes the Commission to provide technical assistence to any State or group of States "as the Commission deems appropriate." 42 U.S.C. 202li. It is our belief that Agreement States which license uranium mills would benefit from NRC technical assistance designed to help the States conduct environmental assessments of their licensing actions.

Our experience is that an environmental review process similar to our own where the significant environmental impacts of a licensing action and its alternatives are documented and circulated for public review will be a useful one. It enhances the quality of licensing decisions by making it more certain that evaluation of environmental impacts by the regulatory agency is objective and independent and that there is full and effective public exposure of the licensing action. We believe the licensing process in Agreement States—most of which do not now prepare "documented" assessments comparable to ours—would benefit from preparation of an independent assessment similar to that conducted by the NRC in non-Agreement States. Specifically, we believe that a documented environmental assessment prepared for each major mill licensing action in Agreement States would be helpful in exploring the issues and alternative courses of action available on each case. This document need not be identical in scope to those prepared for mills licensed by NRC under the Atomic Energy Act. However, the assessment, as a minimum, should treat the most important environmental aspects of milling operations: Tailings waste management and disposal, siting and radiological assessment.

Licensing practices of States must be viewed in terms of their legislative underpinnings as well as the resources and expertise available to the States. After evaluating options available to improve the quality of environmental reviews in Agreement States (see appendix), the Commission has concluded that the most prudent course of action at this time would be to offer assistance to the States. Specifically, the commission will offer assistance to willing States through agreements entered into under the authorities provided by section 274i of the Atomic Energy Act.

The Commission, therefore, has authorized the staff to enter into cooperative agreements with willing States whereby:

1. NRC will furnish technical assistance to the State in reviewing the likely environmental impacts and consequences resulting from the construction or operation of any new uranuim mill and any major modification of an existing mill or any operating mill which may be the subject of a State license renewal application, and any major uranium mill tailings disposal activity licensed by the State. This analysis would take the form of an NRC staff report based on environmental data furnished to NRC by the State.

2. The scope of the environmental report would be worked out jointly by representatives of the State and the NRC and a mutually agreeable schedule for completing the document established. One arrangement which may be appropriate would be for NRC staff to cover in its report the most important environmental aspects of the milling operations: tailings waste management and disposal, siting and radiological assessment. Under this arrangement, the staff would be assessing primarily the critical, long-term environmental problems of mill tailings waste management which are of national concern. The States could treat, as necessary, other environmental issues such as socioeconomic and groundwater impacts which are of local concern and more transient in nature than the tailings problem.

3. States would use any reports supplied by NRC under the agreement as

a decision-making tool in their licensing processes to the extent consistent with State law. Also, the States would be urged to consider a prohibition on commencement of major construction activities prior to completion of the environmental review.

4. States would be urged to enact licensing fee schedules that are similar to NRC's.

The offer of assistance would be contingent upon availability of NRC funding. Furthermore, assistance would be offered for a limited period of time (about three years). The Commission views the program of technical assistance as an interim step toward a strengthening of the environmental review of mills in all States to meet an appropriate standard of quality. A trial, interim program offers NRC the opportunity for additional experience in working with Agreement States before we settle on final approaches. The program will be sufficiently flexible to allow for improvements and related policy changes along the way. In the course of working with States and in light of the results of its own ongoing efforts, the Commission will evaluate the program annually to decide whether (1) States had developed adequate capabilities to make continued assistance unnecessary; (2) the program should be continued; or (3) NRC should seek legislative changes or adopt some other policy alternative regarding the regulation of mills in the Agreement States.

APPENDIX

BACKGROUND

1. *Uranium milling generally:* Uranium oxide (U_3O_8) is processed from uranium ore by a series of physical and chemical actions in a uranium mill. Uranium milling is one of the first steps in the uranium fuel cycle for which a license is required by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. Mills are generally located near uranium mines, and they receive ore either directly from mines, and they receive ore either directly from mines or from intermediate ore buying stations.

Uranium ore usually contains only a very small fraction, often less than 1 percent by weight, of useable uranium oxide. Consequently, the milling process generates large amounts of waste tailings in the form of a sand-like material. The tailings contain traces of the chemicals used to extract uranium from the ore and, more importantly, most of the radioactivity naturally associated with the ore.

The radioactivity of mill tailings is due to the presence of radioactive decay products of uranium. This radioactivity is associated in nature with the rock medium containing uranium. In fact, the uranium daughter products account for approximately 85 percent of the natural radioactivity of uranium ore, which remains in the tailings after milling. In the process of mining and milling, the ore is brought to the surface and can result in higher radioactive exposure to man than it does in its natural undisturbed conditon. The mining and milling process therefore requires that measures be taken to avoid environmental impacts from its radioactivity either from external exposure or through inhalation of radon gas.

It is in the area of long-term health effects, where environmental and public health and safety issues are intertwined, that the greatest regulatory concern lies. Long-term problems can arise if uranium mills are closed without adequate measures being taken to eliminate or limit radon release.

The environmental and health problems posed by tailings piles were not fully appreciated until the 1970's. In the 1950's, during the early stages of the nuclear program, no measures were taken to stabilize or cover tailings and limit radon gas emissions, and as a result, there are now 22 inactive tailings piles that require remedial action to protect the public from long-term adverse environmental and health impacts. As a consequence of the inadequate control measures, these inactive tailings piles, which resulted primarily from milling for government uses, have become the source of increasing concern.

The concern over inactive tailings piles resulted in reports to Congress by the Environmental Protection Agency, the Energy Research and Development Administration (ERDA, whose functions have now been absorbed by the Department of Energy, DOE), and the General Accounting Office. At the request of Congress, ERDA devised plans to stabilize the inactive tailings sites, and legislation is being considered which would authorize DOE to implement the plan and NRC to participate in the process of establishing ways to deal with the tailings problem.

NRC requires new mill licensees to commit themselves to tailings management measures that will mitigate environmental impacts. Older operating mills are being conformed to these requirements as their licenses require renewal.

2. *NRC licensing of uranium mills.* NRC is authorized to issue licenses to possess and use source material for uranium milling under section 63 of the Atomic Energy Act of 1954, as amended. 42 U.S.C. 2093. Requirements for suich source material licenses are stated in 10 CFR Part 40.

In 1972 the AEC published a regulation requiring the preparation of an environmental impact statement (EIS), pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321, for each uranium mill licensed by the Commission. 10 CFR 40.31(f), 32(e). Since then the Commission has prepared EIS's for the mills it licenses, and the procedures and guidelines for these statements are set forth in 10 CFR Part 51. The environmental review process carried out under NEPA insures opportunity for participation by the public and other Federal and State agencies in the assessment of environmental impacts, consideration of alternatives, and the imposition of conditions to mitigate health and environmental impacts. The Commission is of the view that these procedures are beneficial in controlling the impacts of uranium mills.

3. *Agreement State licensing of mills.* Under section 274 of the Atomic Energy Act, as amended, 42 U.S.C. 2021, the Commission is authorized to enter into agreements with the States by which Commission jurisdiction over certain nuclear materials and plants, including uranium mills, is discontinued and regulatory authority is assumed by the States. At present 25 agreements have been entered into, and Agreement States licenses account for more than one half of the presently operating uranium mills. The Agreement States involved in licensing uranium mills are New Mexico, Colorado, Washington, and Texas. Arizona is an Agreement State where future uranium mill licensing is anticipated. Of these five States, only Washington has a law similar to NEPA requiring the preparation of EIS's.

In May of 1977, The Natural Resources Defense Council (NRDC) brought suit against the Commission and the State of New Mexico to have an environmental impact statement (EIS) prepared for a uranium mill being licensed in that State. Such a document is prepared by the Commission in connection with the licensing of uranium mills under its jurisdiction. The legal position of the Commission is that preparation of an EIS for uranium mills being licensed in NRC Agreement States such as New Mexico is not required. Agreement States act under authority independent of the NRC in licensing uranium mills, and therefore, such licensing does not constitute a major federal action requiring an EIS under the National Environmental Policy Act (NEPA). See *Natural Resources Defense Council v. Nuclear Regulatory Commission*, C.A.D.C., No. 77-1570 (January 6, 1978). Additionally, section 274 of the Atomic Energy Act, which provides authority for relinquishing source material licensing control to the States, does not require preparation of an EIS in conjunction with Agreement State source material licensing. The central requirement of section 274 is that States which enter into and exercise regulatory authority by virtue of an agreement with the Commission must have regulatory programs that are "adequate to protect public health and safety." 42 U.S.C. 2021d(2), 2021j. Such a general requirement does not, in the Commission's judgment, mandate that the States do EIS's. A second requirement of 274 is that State Programs should be "compatible with the Commission's program." However, as we discuss later in detail, this obligation would not be a basis for requiring States to do EIS's.

POLICYMAKING REVIEWS

1. *Generic Environmental Impact Statement on Uranium Milling.* The Natural Resources Defense Council (NRDC) filed a petition for rulemaking with the Commission, which was published on May 14, 1975 (40 F.R. 20983), requesting that the Commission require a performance bond of uranium mill licensees for the stabilization of tailings piles and that the Commission prepare a programmatic impact statement on the uranium mills regulatory programs. The request covered uranium mills licensed by the Commission and those licensed by Agreement States. Following receipt of public comments on the petition, the Commission announced its intention to prepare a generic environmental impact statement (GEIS) on uranium milling operations, including those in Agreement States and those licensed by the Commission. 41 F.R. 22430 (June 3, 1976). The scope and content of the proposed GEIS can be found at 42 FR 13874 (1977). Briefly, as proposed the GEIS would address conventional uranium milling, with emphasis on the waste management of mill tailings. Its scope is planned to include an examination of the need for uranium milling, identification of the environmental impacts of milling, taking into account the

proper time for requiring final and adequate disposition of tailings, discussion of alternatives and costs for mitigating the environmental impacts, and an assessment of regulatory programs for uranium mills and mill tailings. As to this last matter, the Commission is currently examining the reach of statutory authority for its regulatory program from, for example, the standpoint of implementing the GEIS findings and conclusions.

The Commission declined to postpone mill licensing actions, as NRDC had requested, and deferred until completion of the final GEIS the question of requiring bonding of licensees for the care of tailings piles. Regulations addressed to this question were promised on completion of the GEIS, which is anticipated for September 1978. Mill operators licensed in the meantime are required to agree to abide by the outcome of the GEIS, including any related rulemaking.

2. *Task force on the Agreement States program.* In the fall of 1976, the Commission formed a task force to review the Agreement States program. Although it was not created for the purpose of reviewing mill licensing in Agreement States, the task force addressed the issue of whether the Commission should reassert jurisdiction over uranium mill licensing. A draft task force report (NUREG-0299) was circulated to all States for review, and a final report (NUREG-0388) was published in December, 1977. Both reports noted the differences between Agreement States and NRC regulatory programs on the preparation of EIS's. In the final report, the Task Force concluded that there was no compelling reason for NRC to reassert jurisdiction over uranium mills, but that NRC should assist agreement states in carrying out prelicensing environmental analysis that would be the functional equivalent of an EIS.

3. *Consultations with the Agreement States.* As a result of the NRDC case, the Commission requested a staff comparative review of mill licensing procedures in Agreement States and by NRC in non-Agreement States, particularly addressed to the issues of environmental assessments and preparation of EIS's. The Agreement States were independently questioned concerning their environmental review procedures. A workshop was sponsored by the NRC in Colorado Springs on November 17-18, 1977, to discuss issues in Federal-State regulation of uranium mills.[1]

The purpose of the Colorado Springs workshop was to examine current State practices in preparing environmental assessments, to compare their practices to Federal practices, and to assess the attitudes of the States regarding reassertion of Federal control. In addition a draft agreement between NRC and Colorado providing for technical assistance to prepare an environmental assessment was discussed.

There are currently four States regulating active uranium mill source material operations under terms of section 274 agreements with NRC and its predecessor AEC. The States, to varying degrees, consider environmental impacts and provide for public participaton in their license review processes. These States do not normally document the review of environmental impacts in an independent report similar to that prepared by the Commission. None of the States has regulations to prohibit construction activities prior to completion of its environmental assessment.

The Agreement States generally believed that their current level of environmental studies is adequate but viewed as beneficial an expansion of their environmental assessment processes to deal specifically with uranium mills. However, the States felt uncomfortable with procedures which would require or encourage extensive formalized studies and documentation equal or comparable to a Federal EIS. State objections to the NEPA/EIS process ranged from a view that the process was too elaborate and encumbered with excessive and unimportant detail, to a concern that the process might lead to a loss of local autonomy. Some State representatives noted that their legislatures had specifically refused to authorize extensive environmental assessment activities.

Most States have significant resource limitations—both people and money—that affect licensing scope and time. They judged that expanded licensing responsibilities would require additional resources. Colorado, Washington, and Idaho representatives said they would be receptive to a technical assistance offer by NRC to prepare a detailed environmental analysis. In general, all States would welcome NRC technical assistance to develop environmental assessments appropriate to their needs. However, Arizona, New Mexico, North Dakota, and Texas expressed doubts about their authority to request or accept NRC technical assistance in the form of an EIS in light of legislative judgments in their respective states against enacting a NEPA/EIS requirement.

All Agreement States emphatically stated that they wished to retain licensing authority and vigorously opposed the idea of relinquishing it. Texas was typical of the States generally, in stating it would not voluntarily return regulatory authority over uranium mills and would oppose any attempt by NRC to reassert regulatory authority. New Mexico noted practical considerations such as the proximity of its staff to mill operations, its jurisdiction over uranium mines (NRC does not assert regulatory authority over uranium mines) and the fact that New Mexico would continue to regulate the nonradiological aspects of uranium mills even if NRC reasserted its exclusive radiological jurisdiction.

POLICY ALTERNATIVES NOT SELECTED

We identified the following alternatives to the selected option of lending technical assistance.

(1) Continue the status quo in which documented assessments comparable to those of NRC are often not performed.

(2) Undertake an obligation for NRC to prepare an EIS for each uranium mill licensed in an Agreement State.

(3) Direct Agreement States to prepare an EIS for each uranium mill license.

(4) Reassert NRC regulatory authority over all uranium mills.

1. *Continue the status quo.* We observed earlier that, in our experience, an environmental review process similar to our own in which significant environmental impacts of a licensing action and its alternatives are documented and circulated for public review is a useful one. Currently, documented assessments are not performed in most cases of Agreement State licensing. State licensing processes would benefit from such assessments. However, it is problematic whether Agreement States will undertake documented assessments on their own. On the other hand, it appears that, with NRC technical assistance, some Agreement States would be willing to strengthen their environmental assessments for uranium mills. If the status quo were maintained, then the benefits to be derived in these States would not be fully realized.

2. *Undertake an NRC obligation to prepare an EIS for every mill licensed by an Agreement State.* The effect of a section 274 NRC-State agreement on the Commission's regulatory jurisdiction is to leave the Commission with no jurisdiction over individual licensing actions in Agreement States. S. Rep. No. 870, 86th Cong., 1st Sess. 9 (1959). There is, therefore, doubt about the Commission's legal authority to require from the State or their applicants the information necessary to prepare an EIS or to implement its conclusions for individual licensing actions in Agreement States.

Assuming NRC could prepare an EIS for each mill licensed in an Agreement State, to do so would not be clearly advantageous over offering technical assistance to willing States. Most States at the Colorado Springs NRC workshop believed that expanded environmental assessment studies for uranium mills would be beneifical to their licensing actions, but few States believed that the EIS format was best-suited for their needs. The inflexibility of this alternative consequently makes it less desirable than offering technical assistance to willing States.

Furthermore, it is unlikely that we could legally require an Agreement State to adopt an NRC-prepared EIS in licensing a uranium mill. Our relationship to Agreement States under 274 extends only to a review of Agreement State programs and their adequacy and compatibility with the Commission's regulatory program. See 42 U.S.C. 2021d, g and j. We could not say that a State refusal to adopt an NRC-prepared EIS would be enough, by itself, to demonstrate that the State program did not adequately protect public health and safety of its citizens.

3. *Require Agreement States to prepare a full NEPA/EIS for each uranium mill license.* As with alternative 2, this option is less desirable as a matter of policy because it does not allow room for accommodating diverse State licensing procedures and needs. In this instance, our own interest in assisting the Agreement States would be to help them to achieve the benefits of an independent documented environment assessment for each uranium mill licensing action. An EIS is one way but not the only way to achieve the benefits. Most Agreement States do not believe a strict NEPA/EIS format would meet their licensing needs, and we do not see a clear need, at this time, to dictate an EIS requirement that the States do not want.

Independent of this, we have doubts about our legal authority to impose such a requirement. We have already noted that our authority over Agreement State programs is closely circumscribed. Specifically, we have noted that our authority is generally limited to specific actions that would be required to protect public health and safety with respect to materials covered by the agreement. For example, section 274j limits our powers to terminate or suspend an Agreement State to situations in which it is "required to protect public health and safety." See also 42 U.S.C. 2021k relating to the effect of section 274 on State authority.

[1] A copy of the report of the workshop is available from NRC. Report on the Nuclear Regulatory Commission Workshop, "Federal-State Regulation of Uranium Mills," NUREG/CR-0029.

The argument most commonly pressed to show that the Commission is authorized to impose an EIS obligation on Agreement States arises from the section 274d requirement that, as a condition for approval, State programs be "compatible with the Commission's program" for regulating nuclear materials. 42 U.S.C. 2021d(2). Assuming, without deciding, that Agreement States have a continuing responsibility to maintain compatibility between their programs and the Commission's, nonetheless it is clear that Congress did not intend "compatibility" to be a pipeline for the Commission to impose continuing procedural obligations on Agreement States. A central theme of section 274 and its legislative history is that the Commission, upon entering into an agreement with a State, will discontinue its regulatory authority and not seek to reenter the field except "under extraordinary circumstances" involving the public health and safety of the State citizenry. S. Rept. No. 870, supra, at 12.[2] It would not be consistent with this Congressional balance of Federal and State interests for us now to claim continuing authority to impose additional requirements on the States which were not required to protect public health and safety.

Additionally, when applying section 274, we obviously must recognize the Congressional intent to require "compatibility" rather than "identity" between Agreement States and the Commission's program. We believe section 274 reflects a traditional concept of "federalism" and a sensitivity to state participation in regulating radioactive materials to protect public health and safety which together require that we not construe "compatibility" to mandate federal decisionmaking procedures such as NEPA. Congress did not expressly impose federal administrative procedures on the States in section 274, and we have never construed "compatibility" to require States to adopt such procedures. For these reasons, we believe that section 274 would not now authorize us to require an Agreement State to prepare an EIS for a uranium mill license.

4. *Reassert NRC jurisdiction over uranium mill licensing in Agreement States by legislation.* This alternative involves the most far reaching action we might take to ensure that all uranium mill licensing was accompanied by independent environmental assessments. It could have the potential for seriously impairing the radiological programs of some States. It would not be consistent with current policies, or with the policy of section 274 to relinquish more, rather than less, governmental authority to the States. We consequently view it as an alternative to be pursued only if other measures will not suffice.

Such a judgment cannot now be made. We have not fully explored the benfits to be gained from measures such as offering technical assistance to the States. As the technical assistance program goes forward, Agreement States may be willing and able to assume additional environmental assessment responsibilities. We can better make that judgment after some experience with the program. Similarly, we should await the conclusions of other aspects of our comprehensive program to strengthen public health and safety regulation of uranium mills—for example, our GEIS on uranium milling due in draft during the summer of 1978—before making final decisions in this area of our dealings with Agreement States. The outcome of our review of our own statutory authority over uranium mills will also be relevant.

Dated at Washington, D.C., this 20th day of April 1978.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-11279 Filed 4-25-78; 8:45 am]

[2]Indeed, some State representatives in their testimony during Congressional hearings on 274 were unwilling to see even this narrow authority remain in the Commission. See Hearings before the Joint Committee on Atomic Energy, 86th Congress, 1st Sess. 323 (1959).

[7590-01]

[Docket No. 50-255]

CONSUMERS POWER CO.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 40 to Provisional Operating License No. DPR-20, issued to Consumers Power Co. (the licensee), which revised Technical Specifications for operation of the Palisades Plant (the facility), located in Covert Township, Van Buren County, Mich. The amendment is effective as of its date of issuance.

The amendment authorizes changes that will enhance the performance and control of the Palisades Iodine Removal System.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment did not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated March 9, 1978, as supplemented by letter dated March 30, 1978, (2) Amendment No. 40 to License No. DPR-20, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's public document room, 1717 H Street NW., Washington, D.C., and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Mich. 49006. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commision, Washingtn, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 12th day of April 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
Chief Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 78-11288 Filed 4-25-78; 8:45 am]

[7590-01]

HIGH-LEVEL RADIOACTIVE SOLID WASTE FORMS

Waste Management Conference

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of Conference.

SUMMARY: The Nuclear Regulatory Commission (NRC) will hold a conference on High-Level Radioactive Solid Waste Forms at the Denver Hilton Hotel, Denver, Colo., December 19-21, 1978. The purpose is to provide opportunity for early review of the various proposed solid waste forms including spent fuel disposal package forms by people with the appropriate technical expertise to discuss their pros and cons in all phases of the management of high-level wastes. This contribution is desired to supplement the record being used by NRC to develop waste management standards.

FOR FURTHER INFORMATION CONTACT:

Dr. R. B. Leachman or Ms. Leslie A. Casey, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, 301-427-4433.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) is responsible for all regulatory aspects of high-level waste management. These include the review and licensing of waste preparations at reprocessing plants, of any spent fuel disposal, of shipping procedures, and of waste repositories. For all of these, the NRC needs to determine the potential risk to the public health and safety resulting from adequacy of the solid waste forms or spent fuels to contain the radionuclides of concern, as well as the reduction of risk provided by deep burial of solid wastes. Systems studies have been performed to identify the aspects of the overall waste management for which the form of solidification is particularly important. Studies are underway for spent fuels. Although not definitive, these studies often indicate the important aspects are transportation and pre-emplace-

ment handling. The question of the role of the waste form after emplacement in a repository deserves further scrutiny. To obtain information and to review these questions a three-day conference which will include workshops will be held.

As part of a public record of consideration of information important to formulation of waste management standards, regulations and guidelines, the NRC has already conducted two workshops in the waste management field. One, a workshop entitled, "The Management of Radioactive Waste: Waste Partitioning as an Alternative" was held at Battelle-Seattle Research Center, June 8-10, 1976, to consider the role of radioactive waste partitioning in waste management. The Partitioning Conference was very similar to the presently announced Solid Waste Form Conference in that it, too, was a consideration of technical issues important to rule making.

The other, a workshop entitled, "Workshops for State Review of Site Suitability Criteria for High-Level Radioactive Waste Repositories" was held consecutively in Denver, New Orleans, and Philadelphia over the time period of September 19-30, 1977. The purpose of the State Workshops was to provide early involvement of the States in the regulation development process.

The presently announced Conference will be open, however the intent is a technical Conference. Therefore, the participants will be invited, and observers are welcome on a space-available basis. The Conference is free, but to assist NRC in planning sufficient meeting arrangements, people who wish to participate or attend are asked to pre-register with the NRC Conference Manager, SCS Engineers, 11800 Sunrise Valley Drive, Reston, Va. 22091, telephone 703-620-3677.

Dated at Silver Spring, Md., this 19th day of April 1978.

For the Nuclear Regulatory Commission.

JAMES C. MALARO,
Chief, High-Level and Transuranic Waste Branch, Division of Fuel Cycle and Material Safety.

[FR Doc. 78-11286 Filed 4-25-78; 8:45 am]

[7590-01]

[Docket No. 50-331]

IOWA ELECTRIC LIGHT AND POWER COMPANY, ET AL.

Issuance of Amendment to Facility Operating Lincense

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 42 to Facility Operating License No. DPR-49 issued to Iowa Electric Light and Power Co., Central Iowa Power Cooperative, and Corn Belt Power Cooperative, which revised Technical Specifications for operation of the Duane Arnold Energy Center, located in Linn County, Iowa. The amendment is effective as of its date of issuance.

The amendment changes the technical specifications to allow operation of the Duane Arnold Energy Center in Core Cycle 4.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated January 4, 1978, (2) amendment No. 42 to License No. DPR-49, and (3) the Commission's related safety evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Cedar Rapids Public Library, 426 Third Avenue, SE., Cedar Rapids, Iowa 52401. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 20th day of April, 1978.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-11289 Filed 4-25-78; 8:45 am]

[7590-01]

[Docket No. 50-245]

NORTHEAST NUCLEAR ENERGY CO., ET AL.

Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued amendment No. 47 to Provisional Operating License No. DPR-21, issued to Northeast Nuclear Energy Co., the Hartford Electric Light Co., Western Massachusetts Electric Co., and Connecticut Light & Power Co. (the licensees), which revised technical specifications for operation of the Millstone Nuclear Power Station, Unit No. 1 (the facility) located in Waterford, Conn. The amendment is effective as of its date of issuance.

The amendment revised the technical specifications for the facility to allow an administrative change, use of revised Minimum Critical Power Ratio (MCPR) limits and a new Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) figure. The amendment relates to refueling of the core for Cycle 6 operation.

The application for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 14, 1977, and supplements thereto dated February 28, 1978, and March 21, 1978, (2) amendment No. 47 to License No. DPR-21, including the Commission's related transmittal letter, and (3) the Commission's related safety evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Waterford Public Library, Rope Ferry Road, Route 156, Waterford, Conn. 06385. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland this 12th day of April 1978.

For the Nuclear Regulatory Commission.

D. L. ZIEMANN,
Chief Operating Reactors Branch No. 2 Division of Operating Reactors.

[FR Doc. 78-11287 Filed 4-25-78; 8:45 am]

[7590-01]

[Docket No. 50-278]

PHILADELPHIA ELECTRIC CO.

Granting of Relief From ASME Section XI Inservice Inspection (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Philadelphia Electric Co. The relief relates to the inservice inspection (testing) program for the Peach Bottom Atomic Power Station Unit No. 3 (the facility) located in York County, Pa. The ASME Code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The relief is effective as of its date of issuance.

The relief is granted, on an interim basis, pending completion of our detailed review, from those inservice inspection and testing requirements of the ASME Code that the licensee has determined to be impractical within the limitations of design, geometry, and materials of construction of components, because compliance would result in hardships and unusual difficulties without a compensating increase in the level of quality or safety.

The request for relief complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR, Chapter I, which are set forth in the letter granting relief. Prior public notice of this action was not required since the granting of this relief from ASME Code requirements does not involve a significant hazards consideration.

The Commission has determined that the granting of this relief will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For further details with respect to this action, see (1) the request for relief dated January 23, 1978, (2) the Commission's letter to the licensee dated ——.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pa. 17126. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 20th day of April 1978.

For the Nuclear Regulatory Commission,

GEORGE LEAR,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-11290 Filed 4-25-78; 8:45 am]

[7590-01]

[Docket Nos. 50-514; 50-515]

PORTLAND GENERAL ELECTRIC CO., ET AL. (PEBBLE SPRINGS NUCLEAR PLANT, UNITS 1 AND 2)

Schedule for Resumption of Evidentiary Hearing

The evidentiary hearing in the above matter will resume on Wednesday, May 31, 1978, at 9 a.m., local time, at the following location: Arlington High School, Arlington, Oreg. 97812.

The hearing will continue at the above location through Friday, June 2, 1978.

On Monday, June 5, 1978, at 9 a.m., local time, the hearing will resume and continue through Friday, June 9, 1978, if necessary, at the following location: U.S. Court of Appeals Courtroom, The Pioneer Courthouse, 555 Southwest Yamhill, Portland, Oreg. 97204.

The agenda for the hearing includes remaining environmental issues, and the health and safety isses in this proceeding. Members of the public are invited but limited appearances will not be received at this session of the hearing.

It is so ordered.

Dated at Bethesda, Md., this 20th day of April 1978.

For the Atomic Safety and Licensing Board.

JAMES R. YORE,
Chairman.

[FR Doc. 78-11285 Filed 4-25-78; 8:45 am]

[7590-01]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section No. 3.9.1 of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September, 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 3.9.1 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan incuding all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 (5 U.S.C. 552(a).)

Dated at Bethesda, Md., this 19th day of April 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 78-11281 Filed 4-25-78; 8:45 am]

[7590-01]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section No. 3.9.5 of the SRP for the NRC staff's

safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September, 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements along are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 3.9.5 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 (5 U.S.C. 552(a).)

Dated at Bethesda, Md., this 19th day of April 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 78-11282 Filed 4-25-78; 8:45 am]

[7590-01]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section No. 3.9.6 of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 3.9.6. is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 (5 U.S.C. 522(a).)

Dated at Bethesda, Md., this 19th day of April, 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 78-11283 Filed 4-25-78; 8:45 am]

[7590-01]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced FEDERAL REGISTER notice dated December 8, 1977, the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section No. 3.10 of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 3.10 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 (5 U.S.C. 552(a).).

Dated at Bethesda this 19th day of April 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety Office of Nuclear Reactor Regulation.

[FR 78-11284 Filed 4-25-78; 9:04 am]

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

CONTROL OF MANAGEMENT SYSTEM CRITERIA AND DATA REQUIRED OF CONTRACTORS

Proposed Policy

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice of a proposed policy which specifies controls to be exercised by executive branch agencies over management system criteria and data required of contractors.

SUMMARY: This proposed policy is intended to implement recommendations A-33 and A-34 of the Commission on Government Procurement.

DATES: Written comments should be submitted to be received on or before Monday, June 19, 1978.

ADDRESSES: Comments should be addressed to the Administrator for Federal Procurement Policy, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT:

Mr. Herman E. Shipley, Deputy Associate Administrator for Systems

and Technology, 202-395-3340.

LESTER A. FETTIG,
Administrator, Office of Federal Procurement Policy.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C.

To the heads of executive departments and establishments

Subject: Control of management system criteria and data required of contractors.

1. *Purpose.* This document establishes policies to be followed by executive branch agencies in the control of development and application of contractually specified management system criteria and required product and nonproduct data in the acquisition of goods and services.

2. *Background.* Government contracts for goods and services frequently prescribe management systems to be used by contractors in performance of their contracts. Additionally, records are required to be kept, reports and data to be submitted, and product data retained or submitted. While the cost impact of such requirements varies sugnificantly among individual procurements, the cumulative costs on all procurements have been estimated to be billions of dollars annually. Although some of these requirements are essential, a system of checks and balances is needed to ensure that such requirements are necessary, that management system criteria rather than management systems are used, and that such requirements are coordinated and compatible. The system set forth herein is illustrated in the attachment to this document.

The Commission on Government Procurement recommended more effective control over the selection and imposition of such data requirements. This policy is based on executive branch consideration of the Commission's recommendations.

3. *Responsibility.* Each agency head has the responsibility to ensure that the provisions of this policy are followed.

4. *Coverage.* This document applies to agency or interagency regulations or other issuances included in purchase solicitations or contracts which: (1) Directly or indirectly prescribe management system criteria for use by contractor; (2) specify product data or nonproduct data required by the Government from the contractor; or (3) establish standards of accuracy and timeliness for the specified data.

5. *Definitions:*

a. Management system is a term used to identify management disciplines which are employed to assist managers in: (1) Defining or stating policy, objectives, criteria, and requirements; (2) assigning responsibility; (3) achieving efficient and effective utilization of resources; (4) periodically measuring performance; (5) comparing that performance against stated objectives and requirements; and (6) taking appropriate action. A management system may encompass part or all of the above areas.

b. Management system criteria means the contractually prescribed management discipline which specifies the required output and performance standards but does not specify detailed procedures or methods of accomplishment. Management system criteria may require generation, preparation, maintenance, analysis, evaluation, display, and dissemination of information.

c. Product data requirement means a documented contract requirement which directs contractors to collect, organize, prepare, maintain, transmit, deliver or retain information incident to the design, development, production, operation, preservation, maintenance or repair of contract end items. Product data include engineering drawings, product specifications and standards, part breakdown lists, catalog item identifications, operation and/or maintenance instructions, descriptions of product physical qualities and characteristics, computerized product definition media, and reprocurement data.

d. Nonproduct data requirement means a documented contract requirement which directs contractors to collect, organize, prepare, maintain, transmit, deliver, or retain information, plans or reports other than product data. Nonproduct data include financial reports, progress reports, design analyses, test data, configuration management reports, engineering change proposals, and other such business and technical management information.

NOTE.—The final report of a study contract of a research effort is excluded as a data requirement in this policy.

e. Tailoring means the careful selection from a list of approved requirements, of only those management system criteria, product data, and nonproduct data requirements which are essential to each individual solicitation or contract.

6. *General policy:*

a. Nothing in this policy relieves or modifies the provisions of OMB Circular A-40.

b. The Federal Government relies on the private sector to provide needed goods and services (see OMB Circular A-76). Agencies should minimize specific instructions to the contractor on methods to be employed in the performance of the contract. Specifically, agencies will specify their requirements for management system criteria, product data, and nonproduct data and the required standards for accuracy and timeliness, in a manner that allows the contractor flexibility in selecting the management systems and other tools used to satisfy these requirements.

c. Agencies will control the development and application of management system criteria, product data requirements, and nonproduct data requirements intended for use in more than one procurement. Agencies will establish and maintain a list(s) of approved management system criteria, product data requirements, and nonproduct data requirements, and assure that unauthorized requirements are not used in procurements. Agencies will verify that there is a demonstrated need for each specific management system criteria, product data requirement, and nonproduct data requirement and that they are cost beneficial before approving them for use and inclusion on the authorized list(s).

d. Agencies will assure compatability among management system criteria product data requirements, and nonproduct data requirements and make maximum use of uniform terminology and classification. Intraagency coordination is mandatory and interagency coordination is encouraged to reduce the expense to the Government incurred by placing differing and incompatible requirements on contractors doing business with several agencies or agency components.

e. For individual procurements, the Government program manager or contracting officer will identify the Government requirements in the solicitation, and request contractors to propose how the requirements will be met and what data is provided. The Government program manager or contracting officer will tailor the application of product data requirements, and nonproduct data requirements to the specific needs of individual procurements, taking into consideration the objective of the procurement, the type of contract, the Government's needs, practical utility, the contractor's proprietary interests, the contractor's proposal, and the desired form and depth of Government management control (prior approval of proposed contractor actions, surveillance, or visibility). Approval of management system criteria, a product data requirement, or a nonproduct data requirement for general use shall not relieve the Government program manager or contracting officer from tailoring the requirement to a specific procurement.

7. *Management system criteria policy.* Agencies will not mandate specific management systems for use by contractors. Only approved management system criteria may be specified in contracts. Contractors will be provided the flexibility to select the management systems and tools they use to satisfy these requirements.

8. *Product data requirements policy.*

a. Agency product data requirements will permit the use of contractor's formats whenever possible.

b. A firm commitment to procure product data requirements will, whenever practicable, be deferred until the time of actual need and scheduled so as to be within the time frame when the product data are normally generated by the contractor. The intention to procure product data should however, be identified in the solicitation and subsequent contract.

c. The price of product data requirements and rights will be negotiated at the time of contracting, where circumstances permit identification of the requirements at that time. Otherwise they will be negotiated not later than the time they are ordered.

d. Consideration should be given to have the contractor be a data repository for the Government.

9. *Nonproduct data requirements policy.*

a. Agency nonproduct data requirements covered by OMB Circular No. A-40 shall conform to the provisions of that Circular.

b. Agency nonproduct data requirements will permit the use of contractor's formats whenever possible.

10. *Implementation.* All agencies will work closely with the Office of Management and Budget in resolving implementation problems. Existing agency documents may need to be revised, consolidated or cancelled to assure that only management system criteria are used and that product data and nonproduct data requirements meet the provisions of this policy.

11. *Submissions to the Office of Management and Budget.* Agencies will submit the following to the Office of Federal Procurement Policy, OMB:

a. Implementing policy directives, regulations, and guidelines as they are issued.

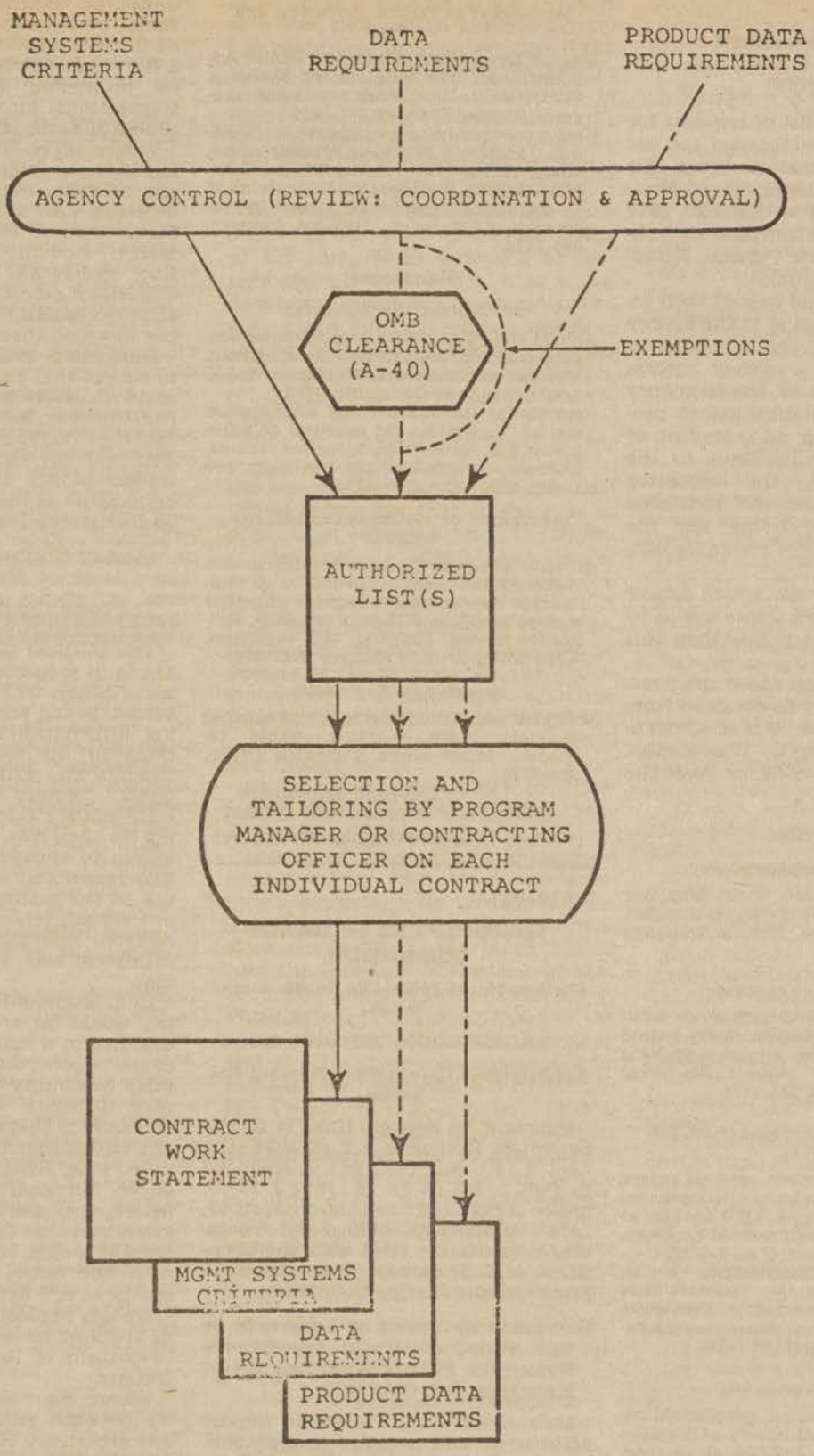
b. Within six months after the date of this document, a time-phased action plan for meeting the requirements of this policy.

2. *Inquiries.* All questions or inquiries should be submitted to the Office of Management and Budget, Administrator for Federal Procurement Policy, telephone 202-395-3340.

Attachment.

Insert Illustrations 3546

ATTACHMENT



[FR Doc. 78-11350 Filed 4-25-78; 8:45 am]

[3110-01]

CLEARANCE OF REQUESTS

List of Reports

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on April 20, 1978 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; an indication of who will be the respondents to the proposed collection; the estimated number of responses; the estimated burden in reporting hours; and the name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

RAILROAD RETIREMENT BOARD

Request for information about employer pension plans, G-88R (1-78), on occasion, 24 railroad employers, Human Resources Division, 395-3532.

DEPARTMENT OF DEFENSE

Departmental and other health services utilization survey, single-time, 3,000 retired military personnel and survivors, Richard Eisinger, Office of Federal Statistical Policy and Standards, 395-3214.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control, medical survey of workers exposed to certain halogenated hydrocarbon, single-time, 1,000 workers at industrial facilities with verified exposure, Richard Eisinger, Ellett, C.A., 395-3214.

Health Services Administration, health maintenance organization national data reporting requirements, PHS-6080, monthly, 80 health maintenance organizations, Richard Eisinger, 395-3214.

DEPARTMENT OF LABOR

Employment and Training Administration, National Longitudinal Survey of Youth—Household Screener, MT-292, single-time, 79,000 households in 202 PSUS, Office of Federal Statistical Policy and Standards, 673-7959.

REVISIONS

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse and Mental Health Administration, The Employment Specialist Study, single-time, drug treatment program, Richard Eisinger, 395-3214.

Health care financing administration (Medicare), physician extenders reimbursement study, HCFA-9777C thru 9781, annually, MD's & PE's participating in experiment I.—sec. 222 of Social Security Act, 2,000 responses, 3,910 hours, Richard Eisinger, 395-3214.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Animal and plant health inspection service, proceeds from animals sold for slaughter, VS1-24, on occasion, 2,500 responses, 500 hours, Clearance Office, 395-3772.

Agricultural stabilization and conservation service, application for approval of warehouse for cotton and/or cotton linters, CCC-49, on occasion, 100 responses, 100 hours, Ellett, C.A., 395-6132.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration, annual inventory of community mental health centers of public mental hospitals, MH-35-3, annually, Federally funded CMHCS, 500 responses, 4,250 hours, Richard Eisinger, 395-3214.

DEPARTMENT OF INTERIOR

U.S. Fish and Wildlife Service, bird banding schedule, 3-860, monthly, 96,000 responses, 19,200 hours, Clearance Office, 395-3772.

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-11485 Filed 4-25-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-14691; File No. SR-Amex-78-10]

AMERICAN STOCK EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on April 17, 1978 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF TERMS OF SUBSTANCE OF THE PROPOSED RULE AMENDMENTS SUBMITTED BY THE AMERICAN STOCK EXCHANGE, INC. ("AMEX")

New Amex Rule 114 would impose affirmative and negative trading obligations on floor traders who wish to qualify as market makers in securities other than options. Such floor traders, when trading for their own account, would be expected to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and would be prohibited from entering into transactions inconsistent with such course of dealings.

Where there is a temporary disparity between supply and demand for any security, such floor trader could be called into the trading crowd by a Floor Official to assist in providing market liquidity. In addition, such floor traders will be expected to direct a specified percentage of their trading activity (initially 50 percent) to securities in which they are assigned.

Rule 110 is proposed to be amended to reflect that floor traders qualifying under Rule 114 would be exempt from the Uniform Net Capital Rule [Rule 15c3-1 (17 CFR 240.15c3-1)] under the Act, and to require that such floor traders satisfy the same capital requirements as those currently imposed on Registered Traders in options.

AMEX'S STATEMENT AND BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of proposed new Rule 114 is to enhance the depth, liquidity and stability of Exchange markets for stocks, bonds and warrants by imposing affirmative and negative obligations to the market on Registered Traders who wish to qualify as Registered Equity Market Makers ("REMM's"). Such traders, when trading for their own account, would be required to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and would be prohibited from entering into transactions inconsistent with such a course of dealings.

In addition, a REMM, like a specialist, would be required to engage in dealings in a security for his own account where there exists a lack of price continuity or depth or a temporary disparity between supply and demand for that security. Under objective circumstances defined by the proposed rule, REMM's would be expected to bid and/or offer in order to better the market for a particular stock to a specified degree. Further, a REMM would be required to comply with the same stabilization requirements as are applicable to specialists. Members registered as REMM's would be required to be on the floor at least 50 percent of the time it is open for trading.

Where there is a temporary disparity between supply and demand for any security, a REMM could be called into the trading crowd by a Floor Official to assist in providing market liquidity. In certain cases, a Floor

Broker would be required to ask a Floor Official to call a REMM into the crowd. In addition, REMM's will be expected to direct a specified percentage of their trading activity (initially 50 percent) to securities to which they are assigned.

In order to assist the Exchange in administering and enforcing the provisions of proposed Rule 114, Commentary .06 to the proposed rule would require REMM's to file reports with the Exchange on a daily basis. The Trading Analysis Division of the Exchange will review these reports daily and compare them with other Exchange Records to monitor compliance with the rule.

Floor traders who qualify under Rule 114 would be considered specialists under the Exchange Act, and trades executed under the rule would be exempt from Section 11(a)(1) of the Act by virtue of the market making exemption of Section 11(a)(1)(A).

REMM's would also be exempt from Exchange Act Rule 15c3-1, the Uniform Net Capital Rule. Therefore, Rule 110 is proposed to be amended to reflect this fact, and to require that such floor traders satisfy the same capital requirements as those currently imposed on Registered Traders in options.

Amex Rule 114 is proposed to be adopted pursuant to Section 11(b) under the Exchange Act, which authorizes national securities exchanges to adopt rules permitting members to be registered as specialists. In addition, proposed Rule 114 would enhance competition among brokers and dealers on the Exchange, thereby furthering Congressional objectives defined in Section 11A(a)(1)(C) of the Act.

The Amex asserts that no formal comments have been solicited or received with respect to the proposed rule changes.

Further, the Amex has determined that no burden on competition will be imposed by the proposed rule changes.

In submitting the instant rule filing, Amex requests that the Commission order approval thereof prior to May 1, 1978, the effective date of Section 11(a)(1) of the Act with respect to transactions on a national securities exchange effected by any member of such an exchange who was a member on May 1, 1975. To accomplish this, Amex suggests that the Commission accelerate approval of SR-Amex-78-10 upon a finding of good cause (and publication of the reason(s) for so finding) pursuant to Section 19(b)(2) of the Act. Alternatively, Amex requests summary effectiveness of SR-Amex-78-10 in accordance with Section 19(b)(3)(B) of the Act. That provision permits the Commission to order effectiveness of an exchange rule proposal summarily (subject to summary abrogation of the proposed rule change within sixty days of the date of filing) if it appears to the Commission that such action is necessary for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities or funds. Thereafter, the rule summarily put into effect is to be refiled and reconsidered by the Commission pursuant to Sections 19(b) (1) and (2).

Although the Commission has determined at this point to publish notice of SR-Amex-78-10 pursuant to Section 19(b)(1) of the Act, that action does not preclude the Commission's invoking at a later date either statutory alternative posed by the Amex to approve, or put summarily into effect, SR-Amex-78-10 on or before May 1, 1978.

Viewing the Amex proposal as one submitted under Section 19(b)(1) of the Act, Section 19(b)(2) provides that within thirty-five days of the date of publication of this notice in the FEDERAL REGISTER, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the abovementioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted by May 17, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

APRIL 20, 1978.

[FR Doc. 78-11369 Filed 4-25-78; 8:45 am]

[8010-01]

[Release No. 34-14696; File No. SR-NYSE-78-26]

NEW YORK STOCK EXCHANGE, INC.

Self-regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on April 13, 1975, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows (additions italicized, deletions bracketed):

TEXT OF PROPOSED RULE CHANGE SUBMITTED BY THE NEW YORK STOCK EXCHANGE, INC. ("NYSE")

COMPETITVE TRADERS

Rule 111. [(a) No member shall initiate transactions, while on the Floor, for an account in which he has an interest unless such member is registered as a competitive trader with the Exchange and unless the Exchange has approved of his so acting as a competitve trader and has not suspended or withdrawn such approval.]

(a) No member shall initiate transactions, while on the Floor, for his own account or for the account of his member organization except that a member may initiate transactions, while on the floor, for the account of his organization if:

(i) such member is registered as a competitve trader with the Exchange; and

(ii) the Exchange has approved of his so acting as a competitve trader and has not suspened or withdrawn such approval.

(b) A member who is registered as a competitive trader is required.

(1) To establish and maintain minimum capital of $25,000 over and above any other Federal or Exchange capital requirements; and

(2) to pass a competitive trader examination prescribed by the Exchange.

(c) The provisions of Paragraph (a) of this Rule shall not apply to transactions made:

(1) by specialists of odd-lot dealers in the stocks in which they are registered;

(2) by registered competitive marketmakers;

[(2)] *(3)* to offset a transaction made in error; *or*

[(3)] *(4)* for bone fide arbitrage[; or].

[(4) when a Floor Official expressly invites a member or members to participate in a difficult market situation.]

(d) [Members may initiate transactions in bonds while on the Floor and the provisions of Paragraphs (a) and

(b) of this Rule shall not apply to such transactions.]

No member shall initiate transactions, while on the Floor, for his own account or for the account of his member organization in any listed bond, unless such transactions are exempt or otherwise effected under Sec. 11(a) of the Act and rules adopted thereunder or unless such transactions are effected in accordance with Exchange Rules 80 or 107.

(e) A member may not act as a competitive trader and a registered competitive market-maker in the same security in the same trading session. A specialist may not act, at any time, as a competitive trader or as a registered supplemental market-maker in the stocks in which is registered.

(f) [(e)] Specialists in rights in which they are registered may effect transactions in the security which is the subject of the rights; and when such transactions are made for the purpose of acquiring or liquidating a bona fide hedge position against the rights, the provisions of Paragraph (a) and (b) of this Rule shall not apply.

** * * SUPPLEMENTARY MATERIAL:*[1]

10. A MEMBER WHO ISSUES A COMMITMENT OR OBLIGATION TO TRADE FROM THE EXCHANGE THROUGH ITS OR ANY OTHER APPLICATION OF THE SYSTEM SHALL, AS A CONSEQUENCE THEREOF, BE DEEMED TO BE INITIATING TRANSACTIONS WHILE ON THE FLOOR AS REFERRED TO IN THIS RULE.

NYSE'S STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the proposed amendments to Rule 111 are as follows:

PURPOSE OF PROPOSED RULE CHANGE

The purpose of the proposed amendment of Rule 111 is twofold. First, the Rule is expanded to permit members to effect transactions on the Exchange in two new categories: (i) as registered competitive market-makers; and (ii) as registered odd-lot bond dealers. Second, the Rule has been amended so that it parallels Section 11(a) of the Act by only permitting members of the Exchange to effect transactions on the Floor of a type that is permitted under Section 11(a) and rules adopted by the Commission thereunder.

BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE

The proposed amendment of Rule 111 relates to section 6(b)(1) of the Securities Exchange Act of 1934 in that it permits the Exchange to enforce compliance by its members and persons associated with its members with Section 11(a) of the Act, and the rules of the Commission adopted thereunder.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS, OR OTHERS ON PROPOSED RULE CHANGE

The Exchange has not solicited comments regarding the proposed amendment of Rule 111 and has received none.

BURDEN ON COMPETITION

The Exchange does not believe that the proposed amendments to Rule 111 will impose any burden on competition.

In submitting the instant rule filing, NYSE requests that the Commission order approval thereof prior to May 1, 1978, the effective date of Section 11(a)(1) of the Act with respect to transactions on a national securities exchange effected by any member of such an exchange who was a member on May 1, 1975. To accomplish this, the Commission could accelerate approval of SR-NYSE-78-26 upon a finding of a good cause (and publication of the reason(s) for so finding) pursuant to Section 19(b)(2) of the Act. Alternatively, the Commission could put the proposed rule change into effect summarily in accordance with Section 19(b)(3)(B) of the Act. That provision permits the Commission to order effectiveness of an exchange rule proposal summarily (subject to summary abrogation of the proposed rule change within sixty days of the date of filing) if it appears to the Commission that such action is necessary for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities or funds. Thereafter, the rule summarily put into effect is to be refiled and reconsidered by the Commission pursuant to Section 19(b) (1) and (2).

Although the Commission has determined at this point to publish notice of SR-NYSE-78-26 pursuant to Section 19(b)(1) of the Act, that action does not preclude the Commission's invoking at a later date either statutory alternative to approve, or put summarily into effect, SR-NYSE-78-26 on or before May 1, 1978.

On or before May 31, 1978, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above mentioned self/regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted by May 17, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

APRIL 21, 1978.

[FR Doc. 78-11370 Filed 4-25-78; 8:45 am]

[1] The capitalized, italicized language represents changes approved by the Board and currently on file with the SEC to provide for the start-up of the intermarket Trading System.

[8010-01]

[Release No. 34-14694; File No. SR-NYSE-78-24]

NEW YORK STOCK EXCHANGE, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on April 13, 1978, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change, as follows (additions italicized, deletions bracketed):

TEXT OF PROPOSED NEW RULE 107 SUBMITTED BY THE NEW YORK STOCK EXCHANGE, INC. ("NYSE")

RULE 107

A. Registration of Registered Competitive Market-Makers

(1) Registration of the Individual

No member shall act as a Registered Competitive Market-Maker on the Exchange, unless such member is registered with the Exchange as a Registered Competitive Market-Maker in accordance with this Rule and the Exchange has not suspended or cancelled such registration.

In addition, if, any proceeding under Rule 476, the Exchange shall have found any Registered Competitive Market-Maker to have been guilty of (1) any substantial or continued failure to engage in dealings in a manner consistent with this rule, (2) conduct inconsistent with just and equitable principles of trade, (3) acts detrimental to the interest or welfare of the Ex-

change, or (4) conduct contrary to an established practice of the Exchange, the registration of such Registered Competitive Market-Maker shall be subject to suspension or cancellaton by the Exchange.

Registration as a Registered Competitive Market-Maker shall apply only to individual members, and not to member organizations. Consequently, each member who wishes to act as a Registered Competitive Market-Maker must register with the Exchange as required by this Rule, but such member's transactions as a Market-Maker may be for the account of his member organization.

(2) Requirements

In order to be registered as a Registered Competitive Market-Maker, a member shall:

(a) be able to establish that he can meet, at all times, with his own liquid assets, a minimum capital requirement of $25,000 over and above any and all other federal and/or Exchange capital requirement to which he may be subject; provided, however, that in the case of a Registered Competitive Market-Maker who trades for the account of his member organization, such member organization shall be able to establish that it can meet, at all times, with its own liquid assets, a minimum capital requirement of $25,000 for each Registered Competitive Market-Maker trading for the account of such member organization over and above any and all other federal and/or Exchange capital requirement to which the member organization may be subject; and

(b) pass a Registered Competitive Market-Maker examination prescribed by the Exchange.

A member who becomes registered as a Registered Competitive Market-Maker pursuant to this Rule shall not commence to act as such until notice of his registration has been posted on the Floor for at least one day.

(3) Voluntary Withdrawal of Registration

Any Registered Competitive Market-Maker may withdraw his registration as such on not less than 10 days written notice of such withdrawal given to the Exchange (Market Surveillance and Evaluation Division).

B. Dealings of Registered Competitive Market-Makers

(1) A Registered competitive Market-Maker may act as a Floor broker and execute orders for the purchase or sale of any security which have been left with him for execution by his member organization or any other member or member organization.

(2) Whenever a Registered Competitive Market-Maker makes a bid or offer for his own account or for the account of his member organization, on the Floor, in any stock he shall engage in a course of dealings for his own account or for the account of his member organization in a manner consistent with the maintenance, so far as reasonably practicable, of a fair and orderly market on the Exchange.

(3) All purchases and sales of any stock on the Exchange by a Registered Competitive Market-Maker for his own account or for the account of his member organization shall constitute a course of dealings reasonably calculated to contribute to the maintenance of price continuity with reasonable depth and to the minimizing of the effects of any temporary disparity between supply and demand, whether immediate or reasonably to be anticipated. Transactions not part of such a course of dealings shall not be effected by a Registered Competitive Market-Maker.

(4) At the request of any Floor Official, a Registered Competitive Market-Maker shall make, for his own account or for the account of his member organization, a bid or offer in any stock traded on the Floor, which bid or offer shall be reasonably calculated to contribute to the maintenance of a fair and orderly market in such stock. At the request of any Floor broker holding an unexecuted customer's order to purchase (sell) any stock traded on the Exchange, a Registered Competitive Market-Maker shall make, for his own account of for the account of his member organization, an offer (bid) to such Floor broker for such stock, which offer (bid) shall be reasonably calculated to contribute to the maintenance of a fair and orderly market in such stock.

(5) All purchases and sales of any stock on the Exchange by a Registered Competitive Market-Maker for his own account or the account of his member organization shall be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in such stock.

(6) A Registered Competitive Market-Maker shall avoid participating as a dealer during the opening or reopening of a stock in such a manner as to upset the public balance of supply and demand as reflected by market and limited price orders, unless the condition of the general market makes it advisable to do so. He may, however, buy or sell stock as a dealer to minimize the disparity between supply and demand at an opening or reopening.

* * * Supplementary Material

.10 Registered Competitive Market-Makers and specialists shall coordinate their activities in furtherance of the maintenance of fair and orderly markets.

.20 A Registered Competitive Market-Maker may not effect transactions for the purpose of adjusting a LIFO inventory in any stock except as a part of a course of dealings reasonably consistent with the maintenance of a fair and orderly market.

.30 Form 81/RCMM Reports.—Every Registered Competitive Market-Maker must keep a record of purchases and sales initiated on the Floor for his own account or the account of his member organization. Such record must show the sequence in which each of his transactions actually took place and insofar as practicable the time thereof, and whether each such transaction was at the same price or in what respect it was at a different price in relation to the immediately preceding transaction in the same stock. Registered Competitive Market-Makers are required to report such transactions on Form 81/RCMM, on periodic call from the Exchange.

Registered Competitive Market-Makers who operate on a LIFO basis for valuing inventory are required to submit a report on Form 81/RCMM for the 30-day period prior to the end of the unit's year. This requirement is applicable to Registered Competitive Market-Makers valuing inventory on a LIFO basis, whether they operate on a calendar or fiscal year basis.

.40 When a member makes a bid or offer in bonds on the Floor which will result in a transaction in such bonds in an amount of 100 or more bonds ($100,000 original principal amount or more) he shall be considered as a Registered Competitive Market-Maker as contemplated by this Rule 107 except that such member shall only be subject to the provisions of paragraph B (2), (3) and (5) thereof. For purposes of this paragraph .40, wherever the word "stock" appears in paragraphs B (2), (3) and (5), it shall mean "Bond".

NYSE's Statement of Basis and Purpose

PURPOSE OF PROPOSED RULE CHANGE

Under the Commission's interpretation of Section 11(a) of the act, which becomes fully effective on May 1, 1978, unless the Congress acts to delay its effective date, Exchange members that initiate and effect transactions on the Floor for their accounts, pursuant to a registration with the Exchange as Competitive Traders and the rules applicable thereto, will no longer be able to do so. In addition, such members that, today, initiate and effect transactions on the Floor for the account of their member organization will only be able to continue to do so subject to very limited conditions.

The Exchange has consistently maintained, over the years, that the ability of Competitive Traders to initiate and effect transactions on the Floor for their own or their firm accounts is beneficial to the Exchange's marketplace and serves the public interest because such transactions add depth and liquidity to the markets in listed stocks. Of course, Competitive Traders, when they are acting in the

capacity of dealers, also provide competition to the specialist and thus, their activities in the Exchange's marketplace serves to enhance the desires of the Congress in this area.

In its release number 34-14563, dealing with the implementation of Section 11(a) of the Act, the Commission suggests that members of the Exchange who now function under a Competitive Trader registration may continue their dealer activities in accordance with Section 11(a) of the Act if they were to register with the Exchange as market-makers pursuant to rules adopted by the Exchange and approved by the Commission.

The purpose of proposed Rule 107 is to create a new category of dealers (to be known as Registered Competitive Market-Makers) on the Exchange, in accordance with the Commission's suggestion, and to impose upon such dealers both "affirmative" and "negative" obligations that are aimed at protecting the public interest and strengthening the Exchange's ability to maintain fair and orderly markets. The affirmative obligations of such dealers also increase dealer competition in the trading crowds on the Floor.

Briefly summarized, Rule 107 will provide that a Registered Competitive Market-Maker:

Must establish and maintain, at all times, a minimum capital requirement of $25,000 *over and above* any other federal or Exchange capital requirement to which he may be subject;

Must pass an examination prescribed by the Exchange;

Must engage in a course of dealings in a manner consistent with the maintenance, so far as reasonably practicable, of a fair and orderly market whenever he is bidding or offering in a stock for his own or firm's account;

Must effect all purchases and sales for his own or firm's account in a manner that will contribute to the maintenance of price continuity with reasonable depth and that will minimize the effects of a temporary disparity between supply and demand.

Must make a bid or offer in a stock that will contribute to the maintenance of a fair and orderly market whenever he is called upon to do so by a Floor Official or a Floor broker holding an unexecuted customer's order.

Must effect all purchases and sales for his own or firm's account in a reasonable and orderly manner.

Must avoid participating as a dealer during the opening of a stock in a manner that upsets the public balance of supply and demand.

The Exchange believes that the requirements which will be imposed on registered competitive market-makers under rule 107 are similar in every major respect to those requirements imposed by other exchanges which employ a competing market-maker system under rules approved by the Commission.

Nevertheless, it is appropriate to point out that other exchanges "assign" their market-makers to particular securities and generally require market-makers to effect at least 50 percent of their dealer trades in such securities. At the same time, however, market-makers on other exchanges are also permitted to effect dealer trades in nonassigned securities if they undertake affirmative and negative obligations when they so trade. Rule 107 will not call for NYSE market-makers to be assigned to any particular securities. In studying the market-maker rules of other exchanges, the Exchange could not detect any meaningful distinction between the affirmative and negative obligations as they relate to assigned and nonassigned securities.

Moreover, the 50 percent requirement might encourage market-makers to engage in more dealer trading than is reasonably necessary in assigned securities in order to increase their ability to effect dealer trades in nonassigned securities. To this extent, the 50 percent requirement may be inconsistent with a market-maker's negative obligation.

Another adverse result of the assignment concept is that it will result in a forced dispersion of market-makers and this might create an artificial barrier against the development of true competitive crowds in any given stock at any given time.

In view of the fact that RCMM's will have both affirmative and negative obligations to the markets pursuant to the provisions of NYSE rule 107, the Exchange believes that RCMM's should be deemed market-makers within the meaning of section 11(a)(1)(A) of the act and should also be able to have their transactions effected pursuant to the provisions of rule 107 qualify for inclusion in the so-called "specialists's account" provided for in Regulations T and U of the Board of Governors of the Federal Reserve system.

A provision has been added to rule 107, which would make the obligations in paragraphs B (2), (3), and (5) applicable to Bond transactions of 100 or more bonds. Bond odd-lots are treated under proposed new rule 80, which is the subject of another filing.

Basis Under the Act for Proposed Rule Change

The proposed new rule relates to section 6(b)(5) of the Securities Exchange Act of 1934 in that it will aid in the protection of investors and the public interest by providing a mechanism that can aid in reducing volatile price fluctuations.

Comments Received From Members, Participants, or Others on Proposed Rule Change

The Exchange has not solicited comments regarding the proposed new rule and has received none.

Burden on Competition

The Exchange does not believe the proposed new rule 107 will impose any burden on competition. In fact, the Exchange believes that the proposed new rule will further fair competition between brokers and dealers.

In submitting the instant rule filing, NYSE requests that the Commission order approval thereof prior to May 1, 1978, the effective date of Section 11(a)(1) of the Act with respect to transactions on a national securities exchange effected by any member of such an exchange who was a member on May 1, 1975. To accomplish this, the Commission could accelerate approval of SR-NYSE-78-24 upon a finding of a good cause (and publication of the reason(s) for so finding) pursuant to Section 19(b)(2) of the Act. Alternatively the Commission could put the proposed rule change into effect summarily in accordance with Section 19(b)(3)(B) of the Act. That provision permits the Commission to order effectiveness of an exchange rule proposal summarily (subject to summary abrogation of the proposed rule change within sixty days of the date of filing) if it appears to the Commission that such action is necessary for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities or funds. Thereafter, the rule summarily put into effect is to be refiled and reconsidered by the Commission pursuant to Section 19(b) (1) and (2).

Although the Commission has determined at this point to publish notice of SR-NYSE-78-24 pursuant to Section 19(b)(1) of the Act, that action does not preclude the Commission's invoking at a later date either statutory alternative to approve, or put summarily into effect, SR-NYSE-78-24 on or before May 1, 1978.

Viewing the NYSE proposal as one submitted under Section 19(b)(1) of the Act. Section 19(b)(2) provides that on or before May 31, 1978 or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and argu-

ments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted by May 17, 1978.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A FITZSIMMONS,
Secretary.

APRIL 21, 1978.

[FR Doc. 78-11371 Filed 4-25-78; 8:45 am]

[8010-01]

[Release No. 14681; SR-Amex-77-28]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

APRIL 19, 1978.

On November 23, 1977, the American Stock Exchange, Inc. ("Amex") 86 Trinity Place, New York, New York 10006, filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which would bring membership requirements for partnerships into conformity with requirements for corporations. The Amex proposes to accomplish this by amending its Constitution and rules to permit members to be associated with a firm without requiring that they be general partners. The principal change would be the addition of a new section 2(e) to Article IV, which sets forth conditions of Exchange approval of member firms substantially parallel to those applied to member corporations. Numerous technical conforming changes would be made throughout the Constitution and rules to delete reference to "general partner" or "general partners" where the context raises the inference that, within a member firm, only general partners may be members.

On December 29, 1977, the Amex filed Amendment No. 1 to File No. SR-Amex-77-28. That amendment reflects rule changes contained in File No. SR-Amex-77-28 which were submitted for Commission consideration in File No. SR-Amex-77-5 but which have not yet been approved.[1] The Amex granted an extension of time for Commission consideration of the following provisions that are the subject of File No. SR-Amex-77-28: Article IV, section 2(e)(7) (redesignated as 2(f)(7)), new Article IV, sections 2(e)(3)[2] and 2(e)(5) and Rule 342(a). The extension of time for the above-mentioned portions of File No. SR-Amex-77-28, except for Article IV, section 2(e)(3),[3] will expire when the Commission makes its determination on amendments to section 2(e)(7) and Rule 342(a) as proposed in File No. SR-Amex—77-5.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14460, February 13, 1978) and by publication in the FEDERAL REGISTER (43 FR 7384, February 22, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that those portions of the proposed rule change described above are consistent with the requirements of the Act and the rules and regulations thereunder applicable to registered national securities exchanges, and in particular, the requirements of section 6, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the above-mentioned portions of the proposed rule change be, and hereby are, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-11217 Filed 4-25-78; 8:45 am]

[1] The Commission deferred action, with the consent of the Amex, on amendments to Article IV, section 2(e)(7) and Rule 342(a) as proposed in File No. SR-Amex-77-5 and approved the remainder of that rule filing. See Securities Exchange Act Release No. 14272 (December 14, 1977), 42 FR 63969 (December 21, 1977).

[2] In its March 29, 1978 letter from Fred M. Stone, Vice President of the Amex to Theodore W. Urban, Chief of the SEC's Branch of Exchange Regulation, the Amex extended the time for Commission consideration of Article IV, section 2(e)(3) "until further notice."

[3] Id.

[8010-01]

[Release No. 34-14682; SR-Amex-77-41]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

APRIL 19, 1978.

On January 3, 1978, the American Stock Exchange, Inc., 86 Trinity Place, New York, New York 10006, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amended Rule 470 to enable AMEX floor brokers to be covered by the Special Financial Responsibility Standard set forth in SEC Rule 15c3-1(b)(2).

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14537, March 7, 1978) and by publication in the FEDERAL REGISTER (43 FR 10657, March 14, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6, as appropriate, and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, That the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-11218 Filed 4-25-78; 8:45 am]

[8010-01]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

APRIL 19, 1978.

On January 30, 1978, the American Stock Exchange, Inc. ("AMEX") 86 Trinity Place, New York, New York 10006, filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C.

78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which amends AMEX's minimum margin requirements to conform them to recent changes in Regulation T, exempt loans extended by member firms to customers for purposes other than purchasing, carrying or trading securities and clarify that member firms must always contain initial margin sufficient to satisfy Regulation T.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 34-14536, March 7, 1978) and by publication in the FEDERAL REGISTER (43 FR 10656, March 14, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, That the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-11219 Filed 4-25-78; 8:45 am]

[8010-01]

[Release No. 14674; SR-CSE-77-1]

CINCINNATI STOCK EXCHANGE

Order Approving Rule Change

APRIL 18, 1978.

INTRODUCTION

In the matter of Cincinnati Stock Exchange, Dixie Terminal Building, Cincinnati, Ohio 45202.

In its January 26, 1978 statement relating to the development of a national market system,[1] the Commission set forth its views as to particular initiatives the Commission considers necessary to accelerate implementation of a national market system meeting the Congressional findings and objectives of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975 (the "1975 Amendments"). That statement describes the objectives of the system, some of the deficiencies in the present structure of the markets, and some of the initiatives that are being or, in the judgment of the Commission, should be undertaken to correct the deficiencies and realize the system's objectives.

Reflecting upon progress made to date, the Commission stated in the January Release:

> The securities industry has started to move forward in the development of market linkage systems. Under the sponsorship of the NYSE, work is proceeding on the implementation of an Intermarket Trading System ("ITS") linking the principal exchange markets . . . A second market linkage initiative is the recently-commenced pilot program for a Regional Market System ("RMS"). The RMS is an electronic trading system in which agency and principal limit orders may be entered and executed directly through the system by brokers and dealers participating in that system * * *[2]

The ITS initiative discussed by the Commission in the January Release is in the process of being implemented. In response to a joint plan filed with the Commission on March 9, 1978 by five self-regulatory organizations, the Commission expedited its initial implementation.[3] In agreeing to act jointly in the development of a pilot market linkage plan the participating exchanges have come forward with a positive proposal to further the objectives articulated in the Commission's January Release.[4]

The RMS initiative discussed in the January Release has continued. However, while it began pilot operations in November 1977, its success as an experiment has been limited. Indeed, for financial and other reasons, that experimental market linkage is perceived by its sponsors and the Commission to be in jeopardy.

On June 30, 1977, the Cincinnati Stock Exchange ("CSE") filed with the Commission, and subsequently amended, a proposed rule change to establish, among other things, a multiple dealer trading facility (the "facility"). The proposal as amended contemplates that the facility will operate, on an experimental basis, for a period of nine months, as a pilot program utilizing RMS technology. CSE members and specialists on other exchanges participating in the facility proposed by the CSE would be permitted to enter, as principal for their own accounts, and as agent for customers' accounts, bids and offers for securities listed or admitted to unlisted trading privileges on the CSE at specified prices and sizes in an automated communications network designated for such use by the CSE Board of Trustees. Orders will be automatically executed within the facility in accordance with strict auction-type principles.[5]

The Commission is not now in a position to determine what the full implications and consequences of the CSE rule proposal might be for the markets in the context of a national market system (or for that matter, for the RMS pilot program if it were proposed as a permanent rule). The Commission, therefore, cannot, at this time, determine as a final matter whether such a rule would be consistent with the purposes of the Act. Nonetheless, the Commission does believe that the opportunity to experiment and to add to the body of knowledge and understanding of novel trading mechanisms and market linkages and of the interest of the industry in utilizing such a facility, and to assess the possible contribution of the CSE linkage and the RMS to the national market system, is worthy of further exploration. Consequently, as an experiment which will be subject to close Commission and self-regulatory oversight, and on which industry comment is requested, the CSE's pilot proposal is deemed by the Commission to be consistent with the purposes of the Act. The marketplace and economic reality will ultimately determine the extent to which any of the conceived and proposed national market system initiatives succeed or fail. The Commission, however, believes it has a responsibility to provide, on a controlled basis, whatever opportunity to experiment may be consistent with the Act in order that self-regulatory organization pilot programs may have a full and fair opportunity to demonstrate their utility and shortcomings so that the industry and the Commission can learn from those experiences.

We recognize the concern that Commission approval of the Cincinnati proposal, even on a pilot basis, may somehow lead to development of a national market system predicated exclusively on an electronic limit order book—a proposal to which the CSE's facility has more than a superficial re-

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[1] Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354 (the "January Release").

[2] January Release at 23-24, 43 FR 4357.

[3] See Securities Exchange Act Release Nos. 14661 and 14662 (April 14, 1978).

[4] The next stage of the comprehensive linkage and routing package necessary for the development of a national market system, as envisioned by the January Release, calls for the implementation of a generally available order routing switch. We are optimistic that a proposal for such a switch will be forthcoming promptly.

[5] The CSE's proposed system is more fully described infra at pp. 8-10.

semblance. The determination of whether the concept is viable at one extreme, and what place it has in a national market system at the other, can only be determined as the various efforts progress and experience grows. Simply stated, the CSE proposal is an experiment, limited in scope and duration, initiated by a single exchange for the expressed purpose of modernizing and improving its trading mechanisms and pursuing national market system objectives. As such, it should be distinguished from those proposals advanced by some which contemplate Commission action, by use of its pervasive powers under the Act, to create a single, nationwide computerized market in which all orders, whether for public investors or for dealers, would be required to be entered and executed automatically on the basis of strict time and price priorities. The Commission has already indicated that it has no intention to force all auction trading into an electronic system with automatic execution capabilities. Indeed, in its January Release, the Commission stated:

[s]uch a system . . . would have an impact upon existing market institutions which could properly be viewed as a fundamental change in the manner in which securities trading is now conducted, and it is difficult to foresee, and to provide against, the problem and difficulties which might arise. . . . [T]he Commission believes that if a change of this magnitude is to be made, it probably should occur as a result of evolutionary forces in the markets rather than by Commission mandate.[6]

The CSE facility, however, as distinguished from a Commission-mandated system, would be purely voluntary for those who choose to use it.[7] As such, the experimental facility will make extensive use of computer technology to bring together geographically separated buyers and sellers of securities by electronic means, and afford new opportunities for competitive market making. The CSE pilot trading facility should provide the Commission and others concerned with development of a national market system with valuable insights into the benefits and difficulties inherent in this kind of trading facility. The Commission also recognizes that the RMS might provide one approach toward creating a public limit order file and an order routing and switching facility, and toward adding market makers and liquidity to the markets. Moreover, the characteristics of trading which develop in the CSE pilot program and the technological features employed in this experiment should be of assistance to the Commission in assessing the implications of the national market system initiatives announced in the January Release.

The Commission is aware that the CSE experiment will provide new opportunities for large retail firms, by making markets through the CSE facility, to deal directly with their customers on a principal basis (particularly at prices between the best bid and best offer contained in the CSE facility when the "spread" is greater than ⅛ of a point). Since the national market system contemplates the maximum exposure of all buying interest to all selling interest; the Commission will be especially interested in the extent to which the CSE facility is used by dealers to "internalize" order flow and to buy from or sell to their own customers without affording other "users" of the facility an adequate opportunity to respond to buying and selling interest represented by their customers' orders.

The extent to which such direct transactions occur between a dealer and his customer will depend on how dealers behave and on the amount of order interaction that occurs both within the CSE facility and between it and other exchanges. Since access to the facility is not difficult to obtain, the Commission is conscious of the fact that the facility itself provides all potential "users" with a continuing opportunity to achieve priority over dealers seeking to effect transactions with their customers (by entering buying or selling interest at a given price earlier in time than interest expressed by such a dealer) and provides customers of such users (regardless of the time at which such customers' buying or selling interest at a given price is entered in the system) with absolute priority over all such dealers.

Notwithstanding the auction features of the CSE's facility, widespread use of that facility to effect trades directly between dealers and their own retail customers might heighten already existing national market system concerns, just as concerns would be heightened by internalization of order flow on the floor of any exchange. Under such circumstances, the Commission would have to consider the desirability or necessity of broker-dealer segregation,[8] application of Rule 10b-6, the proper method of dealing with the consequences of net printing of principal transactions which include the imposition of a transaction charge (*i.e.*, a commission equivalent), and whether constraints should be imposed on trading of both equities and options by marketmakers.[9] Accordingly, while these problems need be addressed in a context broader than that presented by the CSE's proposal, because we are presently dealing with an experimental program approved as such by the Commission, The Commission is prepared to alter the experiment, or even terminate it, should such action appear necessary or appropriate in the public interest or for the protection of investors.

To assist the Commission in evaluating the CSE experiment and its implications for the national market system, the CSE will provide the Commission with regular reports detailing the nature and extent of trading in the pilot program, as well as information concerning participants in the program. The CSE has undertaken to provide the surveillance and compliance system and personnel for the pilot program in order to protect the public interest and the interests of investors and to assure the maintenance of fair and orderly markets in securities traded in that program. As part of its own monitoring program, the Commission will endeavor to assure that the CSE promptly fulfills this undertaking and that the CSE's surveillance and compliance efforts are consistent with the requirements of the Act. In this regard, the Commission expects the CSE promptly to take all necessary steps to assure that it has the capacity to enforce compliance by its members, persons associated with its members and other participants in the pilot program with the provisions of the Act, the rules and regulations thereunder and the rules of the CSE applicable to the pilot program, and to satisfy the Commission that it has done so.

Given the existence of real-time recordation of trades effected through

[6] January Release at 56, 43 FR 4362. At the same time, the Commission noted in the January Release: [A]s the initiatives discussed in this statement demonstrate, the effective linking of markets in a national market system necessarily involves the increased use of [modern] technology to achieve the benefits of that system envisioned by both the Commission and the Congress. *Id.*, 43 FR 4362. Further, the Commission stated in the January Release that: [it] remains receptive to new steps designed to meet the statutory goals of a national market system (regardless of whether they are perfectly congruent with the particular means described in this release). *Id.* at 57, 43 FR 4362.

[7] While the CSE experiment contemplates that the proposed mulitple dealer trading system would represent the exclusive means by which securities included in that system could be trading on the CSE, nothing in the CSE's rules would require "users" of the facility who are members of other exchanges to effect transactions in those securities solely through the CSE.

[8] See, e.g., proposed Rule 15c5-1[A], published in Securities Exchange Act Release No. 13662 (June 23, 1977), 42 FR 33510. Although that proposal would have applied only to over-the-counter transactions, the Commission did solicit comment on whether that rule (or any of the other overreaching proposals published in that release) should apply to exchange trading. See id. at 133, 42 FR 33528.

[9] The latter two of these problems were alluded to in the January Release at 35, n. 53, 43 FR 4359, and at 49, 43 FR 4361, respectively, and would appear to require resolution in a national market system context in any event.

the CSE, providing a complete audit trail on all such transactions, and the commitment of the CSE to provide the necessary self-regulatory surveillance, the Commission is approving the CSE experiment for a finite nine-month period of time, at the end of which (absent further CSE and Commission action) the authorization will automatically terminate. In the course of the experiment, the Commission has directed its staff to surveil CSE activity on a regular basis and carefully monitor its operation and results. Finally, the Commission is inviting, and will affirmatively solicit, comments from both participants and nonparticipants in the CSE as to the viability and desirability of the CSE's electronic trading facility and its implications for the development of a national market system as envisioned by the 1975 Amendments.

In approving the pilot program, the Commission wishes to reiterate that the CSE's pilot program is not a Commission initiative, but is being approved as part of the Commission's effort to encourage experimentation in directions which appear to provide potential for progress towards a national market system, or at least for learning experiences which might facilitate such progress, under circumstances which do not appear to present unusual risk to the brokers, dealers, marketmakers and investors participating in such experiments. Indeed, the opportunity presented by such controlled experimentation is that the Commission and the industry can learn without the risks and judgments inherent in massive Commission-mandated changes in the existing structure of the markets.

Assuming the pilot effort appears viable, its compatibility and integration with other developing aspects of the national system, such as the ITS, a generally available order routing switch, and a public limit order file will need to be explored. For certain kinds of agency and principal trading, the CSE's facility is one possible bridge between trading on the physical floors of geographically-separated exchanges and "upstairs" or over-the-counter activity. As such it could serve to enhance efficient access to the trading facilities of a national market system, and foster maximum integration of all buying and selling activity in a manner consonant with national market system objectives. Consequently, the Commission will actively seek out industry initiatives to explore the ways in which the various trading facilities, if they prove viable, can be linked in order to achieve the comprehensive market linkage and order routing system contemplated by the Commission's January Release. Of course, to the extent that these facilities, as presently contemplated, are not compatible, it may be necessary for the Commission to exercise its authority under Section 11A of the Act to assure that they do develop in a compatible manner, consistent with the January Release.

The CSE Rule Change

Notice of the proposed rule change was provided in Securities Exchange Act Release No. 13788 (July 21, 1977) and the terms of substance of the proposed rule change were published in 42 FR 38447 (July 28, 1977). Amendment No. 1 to the proposed rule change was filed with the Commission by the CSE on January 3, 1978. That filing was noticed in Securities Exchange Act Release No. 14364 (January 11, 1978) and published in 43 FR 2674 (January 18, 1978). No comments were received in response to either the July 1977 or January 1978 releases.

On March 27, 1978, the CSE filed Amendment No. 2 to its proposed rule change.[10] That amendment makes certain revisions to, and elaborations upon, the rules which would govern CSE's proposed multiple dealer trading facility and provides that it would be operated, as indicated above, on an experimental basis, as a pilot program of limited duration. At the same time, the CSE requested that the Commission consider the CSE's proposal to establish its multiple dealer trading facility, as a pilot program, separately from the remaining provisions of its proposed rule change. For the reasons discussed herein, the Commission finds that temporary approval as an experiment of the CSE's proposed pilot in multiple dealer trading is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of Sections 6 and 11A thereof. Further, as discussed herein, the Commission finds good cause for approving these provisions of the proposed rule change prior to the thirtieth day after publication of notice of the filing of Amendment No. 2 thereto.

The CSE proposes to establish and operate, on an experimental basis, "a pilot program for Multiple Dealer Trading using an electronic communication system designated for that purpose by the Exchange Board of Trustees through which bids and offers of competing dealers, as well as public bids and offers, may be consolidated for review and execution by Users."[11] The proposed facility would accept orders in certain securities ("designated issues") from persons who qualify as "users," a category which would include members of the Exchange, access nonmembers of the exchange, and specialists and exchange market makers in designated issues registered as such on other exchanges who may (along with CSE members) become "approved dealers" on the exchange. Members of the CSE and approved dealers would be able to enter both agency and principal orders; access non-members of the CSE would be able to enter only agency orders. The CSE's rules would not require that any principal or agency order of a user for a designated issue be brought to the CSE as opposed to another market for execution. Orders in such securities could not be executed on the CSE, however, otherwise than by entry in and (subject to one exception discussed below) execution through the CSE's electronic trading facility.

Execution priority would be granted to orders first by price (i.e., the highest bid and lowest offer) and then, as to orders at the same price, by time of entry, except that "public agency orders," regardless of time of entry, would be granted priority over other orders at the same price. The proposed rule defines a public agency order as "any order for the account of a person other than an Approved Dealer, a Member or a person who could become an Approved Dealer by complying with this Rule with respect to his use of the System, which order is represented, as agency, by a User." Once entered, a public agency order which has not been executed may be removed under only three circumstances: (1) upon cancellation, (2) in connection with a transfer of the order to another exchange, or (3) in order to permit the approved dealer or member who entered the order to execute such order as principal pursuant to a prior guarantee to provide an execution in the event a trade takes place in another market at the specified limit price (a "limit order guarantee"). The proposed rule provides that public agency orders removed from the facility and executed by the entering approved dealer or CSE member on a principal basis pursuant to a limit order guarantee would be deemed to be executed on the CSE as if executed through the facility and would have to be reported to the CSE as promptly as possible and in any event within one minute of execution.

The proposed rule provides for the automatic printing of hard-copy confirmations by the facility to the parties to a trade (or their agents) and enables the CSE Board of Trustees, through proposed rule changes filed with the Commission pursuant to Section 19(b) (2) or (3) of the Act, to pre-

[10] Notice of Amendment No. 2 to the proposed rule change was given in Securities Exchange Act Release No. 14620 (March 30, 1978) and was published in the Federal Register on April 7, 1978 (43 FR 14783).

[11] Authority for, and rules governing the operation of, the multiple dealer trading facility would be set forth in Rule 9D3 (Temporary) of the CSE Rules.

scribe reasonable fees as a condition for direct access to the facility. The proposal delineates procedural rights (including written notice, right to an on-the-record adversarial hearing, and the right to appeal to the CSE Board of Trustees) for any person who is prohibited or restricted in obtaining access to services offered by the CSE or any member in connection with the facility. Finally, the proposal provides that existing trading rules of the CSE, with certain exceptions for rules having no rational application to electronic trading, would also govern trading in the multiple dealer trading facility.

The CSE presently contemplates designating for use in its multiple dealer trading facility the computer facilities and software which currently support the RMS, an experimental market linkage among the CSE and the Pacific ("PSE"), Midwest, ("MSE") and Boston ("BSE") Stock Exchanges which has been operating on a six-month pilot basis since November 1977. The securities to be traded in the facility would be selected by the CSE's Board of Trustees from those listed or admitted to unlisted trading privileges on the CSE; the total number of issues traded in the facility during the pilot program, however, may not exceed 200. The proposal provides that the pilot program will terminate no later than January 31, 1979, unless its continuance is authorized by a subsequent rule proposal filed with and approved by the Commission pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed CSE nine-month experimental pilot program for an electronic "multiple dealer" trading facility is consistent with the requirements of the Act.[12]

The Commission believes the CSE experiment may provide an opportunity to assess, on an empirical basis, the impact of a trading environment in which members of an exchange and other qualified broker-dealers may engage in trading through an electronic communications network governed by the auction principles of price and time priority and, which, in addition, provides for priority of agency orders over the orders of dealers trading directly for their own account, a priority deemed by Congress to be "an important benefit when trading in an ideal auction-type market."[13]

At the same time, by permitting direct access to its auction market by specialists on other exchanges (both for agency and principal orders) without requiring CSE membership, the "open access" nature of the proposed pilot program may afford an opportunity for enhanced competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.[14]

As the Commission noted in the January Release,[15] the legislative history of the 1975 Amendments[16] confirms that the Commission is expected, on a continuing basis, to ensure the development and maintenance of a "fair field of competition" among brokers and dealers and among markets. The CSE's proposed pilot program appears to be the kind of "competition-enhancing" development the Commission should foster under the Act rather than foreclose in carrying out the Act's national market system mandate.[17] Thus, the CSE's experiment in computer-based trading in its market (and with such other markets as may choose to continue the pilot market linkage commenced in the RMS effort) is consistent with the course the Commission has charted in the January Release.

The Commission further finds good cause to approve this part of the proposed CSE rule change prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 thereto. As discussed above, the CSE proposal to establish a multiple dealer trading facility has previously been published for comment on two separate occasions in July 1977 and January 1978, and no comments were received in response to these two notices. While several refinements to the proposal were set forth in Amendment No. 2, the features of the facility remain basically similar, and these refinements have restricted the scope of the proposed rule change.[18] Moreover, we will consider carefully any comments received as a result of the publication of notice of the filing of Amendment No. 2, as well as any comments interested persons may file with us after the CSE pilot program commences operations. The Commission will, of course, be prepared to take any appropriate action in response either to any comments it might receive, or as a result of the staff's own surveillance efforts.

As previously noted, the CSE proposes to base its facility on computer and software currently supporting the experimental market linkage among the CSE, the PSE, the MSE and the BSE, known as the RMS. Since its inception in November 1977, the RMS has involved substantial start-up and

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[12] The CSE simply seeks authorization to implement its multiple dealer trading facility as a pilot program and on an experimental basis, and, as indicated above, we decide no more. The experiment will enable the CSE, if it chooses to do so, to apply for a permanent rule change along these lines, based on the data and operating experience the CSE will be gathering over the next nine months. We intimate no view as to whether the CSE's application for a permanent rule change, should such an application be made, would be consistent with the Act.

[13] Senate Comm. on Banking, Housing and Urban Affairs, Report to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Sess. 16 (1975). For a brief description of the RMS, *see* January Release, supra note 1, at 23-24, 43 FR 4355. While the RMS was never presented to the Commission for approval, nor was approved by the Commission, as the Commission noted in its January Release, the computer facilities and software utilized in the RMS, which is to be used as the basis for the CSE's facility, "offers considerable promise as a basis for a comprehensive system establishing a national aution based on price and time priorities." Id. at 37, n. 55, 43 FR 4359. The Commission also noted in connection with its determination to encourage implementation of a central file affording nationwide protection for all public agency limit orders against trades at the same or an inferior price occurring in any market, that the technology employed in the RMS, appropriately modified, "could provide a basis on which a Central File could be developed." *Id.*, 43 FR 4359. Development of these potentials of the CSE's facility, in the context of the national market system initiatives announced in the January Release, may well stimulate accelerated progress toward achievement of a national market system.

[14] Off-board trading rules of national securities exchanges other than the CSE, restricting the ability of their members to effect transactions in securities listed or admitted to unlisted trading privileges on those exchanges otherwise than on those exchanges, would not, of course, affect the ability or such members to effect CSE transactions in designated issues pursuant to the rule we have approved today, if such members qualify under the rule as "users" of the facility. See In re Rules of the New York Stock Exchange, 10 SEC 270 (October 4, 1941) ("Multiple Trading Case"); Securities Exchange Act Release No. 11628 (September 2, 1975), 40 FR 41808; Securities Exchange Act Release No. 11942 (December 19, 1975), 41 FR 4507; Securities Exchange Act Release No. 13662 (June 23, 1977), 42 FR 33510.

[15] January Release, supra note 1, at 17, 43 FR 4356.

[16] Pub. L. No. 94-29 (June 4, 1975).

[17] January Release at 17, 43 Fr 4356. The Senate Committee on Banking, Housing and Urban Affairs, in its Report to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Sess. 3 (1975), the legislation from which the national market system provisions of the 1975 Amendments were primarily drawn, stated specifically that it would be contrary to the purpose of enhancing competition (i.e., ensuring that economic forces could "arrive at appropriate variations in practices and services" among markets and among securities professionals) "to compel elimination of differences between types of markets or types of firms that might be competition-enhancing."

[18] For example, provisions in Amendment No. 2 changed the multiple dealer trading facility from one of permanent authorization to a pilot program to terminate on or before January 31, 1979. In addition, the number of issues eligible to be traded in the facility during the pilot program was limited to a maximum of 200.

operational costs. Further, the Commission has been advised that the PSE and MSE have served notice of their intent to terminate their participation in, and financial support of, the computer facilities and software constituting the RMS at the end of this month. The Commission also understands that the BSE's financial support for these facilities already has been significantly curtailed. The value of the CSE pilot program would be reduced were the existing RMS linkage of regional exchanges to be eliminated. Hence, timely approval will provide regional exchanges the opportunity to consider the pilot program in arriving at their determination whether to continue participation in RMS.

The CSE has represented that, under these circumstances, its present membership cannot finance maintenance of the computer facilities and software necessary to operation of its proposed multiple dealer trading facility, in the absence of expeditious Commission consideration of its rule proposal contemplating implementation of the pilot program—action which would afford some prospect of attracting new members to the CSE willing to participate in, and financially support, the facility. Failure to act promptly upon the CSE's rule proposal with respect to the facility, therefore, apparently will result in the dismantling of the computer facilities and communications network underlying the RMS and will jeopardize the CSE's ability in the future to implement its proposed multiple dealer trading facility. The Commission finds that the imminence of these difficulties, which would prevent implementation of the pilot program proposed by the CSE, constitutes good cause to approve this portion of the proposed CSE rule change prior to thirty days after publication of Amendment No. 2 to SR-CSE-77-1.

It is therefore ordered, pursuant to its authority under the Act, and particularly Sections 11A and 19(b)(2) thereof, That the CSE's pilot project relating to the establishment and operation of the CSE multiple dealer trading facility, as set forth in Rule 9D3 (Temporary) of the CSE Rules, be, and it hereby is approved, consistent with the terms of, and discussion in, this order.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-11220 Filed 4-25-78; 8:45 am]

[8010-01]

[File No. 1-7256]

INTERNATIONAL ALUMINUM CORP.

Application To Withdraw from Listing and Registration

APRIL 18, 1978.

The above named issuer has filed an application with the Securities and Exchange Commission, pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. (Amex).

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common stock of International Aluminum Corp. (the "Company") has been listed for trading on the Amex since October, 27, 1975. On March 2, 1978 the stock was also listed for trading on the New York Stock Exchange, Inc. and concurrently therewith, such stock was suspended from trading on the Amex. In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing on both exchanges. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for such stock.

The application relates solely to the withdrawal from listing and registration on the Amex and shall have no effect upon the continued listing of such common stock on the New York Stock Exchange, Inc. and the Pacific Stock Exchange, Inc. The Amex has posed no objection in this matter.

Any interested person may, on or before May 10, 1978, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission will, on the basis of the application and any other information submitted to it, issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-11221 Filed 4-25-78; 8:45 am]

[8010-01]

[Release No. 20504; 70-5982]

METROPOLITAN EDISON CO.

Filing Regarding Issue and Sale of Short-Term Notes to Banks

APRIL 17, 1978.

Notice is hereby given that, Metropolitan Edison Co., 2800 Pottsville Pike, Mulhenberg Township, Berks County, Pa. 19605, ("Met-Ed"), an electric utility subsidiary company of General Public Utilities Corp., a registered holding company, has filed with this Commission a post-effective amendment to its application previously filed in this proceeding pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating section 6(b) of the Act as applicable to the following proposed transaction. All interested persons are referred to the application, as now amended, which is summarized below, for a complete statement of the proposed transaction.

By order dated December 30, 1977 (HCAR No. 20358), the Commission authorized Met-Ed, for the period ending December 31, 1978, to issue or renew notes of a maturity of nine months or less, evidencing short-term bank borrowings provided that the aggregate principal amount of such notes to be outstanding at any one time shall not exceed the lesser of (a) $66,000,000, or (b) the amount permitted by Met-Ed's Articles of Incorporation provided, that said aggregate principal amount shall be reduced upon the consummation of the transfers of ownership interests in certain nuclear generating stations as described in the separate application docketed in File No. 70-5951. In no event shall any such reduction result in a lesser amount which Met-Ed would otherwise be permitted to have outstanding without order of the Commission. Upon consummation of the above-mentioned transfers, authority herein granted would be relinquished.

Met-Ed now requests that the aggregate principal amount of the aforesaid notes to be outstanding at any one time be increased to $85,000,000. In all other respects, the transactions as heretofore authorized by the Commission would remain unchanged.

The new notes will bear interest at the prime rate, which may be the floating rate of the lending bank, for commercial borrowing at the date of issue of such note, will mature not more than nine months from the date of issue, will be prepayable at any time without premium, and will not be issued as a part of a public offering. Although no commitments or agreements for such borrowings have been made, Met-Ed expects that, as and to the extent that its cash needs require, borrowings will be effected from time

to time from among 31 designated banks.

It is stated that the banks generally require compensating balances ranging from a minimum of 10 percent of the line of credit to a maximum of 10 percent of the line plus 10 percent of the loan outstanding. Assuming a 8 percent prime rate and a 20 percent compensating balance, the effective interest rate to be paid by Met-Ed would be 10 percent.

Met-Ed proposes to use the proceeds of the short-term loans to provide funds for its short-term working capital requirements, including repayment of other short-term borrowings, and to provide a temporary source of funds for construction expenditures. Met-Ed states that it now has short-term notes outstanding in an aggregate principal amount of $42,800,000. The cost of Met-Ed's 1978 construction program is approximately $64,577,000.

Any fees or expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no State commission or Federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that, any interested person may, not later than May 12, 1978, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said post-effective amendment to the application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicant at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application, as amended by said post-effective amendment or as it may be further amended, may be granted as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices 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 Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-11222 Filed 4-25-78; 8:45 am]

[8010-01]

[Release No. 14678; File No. SR-NYSE-78-18]

NEW YORK STOCK EXCHANGE, INC.

Filing and Effectiveness of Proposed Rule Change

APRIL 18, 1978.

The New York Stock Exchange, Inc. submitted on March 23, 1978, a proposed rule change under Rule 19b-4 to provide floor members with a service whereby news information would be available on a continuous, non-delayed basis. This service would be initiated concurrently with the commencement of the Exchange's Intermarket Trading System.

The foregoing rule change has become effective, pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Publication of the submission is expected to be made in the FEDERAL REGISTER during the week of April 24, 1978. In order to assist the Commission to determine whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days from the date of publication in the FEDERAL REGISTER. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. SR-NYSE-78-18.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and of all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 11223 Filed 4-25-78; 8:45 am]

[8010-01]

[File No. 500-1]

WITS, INC.

Suspension of Trading

APRIL 20, 1978.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of Wits, Inc. being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 9 a.m. (e.s.t.) on April 20, 1978 through April 29, 1978.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-11224 Filed 4-25-78; 8:45 am]

[4910-06]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Waiver Petition No. HS-78-5]

MARYLAND AND DELAWARE RAILROAD CO.

Petition for Exemption From the Hours of Service Act

The Maryland and Delaware Railroad has petitioned the Federal Railroad Administration pursuant to 45 U.S.C. 64a(e) for an exemption, with respect to certain employees, from the Hours of Service Act, as amended, 45 U.S.C. 61-64(b).

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Attention: FRA Waiver Petition No. HS-78-5, Room 5101, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before May 31, 1978, will be considered before final action is taken on this petition. All comments received will be available for examination by interested persons during business hours in Room 5101, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

Issued in Washington, D.C. on April 18, 1978.

ROBERT H. WRIGHT
Acting Chairman
Railroad Safety Board.

[FR Doc. 78-11252 Filed 4-25-78; 8:45 am]

[4910-06]

[FRA Waiver Petition No. HS-78-4]

SAVANNAH STATE DOCKS RAILROAD CO.

Petition for Exemption From the Hours of Service Act

The Savannah State Docks Railroad has petitioned the Federal Railroad Administration pursuant to 45 U.S.C. 64a(e) for an exemption, with respect to certain employees, from the Hours of Service Act, as amended, 45 U.S.C. 61-64(b).

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should be submitted in triplicate to the Docket Clerk, Office of Chief Consel, Federal Railroad Administration, Attention: FRA Waiver Petition No. HS-78-4, Room 5101, 400 Seventh Street SW., Washington, D.C. 20590. Communications received before May 31, 1978, will be considered before final action is taken on this petition. All comments received will be available for examination by interested persons during business hours in Room 5101, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590.

Issued in Washington, D.C. on April 18, 1978.

ROBERT H. WRIGHT,
Acting Chairman,
Railroad Safety Board.

[FR Doc. 78-11251 Filed 4-25-78; 8:45 am]

[4910-06]

Federal Railroad Administration

[Docket No. RFA 511-76-1; Notice No. 2]

GUARANTEE OF OBLIGATIONS

Receipt of Application

Project: Notice is hereby given by the Federal Railroad Administrator that the Missouri-Kansas-Texas Railroad Co. ("applicant"), 701 Commerce Street, Dallas, Tex. 75202, has applied for an amendment to the Guarantee Agreement, dated June 15, 1977, between applicant and the United States. Applicant seeks to secure a further guarantee by the United States under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831) of notes in the principal amount of $4,500,000, the proceeds of which shall be used by applicant to rehabilitate and improve its main line between Bellmead (Waco) and Temple, Tex., a total of 43.7 track miles including sidings ("project"), as part of the estimated total cost of $5,189,885.

The project will result in the elimination of deficient ties, replacement of approximately 5 miles of worn rail, addition of more ballast, roadbed stabilization, and replacement in part of worn signals and signal lines.

Justification for Project: The applicant anticipates that completion of this project will result in substantial savings in operating expenses, improved transit time and overall efficiency, improved safety of operations, and better service to the public. It is anticipated that increased revenues and decreased expenses will enable applicant to repay the principal and interest on the increased principal amount.

Comments: Interested persons may submit written comments on the application to the Associate Administrator for Federal Assistance, Federal Railroad Administration, 400 Seventh Street SW., Washington, D.C. 20590, not later than 15 days after the date on which this notice is published in the FEDERAL REGISTER. Such submission shall indicate the docket number shown on this notice and state whether the commenter supports or opposes the application and the reasons therefor.

The comments will be taken into consideration by the Federal Railroad Administrator in evaluating the application. However, formal acknowledgment of the comments will not be provided.

Dated: April 25, 1978.

CHARLES SWINBURN,
Associate Administrator for Federal Assistance, Federal Railroad Administration.

[1505-01]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 156, Amdt. 5]

REGIONAL COMMISSIONERS ET AL

Delegation of Authority

Correction

In FR Doc. 78-10322 appearing at page 16237 in the issue for Monday, April 17, 1978, the following corrections should be made:

(1) In the heading "Amdt. 65" is changed to read "Amdt. 5".

(2) At the end of the document, the date on which it was signed should have read "April 7, 1978" instead of "April 4, 1978".

[4810-25]

Office of the Secretary

[Treasury Department Order No. 234-5]

DIRECTIVE TO SELL GOLD

By virtue of the authority vested in me as Secretary of the Treasury, the Gold Reserve Act of 1934 and Reorganization Plan No. 26 of 1950, I hereby authorize and direct the Under Secretary for Monetary Affairs to take all necessary and proper measures, including direction of other officials of the Department and utilization of the services of other government agencies for periodic public sales of gold from the United States' gold stocks. Any actions heretofore taken by the Under Secretary for Monetary Affairs in connection with such sales are hereby ratified and confirmed as the actions of the Secretary.

Dated: April 19, 1978.

W. MICHAEL BLUMENTHAL,
Secretary of the Treasury.

[FR Doc. 78-11257 Filed 4-25-78; 8:45 am]

[4810-22]

MOTORCYCLES FROM JAPAN

Antidumping Withholding of Appraisement Notice

AGENCY: U.S. Treasury Department.

ACTION: Withholding of appraisement.

SUMMARY: This notice is to advise the public that there are reasonable grounds to believe or suspect that there are sales of motorcycles from Japan to the United States at less than fair value within the meaning of the Antidumping Act, 1921. Appraisement, for the purpose of determining the proper duties applicable to entries of this merchandise, will be suspended for 6 months. Interested persons are invited to comment on this action not later than May 26, 1978.

EFFECTIVE DATE: April 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Edward F. Haley, Operations Officer, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C., 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On June 8, 1977, information was received in proper form pursuant to sections 153.26 and 153.27, Customs Regulations (19 CFR 153.26 and 153.27), indicating that motorcycles from Japan are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was submitted by counsel acting on behalf of the Harley-Davidson Motor Co., Inc., a subsidiary of AMF, Inc. On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of July 15, 1977 (42 F.R. 36584).

Pursuant to section 201(b)(2) of the Act (19 U.S.C. 160(b)(2)), notice was published in the FEDERAL REGISTER of January 20, 1978 (43 F.R. 3968), stating that the Secretary had concluded that the determination provided for in section 201(b)(1) of the Act (19 U.S.C. 160(b)), could not reasonably be made within 6 months. The determination under section 201(b)(1) of the Act (19 U.S.C. 160(b)(1)) was, therefore to be made within no more than 9 months.

For purposes of this notice, the term "motorcycles" means motorcycles having engines with total piston displacement over 90 cubic centimeters, whether for use on or off the road.

TENTATIVE DETERMINATION OF SALES AT LESS THAN FAIR VALUE

On the basis of information developed in Customs investigation and for the reasons noted below, pursuant to section 201(b)(1) of the Act (19 U.S.C. 160(b)(1)), I hereby determine that there are reasonable grounds to believe or suspect that the exporter's sales price of motorcycles from Japan is less, or is likely to be less, than the fair value, and thereby the foreign market value of such or similar merchandise.

STATEMENT OF REASONS ON WHICH THIS DETERMINATION IS BASED

The reasons and bases for the above tentative determination are as follows:

a. *Scope of the investigation.* It appears that virtually all imports of the subject merchandise from Japan were manufactured by Honda Motor Co., Ltd., Yamaha Motor Co., Ltd., Kawasaki Heavy Industries, Ltd., and Suzuki Motor Co., Ltd. Therefore the investigation was limited to these manufacturers.

b. *Basis of comparison.* For the purpose of considering whether the merchandise in question is being, or is likely to be, sold at less than fair value within the meaning of the Act, the proper basis of comparison appears to be between exporter's sales price and the adjusted home market price of such or similar merchandise. Exporter's sales price, as defined in section 204 of the Act (19 U.S.C. 163), was used since sales by all four manufacturers were made to U.S. firms related to those manufacturers within the meaning of section 207 of the Act (19 U.S.C. 166). Home market prices, as defined in section 153.2, Customs Regulations (19 CFR 153.2(b)), were used for fair value purposes since such or similar merchandise appears to have been sold in the home market in sufficient quantities to provide an adequate basis for comparison.

In accordance with section 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning imports from Japan sold in the United States during the 8-month period November 1, 1976, through June 30, 1977, and home market sales of motorcycles during the period corresponding to the dates of export of those motorcycles sold in the United States during the above 8-month period.

c. *Exporter's sales price.* For the purpose of this tentative determination of sales at less than fair value, all of the merchandise was sold or agreed to be sold in the United States, before or after the time of importation, by or for the account of the exporter, within the meaning of section 207 of the Act. Accordingly, the exporter's sales price to unrelated U.S. dealers with deductions for Japanese inland freight and insurance, U.S. duty, U.S. port handling, U.S. inland freight, U.S. dealer preparation, tires and tubes excise tax, owner's manual, warranty costs, financing expenses, direct advertising, co-op advertising, discounts, rebates, selling expenses and sales promotion, as appropriate. An addition was made for the Japanese commodity tax incurred with respect to home market sales but not collected or rebated by reason of exportation to the United States, in accordance with section 204 of the Act (19 U.S.C. 163).

d. *Home market price.* For the purposes of this tenative determination of sales at less than fair value, the home market prices have been calculated on the basis of the weighted-average prices to unrelated dealers. Adjustments were made for inland freight, owner's manuals, rebates, discounts, warranty costs, financing expenses, selling expenses, sales promotion, and direct advertising, with an addition for cost of export packing, as appropriate, in accordance with section 153.10, Customs Regulations (19 CFR 153.10). Adjustment was made for differences in merchandise sold in the two markets, as appropriate, in accordance with Section 153.11, Customs Regulations (19 CFR 153.11).

During our extended investigatory period, additional information was obtained in connection with the comparability of merchandise sold to the United States with that sold in the home market. This information has been reviewed and analyzed by a special consultant selected by the U.S. Customs Service for this purpose. As a result of his analyses, certain additional information in connection with sales to third countries has been requested, for the purpose of making Fair Value comparisons for motorcycles sold to the United States for which no comparable home market model is now deemed to exist. This information will be verified and analyzed prior to the Final Determination.

During our extended investigatory period information was requested concerning direct factory overhead expenses applicable to the cost of manufacture of motorcycles sold to the United States and similar merchandise sold in the home market, and if applicable, third countries. This information will be analyzed prior to the Final Determination and will be utilized in determining differences in cost of manufacture of similar merchandise in the two markets, under Section 153.11, Customs Regulations (19 CFR 153.11).

It has been claimed that, with respect to 1974, 1975 and 1976 model year motorcycles sold during the investigatory period, an adjustment should be made to account for the fact that these motorcycles were considered "current" when sold in Japan, where motorcycles are not marketed by model year designations, but were not considered "current" when sold in the United States, where this merchandise is sold by model year designation. Information demonstrating that the practice of reducing prices on prior model year motorcycles is customary in the United States market not having been received, this adjustment has been denied. If sufficient documentation supporting this claim is received in a timely fashion, adjustment may be made at the time of the Final Determination.

Additionally, petitioner has claimed that rebates have been paid by respondents to unrelated U.S. dealers subsequent to our investigatory period in connection with sales to those dealers occurring during the period and that such rebates should be deducted from exporter's sales prices. This claim will be investigated prior to the Final Determination and will, to the extent consistent with our findings on the preceding claim for prior model year adjustment, be adjusted for whenever the net price paid is thereby affected.

Petitioner has requested that the scope of the investigation be broadened to include motorcycle components other than those imported for sale as spare parts. As motorcycle components are an entirely separate and distinct "class or kind" of merchandise from motorcycles subject to this investigation, it has been concluded that, absent a showing that components are being imported as "kits" or in a similar aggregate form for assembly in the United States, motorcycle components cannot be appropriately included within the scope of this proceeding.

Counsel for Yamaha has claimed adjustment based alternatively, on Section 153.15, Customs Regulations (19 CFR 153.9, 153.15), for greater costs incurred in selling to home market, vis-a-vis, U.S. dealers. These fixed selling costs relate to the larger home market sales force needed to service dealers who are greater in number than in the U.S. and who purchase in smaller lots and hold smaller inventories. The requested adjustment is in addition to those elements of direct and indirect selling expenses already the subject of adjustment under subsections (a) and (b), respectively, of Section 153.10 of the Custom Regulations (19 CFR 153.10(a)(b)). The possibility of making adjustment for such costs in the context of Sections 153.10 and 153.15 was previously considered in the case of Ice Hockey Sticks from Finland. In our "Notice of Modification of Determination of Sales at Less Than Fair Value" published in the FEDERAL REGISTER of March 10, 1978, (43 FR 9912) in connection with that case, we stated:

"Treasury is aware of, and sensitive to, the possibility that present regulations and Treasury policies regarding these two issues may not have to the past properly recognized all expenses which may warrant adjustments. However, it has been determined that a review and possible alteration of regulations and policies with respect to such a fundamental area of the administration of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) should not be implemented on a case-by-case basis."

As we further stated in that notice, a comprehensive review of this area is currently underway. Our past practice under Section 153.9, which provides for ad- justment in differences in costs specifically attributable to quantities involved in sales in the two relevant markets, limits the scope of such adjkustment to differences in production costs resulting from the quantities produced. Expenses which are sales or promotional in nature are appropriately dealt with under Sections 153.10 and/or 153.15. Expenses of the type for which adjustment is claimed are in fact costs which are subject to "offset" in a situation such as the instant one involving the use of exporter's sales price, under § 153.10(b). Acceptance of the claimed adjustment beyond the offset amount would therefore be contrary to a literal reading of that section. This claim has therefore been denied.

Petitioner has claimed that § 153.10(b), which provides that in making comparisions using exporter's sales price, reasonable allowance will be made for actual selling expenses incurred in the home market up to the amount of the selling expenses incurred in the United States market, should be interpreted on an item-by-item basis. Under such reading, adjustment for indirect expenses in the home market would be limited to an offset up to the amount of actual expenses incurred for each particular category of selling expenses.

Our consistent practice over many years has been to the contrary. We have concluded that that practice, taking cognizance as it does, of varying market conditions and requirements in the two markets, should not be deviated from, particularly at a time when this area of administration of the law is the subject of overall review to determine whether adjustment for fixed or indirect selling expenses should be broadened.

Petitioner has claimed that advertising expenses directed to the promotion of sales of a particular motorcycle model should be deducted from the price of that particular model, rather than allocated over the entire class or kind of merchandise subject to the investigation. While it has been concluded that this claim is well-founded, it has not been possible to perform the necessary recalculations in time for this Tentative Determination. This will be done prior to the Final Determination.

Petitioner has requested that Treasury examine whether prices of the subject merchandise have been revised to fully reflect increases in the value of the Japanese yen during the time subsequent to the conclusion of our investigatory period, i.e., June 30, 1977. It is not normally possible, nor generally is it our policy, to examine pricing behavior subsequent to the investigatory period, otherwise than in the context considering a request for discontinuance under Section 153.33, Customs Regulations (19 CFR 153.33), in connection with which it must be determined whether necessary price revisions have occurred to eliminate any present sales at less than fair value.

e. *Result of fair value comparisons.* Using the above criteria, preliminary analysis suggests that the exporter's sales price probably will be lower than the home market price of such or similar merchandise. Comparisons were made on about 80 percent of the motorcycle sold in the United States by the manufacturers during the period of investigation. Margina were tentatively found on 9 percent of the sales compared. The weighted-average margin on the basis of all sales compared is 1.7 percent. Weighted-average margins found with respect to the companies under investigation, computed over all sales compared, were as follows: Honda, 1.4 percent; Kawasaki, 3.6 percent; Yamaha, 1.9 percent; and Suzuki, 0.7 percent. Accordingly, Customs officers are being directed to withhold appraisement of motorcycle from Japan in accordance with Section 153.48, Customs Regulations (19 CFR 153.48).

In accordance with § 153.40, Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views.

Any request that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue NW., Washington, D.C. 20229, in time to be received by his office not later than May 8, 1978. Such request must be accomplished by a statement outlining the issues wished to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than May 26, 1978. All persons submitting written views of arguments should avoid repetitious and merely cumulative material. Counsel for petitioner and respondents are requested to serve all written submissions on all other counsel and to file their submissions in ten copies with the Commissioner of Customs.

This notice, which is published pursuant to § 153.35(b), Customs Regulations (19 CFR 153.35(b), shall become effective April 26, 1978. It shall cease to be effective at the expiration of 6 months from the date of this publication, unless previously revoked.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

APRIL 19, 1978.

[FR Doc. 78-11258 Filed 4-25-78; 8:45 am]

[4810-40]

[Public Debt Series-No. 9-78]

TREASURY NOTES OF SERIES N-1980

Redesignation of Interest Rate

APRIL 20, 1978.

The Secretary of the Treasury announced on April 19, 1978, that the interest rate on the notes described in Department Circular, Public Debt Series, No. 9-78, dated April 13, 1978, will be 7¾ percent per annum. Accordingly, the notes are hereby redesignated 7¾ percent Treasury Notes of Series N-1980. Interest on the notes will be payable at the rate of 7¾ percent per annum.

PAUL H. TAYLOR,
Acting Fiscal Assistant Secretary.

[FR Doc. 78-11255 Filed 4-25-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 645]

ASSIGNMENT OF HEARINGS

APRIL 21, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

No. MC 95876 (Sub-No. 204), Anderson Trucking Service, Inc., now being assigned for continued hearing on May 16, 1978, at the Offices of the Interstate Commerce Commission, Washington, DC. MC 116915 Sub 34, Eck Miller Transportation Corp., is now assigned for hearing June 6, 1978 (1 day) at Louisville, KY, at a location to be later designated.

No. FF 504, Gray International Freight Forwarding Co., now assigned June 15, 1978, at Denver, CO is canceled and application dismissed.

MC 99581 Sub 4, Vaca Valley Bus Lines, Inc. now being assigned June 19, 1978 (2 days) for continued hearing in San Francisco, CA in a hearing room to be later designated.

FD 28697, Southern Railway Co. Discontinuance of Trains Nos. 1 and 2 between Washington, DC and Atlanta, GA, now assigned for hearing and continued hearings on the dates listed below, will be held at the locations listed below: May 12, 1978 at the offices of the Interstate Commerce Commission, Washington, DC; May 19, 1978 in room B-67, Federal Building, 220 7th Street Northwest, Charlottesville, WV; May 20, 1978 in the Federal Courtroom, Second Floor, U.S. Post Office and Federal Building, Church Street, Lynchburg, VA; May 22, 1978 in the Federal Courtroom, Second Floor, Post Office Building, 700 Main Street, Danville, VA; May 23, 1978 in the Second Floor Courtroom, U.S. Post Office and Courthouse Building, 324 West Market Street, Greensboro, SC; May 24, 1978 in The Rond Courtroom, Third Floor, Rowan County Courthouse, 2nd block of North Main Street, Salisbury, NC; May 25, 1978 in the Meeting Room, Fourth Floor, Knight Publishing Co., The Observatory News Building, 600 South Tryon Street, Charlotte, NC; May 26, 1978 at City Hall, Council Chambers, 145 West Broad Street, Spartanburg, SC; May 27, 1978 Sheraton Palmetto Inn, 4295 Augusta Road, Greenville, SC; May 30, 1978 at Fort Hill Federal Savings & Loan, 207 College Avenue, Clemson, SC; May 31, 1978 at the Stevenson County Library, Savannah Street, Toccoa, GA; June 1, 1978 at City Hall, 116 Broad Street Southeast, Gainesville, GA; June 2, 1978 in Room 556, Federal Office Building, 275 Peachtree Street Northeast, Atlanta, GA; June 5,

1978 in the Chamber of Commerce Conference Room, 1316 Noble Street, Anniston, AL, June 6, 1978 at Exhibition Hall (Albert Bawell Auditorium), Eighth Avenue North between 19th and 20th Streets, Birmingham, AL; June 7, 1978 at City Hall, Council Meeting Room, Livingston, AL; June 8, 1978 in the courtroom, Lauderdale County Juvenile Center, 5400 Semms Road, Meridian, MS; June 9, 1978 in the City Hall Conference Room, Laurel, MS; June 12, 1978 at the Front Street Community Center, Room B, 220 Front Street, Hattiesburg, MS; June 13, 1978 in the County Courthouse Courtroom, Pearl River County Courthouse, Poplarville, MS; and June 14, 1978 in West Courtroom 265, U.S. Court of Appeals, 600 Camp Street, New Orleans, LA.

No. MC 22229 (Sub-No. 119), Terminal Transport Co., Inc., application dismissed.

No. MC 134906 (Sub-No. 9), Cape Air Freight, Inc., now assigned June 6, 1978, at Atlanta, GA is postponed to September 12, 1978 (9 days), at Atlanta, GA in a hearing room to be later designated.

MC 60014 Sub 64, Aero Trucking, Inc. Now being assigned July 12, 1978 (3 days) at Atlanta, GA in a hearing room to be later designated.

MC 1515 Sub 222, Greyhound Lines, Inc., is now assigned for continued hearing May 15, 1978 at New York, NY (1 week), and will be held in the Court of Claims, Room 238, Courtroom A, 26 Federal Plaza.

MC 19311 Sub 34, Central Transport, Inc., now assigned May 8, 1978 at Chicago, IL, will be held in Room 3855A, 230 South Dearborn Street.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11313 Filed 4-25-78; 8:45 am]

[7035-01]

[Notice No. 32]

MOTOR CARRIER TRANSFER PROCEEDINGS

APRIL 26, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC 77634. By application filed April 14, 1978, A.M. & M. INC., Hwy U.S. 45 North, Henderson, TN 38340, seeks temporary authority to transfer the operating rights of Record Truck Line, Inc., P.O. Box 2646, Jackson, TN 38301, under section 210a(b). The transfer to A.M. & M. Inc. of the operating rights of Record Truck Line, Inc., is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11314 Filed 4-25-78; 8:45 am]

[7035-01]

[Notice No. 31]

MOTOR CARRIER TRANSFER PROCEEDINGS

APRIL 26, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC 77633. By application filed April 19, 1978, FOX BUS LINES INC., 92 Brattle Street, Worcester, MA 01606, seeks temporary authority to transfer the operating rights of Worcester Bus Co., Inc., 287 Grove Street, Worcester, MA 01605, under section 210a(b). The transfer to Fox Bus Lines Inc., of the operating rights of Worcester Bus Co., Inc., is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11315 Filed 4-25-78; 8:45 am]

[7035-01]

[Notice No. 30]

MOTOR CARRIER TRANSFER PROCEEDINGS

APRIL 26, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC 77629. By application filed April 14, 1978, PITTSBURGH-FAYETTE EXPRESS, INC., 1101 Dormont Avenue, Pittsburgh, PA 15216, seeks temporary authority to transfer the operating rights of Pittsburgh-Brownsville Express, Inc. (Debtor-in-Possession), P.O. Box 716, Connellsville, PA 15425, under section 210a(b). The transfer to Pittsburgh-Fayette Express, Inc., of the operating rights of Pittsburgh-Brownsville Express, Inc. (Debtor-in-Possession), is presently pending.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11316 Filed 4-25-78; 8:45 am]

[1505-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 51]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-8679 appearing at page 13961 in the issue for Monday, April 3, 1978, in the middle column of page 13963, in the 14th line of the paragraph for MC 113362 (Sub.-No. 318TA), "MI" should have read "MN".

[7035-01]

[No. 36864; Ex Parte Nos. 295 etc.]

GENERAL RATE INCREASE—INTERSTATE APPLICATION

Institution of declaratory order Proceeding

Petition for a Declaratory order—Inclusion of Interstate Application of Authorized General Rate Increases (Ex Parte Nos. 295, 299, 303, 305, 305-RE, 310 and 313).

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of a declaratory order proceeding.

SUMMARY: Petitioners, eighteen railroads, seek an order declaring that general freight increases authorized in Ex Parte Nos. 295, 299, 303, 305, 305-RE, 310 and 313 have been applied properly to interstate rates set out in 41 tariffs published by the Traffic Executive Association-Eastern Railroads. According to petitioners, more than 3,000 claims totalling more than $1 million have been filed, and the total revenue at issue may exceed $25 million.

By order served concurrently with this publication, a proceeding is being instituted to determine the applicability of the general rate increases to the specific tariffs at issue.

DATES: Interested parties are asked to submit a statement of intent to participate on or before May 16, 1978. For administrative convenience, parties should indicate in the statement of intent whether they intend to actively participate, in which case they will be placed on the service list, or whether they merely wish to receive copies of reports and orders of the Commission.

Parties actively participating in this proceeding by submitting written representations must serve copies of their representations on all parties on the service list. An original and fifteen copies of written representation must be filed with the Commission. An original and one copy of the statements of intent to participate must also be filed.

The filing and service of pleadings is to be as follows: (a) Opening statement of facts and argument by petitioner and any parties supporting petitioner on or before 30 days of the date of publication of this notice; (b) 30 days after that date, statement of facts and argument by any party in opposition; and (c) 20 days thereafter, replies by petitioner and any supporting parties.

A service list will be sent to all active parties in time to enable them to comply with the filing deadline.

ADDRESSES: Statements and replies should be sent to: Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT:

Janice M. Rosenak, Deputy Director or Harvey Gobetz, Assistant Deputy Director, Section of Rates, Office of Proceedings, Washington, D.C. 20423, 202-275-7693.

Issued in Washington, D.C., April 14, 1978.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11322 Filed 4-25-78; 8:45 am]

[7035-01]

[Docket No. AB-19 (Sub-No. 35)]

ALLEGHENY AND WESTERN RAILWAY CO., BUFFALO, ROCHESTER AND PITTSBURG RAILROAD CO., AND THE BALTIMORE AND OHIO RAILROAD CO. ABONDONMENT NEAR NEW CASTLE, LAWRENCE COUNTY, PA.

Notice of Findings

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by an order entered on January 31, 1978, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment—Goshen*, 354 I.C.C. 76 (1977) and for public use as set forth in said order, the present and future public convenience and necessity permit the abandonment by the Allegheny and Western Railway Co., Buffalo, Rochester and Pittsburg Railroad Co., and the Baltimore and Ohio Railroad Co. of that portion of its branch line extending from valuation station 343+75 to the Shenango Industrial Park, a distance of approximately 1.5 miles near New Castle in Lawrence County, Pa. A certificate of abandonment will be issued to the Allegheny and Western Railway Co., Buffalo, Rochester and Pittsburg Railroad Co. and The Baltimore and Ohio Railroad Co. based on the above-described finding of abandonment, on May 26, 1978, unless on or before May 26, 1978, the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) it is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced order.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11391 Filed 4-25-78; 8:45 am]

[7035-01]

Docket No. AB-43 (Sub-No. 35)

ILLINOIS CENTRAL GULF RAILROAD CO. ABANDONMENT BETWEEN SILVER CREEK AND MENDENHALL, IN LAWRENCE, JEFFERSON DAVIS AND SIMPSON COUNTIES, MISS.

Notice of Findings

Notice is hereby given pursuant to Section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by an order entered on February 6, 1978, a finding, which is admininstratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment—Goshen*, 354 I.C.C. 76 (1977) and for public use as set forth in said order, the present and future public convenience and necessity permit the abandonment by the Illinois Central Gulf Railroad Co. of that portion of its line of railroad extending from railroad milepost 120.91 near Silver Creek, Miss., to milepost 148.65 at Mendenhall, Miss., a distance of 27.74 miles in Lawrence, Jefferson Davis, and Simpson Counties, Miss. A certificate of abandonment will be issued to the Illinois Central Gulf Railroad Co. based on the above-described finding of abandonment, on May 26, 1978, unless on or before May 26, 1978, the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) it is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such as agreement (including any extensions or modification) is in effect. Information and procedures regarding the financial assistance for contained rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691. All interested persons are advised to follow the instruction contained therein as well as the instructions contained in the above-referenced order.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11390 Filed 4-25-78; 8:45 am]

[7035-01]

[Finance Docket No. 28718]

LENAWEE COUNTY RAILROAD CO., INC., ACQUIRE BRANCH TRACK; DETROIT, TOLEDO AND IRONTON RAILROAD CO.

Lenawee County Railroad Co., Inc. (LCRC), 708 East Michigan Street, Adrian, Mich. 49221, represented by Erci D. Gerst, Esquire, 1515 Locust Street, Sixth Floor, Philadelphia, Pa. 19102, hereby give notice that on the 24th day of March, 1978, it filed with the Interstate Commerce Commission at Washington, D.C., an application under Section 5(2) of the Interstate Commerce Act for an order approving and authorizing the acquisition of 3.8 miles of the Tecumseh Branch of the Detroit, Toledo, and Ironton Railroad Co. (DT&I) through purchase from DT&I, which application is assigned Finance Docket No. 28718.

The nature of the proposed transaction is a purchase by LCRC from DT&I of the rail properties constituting approximately 3.8 miles of DT&I's Tecumseh branch.

DT&I presently provides service on its 55.4 mile Tecumseh branch from the branch's intersection with DT&I's main line at Malinta, OH, northwardly to the branch's termination at Tecumseh, Mich. LCRC proposes to purchase a 3.8 mile segment, from Bimo, Mich., to Leaf, Mich. and to provide service on the purchased segment. The portion of the Tecumseh branch LCRC seeks the authority to purchase lies in Lenawee County, Mich.

The section proposed to be acquired (Bimo to Leaf, Mich.) is a portion of rail trackage upon which the DT&I filed an abandonment application on June 11, 1975, in Docket No. AB-111.

By application filed February 17, 1978 (Finance Docket No. 28643 (Sub-No. 1)) and published in the FEDERAL REGISTER March 17, 1978, page 11296, Vol 43, the Norfolk and Western Railway Co. (NW) also proposed to acquire from DT&I 11.1 miles of its Tecumseh branch.

In the opinion of the applicant, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's Regulations (49 C.F.R. 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969,* 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National environmental Policy Act, 1969, supra,* at p. 487.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 28718 and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than June 12, 1978. Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation and the Attorney General.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11392 Filed 4-25-78; 8:45 am]

[7035-01]

[Finance Docket No. 28654 (Sub-No. 1)]

ITEL CORP.—CONTROL—GREEN BAY AND WESTERN RAILROAD CO.

Itel Corp. (Itel), One Embarcadero Center, San Francisco, Calif. 94111, represented by Robert L. Calhoun, 1025 Connecticut Avenue NW., Washington, D.C. 20036, and David N. Kuhn, Associate Counsel, One Embarcadero Center, San Francisco, Calif. 94111, hereby gives notice that on March 27, 1978, it filed with the Interstate Commerce Commission at Washington, D.C. an application under Section 5(2) of the Interstate Commerce Act (Act) seeking authorization for Itel to acquire control of the Green Bay and Western Railroad Co. (GB&W) a motor common carrier subject to Part II of the Act, through the purchase of GB&W's common stock. The application has been accepted by the Commission and assigned Finance Docket No. 28654 (Sub-No. 1). The operating rights sought to be controlled authorized the transportation of general commodities (with certain exceptions) between points in WI. Operations over some of these authorities are restricted to service which is auxiliary to or supplemental of the rail service. These rights are more fully described in No. MC-58271 and subnumbers.

Itel controls McCloud River Railroad Co. and McCloud River Trucking Co. which holds motor common carrier authority to transport general commodities and specified lumber products between points in CA. These rights are more fully described in No. MC-28759 and No. MC-125604 (Sub-No. 2).

In *Itel Corporation—Control—Green Bay and Western Railroad Co.*, 354 I.C.C. 232 (1078), the Commission granted Itel permission to file a single control application for both rail and motor control. Notice of the rail portion of this application is published separately in this edition of the FEDERAL REGISTER under the same docket number. The time limits set out therein will be applied to the motor carrier portion of the application as well as the rail.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11393 Filed 4-25-78; 8:45 am]

[7035-01]

[Finance Docket No. 28654 (Sub-No. 1)]

ITEL CORP.—CONTROL—GREEN BAY AND WESTERN RAILROAD CO.

Itel Corp. (Itel), One Embarcadero Center, San Francisco, Calif. 94111, represented by Robert L. Calhoun, 1025 Connecticut Avenue NW., Washington, D.C. 20036, and David N. Kuhn, Associate Counsel, One Embarcadero Center, San Francisco, Calif. 94111, hereby gives notice that on March 27, 1978, it filed with the Interstate Commerce Commission at Washington, D.C., an application under Section 5(2) of the Interstate Commerce Act (Act) for an order approving and authorizing the control of the Green Bay and Western Railroad Co. (GB&W). This application has been accepted and assigned Finance Docket No. 28654 (Sub-No. 1). By the same application, Itel also seeks authority to acquire control of the motor carrier certificates held by GB&W. Notice of the seeking of authority over the motor carrier operations of GB&W is published separately in this edition of the FEDERAL REGISTER under the same docket number.

Itel proposes to acquire control of the GB&W by purchasing its capital stock and other securities. On December 8, 1977, Itel made a tender offer to purchase the issued and outstanding securities of the GB&W. Under the terms of the tender offer Itel is to transfer any and all of its rights to vote securities tendered to the M&I Marshall and Ilsley Bank until such time as Itel's acquisition of control of the GB&W is approved by the Interstate Commerce Commission.

GB&W operates 254 miles of railroad in the State of WI. GB&W also

holds certificates of public convenience and necessity in Docket No. MC-58273 authorizing the transportation of general commodities between specified points in WI.

Itel is a non-carrier, controlling carriers subject to the Act. Itel controls the Hartford and Slocomb Railroad Company which operates between Hartford and Dothan, AL. Itel also controls McCloud River Railroad Company and its division, the Ahnapee and Western Railroad Company. McCloud River Railroad Company operates 90 miles of railroad in CA. The Ahnapee and Western Railroad Company operates 14 miles of railroad in WI between Algoma and Casco Junction. McCloud River Railroad Company is also authorized in Docket No. MC-28759 to operate as a common carrier by motor vehicle between specified points in CA. The McCloud River Trucking Company, a subsidiary of McCloud River Railroad Company holds a certificate of registration in Docket No. MC-125604 (Sub-No. 2) to transport specified lumber and lumber products between points in CA.

The Ahnapee and Western Railway Company has a connection with the GB&W at Casco Junction.

Any person interested in filing an inconsistent application or petition for inclusion should file a notice of its intention to file no later than June 12, 1978 (45 days after the date notice of the filing of the application is published in the FEDERAL REGISTER). Original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423. Any inconsistent applications and petitions for inclusion must be filed with the Commission by July 25, 1978.

Interested persons may participate formally in the proceeding by submitting written comments regarding the application. The submission shall indicate the proceeding designation Finance Docket No. 28654 (Sub-No. 1) and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than June 12, 1978 (45 days after the date notice of the filing of the application is published in the FEDERAL REGISTER). Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction, specific reasons why approval would or would not be in the public interest and a request for oral hearing if one is desired. Additionally interested persons who do not intend to participate formally in the proceeding but who desire to comment thereon may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission shall at the same time serve copies of such written comments upon Itel, the Secretary of Transportation and the Attorney General.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-11394 Filed 4-25-78; 8:45 am]

sunshine act meetings

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

[6740-02]

1

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 17445, published April 24, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., April 26, 1978.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

CP-8.—CP78-171, Southern Natural Gas Co., Texas Gas Transmission Corp., and United Gas Pipe Line Co.

KENNETH F. PLUMB,
Secretary.

[S-876-78 Filed 4-24-78; 2:11 pm]

[6210-01]

2

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Monday, May 1, 1978.

The closed portion of the meeting will commence at the conclusion of the open discussion.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Part of the meeting will be open; part will be closed.

MATTERS TO BE CONSIDERED:

Open portion:

SUMMARY AGENDA

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed report to the Comptroller of the Currency regarding the competitive factors involved in the merger of Monroe County Bank of Dundee, Mich., with the First National Bank of Monroe, Monroe, Mich.
2. Proposed supplement to Regulation Z (Truth in Lending) prescribing procedures and criteria for granting: (a) State exemptions from the requirements of the consumer leasing provisions, and (b) determinations that State law is not preempted by these provisions.
3. Proposed expansion of the System's computer hardware monitoring program.
4. Proposed purchase of computer equipment installed at the Federal Reserve Banks of New York and St. Louis.

DISCUSSION AGENDA

1. Proposal to amend Regulation Q (Interest on Deposits) to permit automatic transfers of savings deposits. (Proposed earlier for public comment; docket no. R-0027.)
2. Proposed amendment to Regulation T (Credit by Brokers and Dealers) to permit brokers and dealers to extend credit on corporate bonds, subject to certain specified conditions, and to set a uniform loan value for all eligible corporate debt securities.
3. Any agenda items carried forward from a previously announced meeting.

Closed portion:

1. Proposed renovation, pursuant to competitive bidding, of the power and air conditioning systems of the Federal Reserve Bank of New York.
2. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Date: April 21, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-872-78 Filed 4-24-78; 9:04 am]

[7030-01]

3

INDIAN CLAIMS COMMISSION.

TIME AND DATE: 10:15 a.m., May 3, 1978.

PLACE: Room 600, 1730 K Street NW., Washington, D.C.

Portion of the meeting open to the public:

Dockets 15-C, 29-A and 71, *Potawatomi.*
Docket 59, *Saginaw Chippewa.*
Docket 332-C, *Yankton Sioux.*

Portion of the meeting closed to the public:

Personnel.

FOR MORE INFORMATION:

David H. Bigelow, Executive Director, Room 640, 1730 K Street NW., Washington, D.C. 20006, telephone 202-653-6174.

[S-873-78 Filed 4-24-78; 9:49 am]

[7590-01]

4

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of April 17, 1978 (cancellation).

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 16259.

PLACE: Commissioners' Conference Room, 1717 H St. NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

3 P.M. FRIDAY, APRIL 21

Discussion of proposed licensing legislation (approximately 1½ hours) (Closed—Exemption 9) is *canceled.*

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

APRIL 21, 1978.

[S-875-78 Filed 4-24-78; 10:10 am]

Federal Register

WEDNESDAY, APRIL 26, 1978
PART II

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

■

DETERMINATION THAT VARIOUS PLANT TAXA ARE ENDANGERED OR THREATENED SPECIES

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination that 11 Plant Taxa are Endangered Species and 2 Plant Taxa are Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines 11 plant taxa to be Endangered species, and two plant taxa to be Threatened species. This action is being taken primarily because of threats to the plants from habitat destruction. Twelve States are involved: California, Georgia, Hawaii, Iowa, Maine, New York, Ohio, South Carolina, Texas, Utah, Virginia, and Wisconsin, as well as New Brunswick, Canada.

DATES: This rule becomes effective on May 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director for Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

Background

On April 21, 1975, the United States Fish and Wildlife Service (hereinafter, the Service) published a notice of review for four U.S. and Canadian plants in the FEDERAL REGISTER (40 FR 17612) advising that sufficient evidence was on file to warrant a status review of the species with regard to their possible qualification for determination as Endangered or Threatened species under provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884; hereinafter, the Act). The Northern wild monkshood (*Aconitum noveboracense*) was one of the four plants.

Subsequently, on July 1, 1975, the Service published a notice of review for 3,187 vascular plants in the FEDERAL REGISTER (40 FR 27823), advising that the Service considered the Smithsonian Institution's "Report on Endangered and Threatened Plant Species of the United States" (House Document 94-51) as a "petition" in the context of Section 4(c)(2) of the Act, and that ample justification had been presented to warrant a review to their possible qualification for determination as Endangered or Threatened species under provisions of the Act. Twelve of the 13 plants included herein, and a variety of the *Aconitum*, were among the 3,187 plants reviewed.

On June 7, 1976, the Service published procedural rules in the FEDERAL REGISTER (41 FR 22915) proposing prohibitions on certain uses of Endangered or Threatened plants, permits for exceptions to such prohibitions, and related items. The final rulemaking was published in the June 24, 1977, FEDERAL REGISTER (42 FR 32373).

In addition, on June 16, 1976, the Service published in the FEDERAL REGISTER (41 FR 24523) a proposal that 1,783 vascular plants known to occur in the United States were Endangered species as provided by the Act. The 13 plants in this final rule were among the 1,783 proposed. That proposal briefly summarized the factors thought to be contributing to the likelihood that the species would become extinct within the foreseeable future; specified the prohibitions which would be applicable if such a determination were to become final; and solicited relevant, written comments, and other documents from interested persons.

Critical Habitat was proposed for the Antioch Dunes evening-primrose (*Oenothera deltoides* ssp. *howellii*), Contra Costa wallflower (*Erysimum capitatum* var. *angustatum*), and six butterflies in the February 8, 1977, FEDERAL REGISTER (42 FR 7972).

In the July 2, 1976, FEDERAL REGISTER (41 FR 27381) the Service announced that four public hearings would be held concerning the various proposals and reviews for plants. The public was invited to present their opinions either orally or in writing at the public hearings.

This rulemaking determining 13 plants to be Endangered or Threatened species is the second final rulemaking which the Service has issued based on the proposal of 1,783 plants as Endangered. The first such rulemaking included four plants from San Clemente Island, Calif., and was published in the August 11, 1977, FEDERAL REGISTER (42 FR 40682). An additional 1,404 native plants remain under review from the April 21, 1975, and July 1, 1975, FEDERAL REGISTER notices.

Summary and Discussion of Comments

As has been previously discussed, up to July 1976 the Service published two notices of review and a proposed rulemaking concerning the determination of native plants as Endangered or Threatened species, and proposed procedural regulations for plants. In addition, the Service published a proposed rulemaking in the June 16, 1976, FEDERAL REGISTER (41 FR 24367) and a final rulemaking in the February 22, 1977, FEDERAL REGISTER (42 FR 10461) for the implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Many of the comments received discussed more than one of the reviews or proposed rulemakings. Included in those comments were about 425 which specifically addressed the proposed Endangered status for the 1,783 plants.

The following is a quantitative summary and general discussion of these comments received. About 200 letters were received from citizens (including professional biologists), 53 from commercial enterprises and associations, 46 from conservation groups, 63 from garden clubs, 31 from Federal agencies, and 37 from State and local agencies. Three professional botanists, four State representatives and one representative of a commercial business submitted testimony directly relevant to the listing of the 1,783 plants at the four public hearings. Some of this testimony was supplemented by written statements. Excerpts of testimony from the public hearings were featured in the September 1976 issue of the Service's *Endangered Species Technical Bulletin* and are incorporated herein.

The deadline for written comments on the proposed listing was August 16, 1976; however, additional comments received by March 18, 1977, were considered. Any further comments, data or questions concerning these plants should be addressed to the Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240.

The Service responded to many comments received and those responses often resulted in additional communications. Efforts made by the Service to elicit information from the public included the dispersal of over 6,000 copies of the proposal, announcements in the July and September 1976 issues of the *Endangered Species Technical Bulletin*, and presentations by Service botanists to professional and amateur organizations. Among the numerous newspaper articles published concerning the proposal were those in the June 18, 1976, Washington Post and Honolulu Advertiser and the June 19, 1976, Detroit Free Press.

About 400 of the comments received supported the conservation of Endangered and Threatened plants. Less than one percent opposed such conservation programs. Many comments supplied data for those plants covered by the notices of review, for those plants proposed as Endangered, and for other plants that should possibly be proposed as either Endangered or Threatened. Comments and data pertaining to specific plants will be discussed when those plants are included in final rulemakings.

Data Required to Determine Plants as Endangered Species or Threatened Species.—Many comments suggested that the plants in the reviews or the proposals did not have sufficient documentation to warrant their designation as either Endangered species or Threatened species. In addition, about two dozen comments expressed concern about the quality and availability of the data. One of the reasons for publishing such reviews and proposals is to solicit data. Section 4(b)(1) of the Act requires that the listing of a species as an Endangered species or a Threatened species, or its subsequent delisting, must be based on ". . . the best scientific and commercial data available. . . ." The compilation and analysis of data concerning Endangered animals and plants must be a continuous process to insure the accuracy of the list and to promote efficient management practices. The Service has received data that support the designation of some taxa as Endangered species or Threatened species and data that suggests others may not qualify for such status. Although most of the 1,783 plants were considered endangered by the Smithsonian Institution in their report (House Document 94-51), at this time their data are not in a form that can be easily distributed in their entirety. The Smithsonian was under contract to the Service from July 1976 through June 1977 to consolidate and add to their data and these data are available for inspection by interested parties. Also, detailed information is being developed by many State groups, in some cases under Service contracts through our Regional offices.

Concern and Recommendations for Plant Conservation.—Two comments expressed concern about the small number of staff and the modicum of funds available for plant conservation in the Service's Office of Endangered Species. More than 85 comments suggested that more publicity is necessary to educate the public about the identity, habitat, and the conservation of Endangered and Threatened plants. Included were about 55 letters from members of the Garden Club of America who felt "the public could be much better informed about endangered plants if money available . . . was used for color posters showing the endangered plant species of every state."

Several comments urged the establishment of Cooperative Agreements for plant conservation between the Federal and State governments under Section 6 of the Act. Congress did not authorize the establishment of Cooperative Agreements for plant conservation under Section 6; however, the Service may enter into Section 6 Management Agreements with the States for the administration and management of areas established for the coservation of Endangeed species or Threatened species.

Inclusion of the 1,783 Plants in the Appendices of the Trade Convention.—More than 35 comments have been received suggesting that the Service propose all of the 1,783 plants for inclusion in the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Several of these comments specified Appendix III as the appendix under which these taxa should be listed. The Service anticipates proposing those U.S. plants that would benefit from such action and that meet established criteria, for inclusion in the appropriate appendices of the Convention.

Comments Concerning the Designation of Rare Plants, Plants that have Economic Value, Plants that Produce Hallucinogens and Allergens, and Extinct Plants as Endangered Species and Threatened Species.—Five comments questioned whether the rarity of a plant constituted justification for its designation as an Endangered species or a Threatened species. The Director, U.S. Fish and Wildlife Service, may determine a plant as an Endangered species or a Threatened species because of the comprehensive factors provided in Section 4(a)(1) of the Act. If a plant is rare, but is not affected by any of the factors, then it may not be considered for such status.

Two comments suggested that only plants with economic value should be considered for Endangered or Threatened status. In addition, a few comments expressed opposition to consideration of rare plants in general which include plants that produce hallucinogens and allergens. Section 4(a)(1) of the Act, which sets forth the criteria for listing, does not place any restrictions on the types of plants or the attributes a plant should have before it can be listed under the Act. It should be remembered that plants determined as Endangered species or Threatened species that are not already of economic or medical importance may prove to have such importance after their biology is more thoroughly understood or with the advent of new technologies.

One comment questioned the necessity of listing plants under the Act that are thought to be extinct. In contrast, another comment suggested that all extinct plants should be listed as Endangered. Concern was expressed that delays in the listing process might result in the destruction of any rediscovered species.

In their report, the Smithsonian Institution designated 100 plants as extinct, or possibly or probably extinct. These plants were among those proposed as Endangered. Since the publication of the Smithsonian Institute's report, several of the plants thought to be possibly or probably extinct have been rediscovered. This is the case with four of the thirteen plants in this final rulemaking.

Section 7 of the act.—Section 7 of the Act, which sets forth conservation obligations of Federal agencies, was referred to in 16 comments. Section 7 reads as follows:

"The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical."

Two comments supported section 7 as a good tool for the conservation of Endangered and Threatened plants. The remaining 14 comments expressed concern that the protection afforded such plants under section 7 would inhibit the utilization of the plants' habitat. One member of a mining organization noted: "While we recognize the importance of rare species of plants, we urge the Fish and Wildlife Service to recognize the problems being confronted by the United States in maintaining an adequate land base for the production of vital natural resources."

The Service recognizes that in the future some projects and activities could potentially be in conflict with section 7; however, the Service anticipates that a large majority of the plants determined as Endangered species or Threatened species can be conserved with only minor modifications in the use of their habitat, and little expense. Furthermore, the Service firmly believes that the vast majority, if not all, of these potential conflicts can be avoided through use of the consultation process under section 7. Many such plants can be conserved with the simple recognition of their existence by persons managing their habitats.

Time available for comments.—Fifty-six comments requested more time (up to five years) to offer comments and to provide time for the study of the status of the 1,783 plants proposed as Endangered. Six comments requested additional hearings. The Service is always interested in receiving additional comments and data that may be useful in better establishing the status of any plant, in designating Critical Habitat, or in conserv-

ing Endangered species or Threatened species. In light of this policy and the long time between the proposal and subsequent final rulemakings, the Service does not feel that an official extension of the comment period or the scheduling of additional hearings is necessary.

Need for assessing the impacts of designating plants as Endangered or Threatened species.—Ten organizations and two individuals submitted comments in which they suggested that the environmental or economic impact of listing plant taxa should be investigated. The Service recognizes the concern of those individuals who will be affected by conservation of plants under the Act and will fully comply with existing law, including the requirements of the National Environmental Protection Act of 1969.

Designation of plant varieties as Endangered species or Threatened species.—There has been some concern expressed as to whether Congress has empowered the Service through the Act to designate plant varieties as well as plant subspecies as Endangered species or Threatened species. In their report (House Document 94-51), the Smithsonian Institution noted several inadequacies in the Act for the conservation of plants. The first such inadequacy discussed was that the term "species" as defined in section 3(11) of the Act clearly includes subspecies, but not varieties.

Although the International Code of Botanical Nomenclature (Stafleu, F. A., ed. 1972. Adopted by the Eleventh International Botanical Congress, Seattle, August 1969. Regnum Vegetabile 82:1-426.) lists the rank variety below the rank subspecies, the Service has recognized that there has not been a precise botanical usage of these ranks. When the Service published the proposed rulemaking to designate 1,783 plants as Endangered species, numerous plant varieties were included. In that rulemaking the Service provided the following discussion: "The Service recognizes that plant taxonomy is not an exact science, that the knowledge of plants continues to develop, and that scientific nomenclature reflects such understanding. It further recognizes that the classification and nomenclatural rank given to a plant is subject to opinion, based on the specialist's knowledge of the plant in question, and his interpretation of the terms and concepts of plant taxonomy. Consequently, those plants named as 'varieties' in the Smithsonian Institution report and its revision are here considered to be subspecies and, therefore, 'species' as defined in section 3(11) of the Act."

The Service feels that there is a rational basis for this interpretation, and has received support from the botanical community for the determination of plant varieties as Endangered or Threatened. As an example, a botanist from the Smithsonian Institution supplied a discussion of the botanical usage of infraspecific ranks to the Service, in which he concluded that as the terms have historically been used interchangeably, they are essentially identical.

In addition, the usage of these infraspecific ranks has been discussed in numerous general texts in plant taxonomy. A. S. Hitchcock (1925. Methods of Descriptive Systematic Botany. John Wiley and Sons, Inc., New York. pp. 11-12.) noted: "The tendency, especially among most American botanists, is to recognize among wild plants only one subdivision of the species. It is evident that the subdivisions may have very unequal rank, and this inequality may be indicated by several categories of minor groups; but from the standpoint of convenience in the use of the terms and in the designation of groups, the method of having a single category below the species is preferable." Hitchcock continued by noting that the rank ". . . variety (or subspecies)." is the rank most used for designating the primary subdivisions of plant species.

George H. M. Lawrence (1951. Taxonomy of Vascular Plants. MacMillan Company, New York, p. 55.) also discussed the synonymy of the ranks variety and subspecies (italic supplied).

"The variety (Latin, varietas) has been used as a category to designate as many or more concepts as has that of subspecies. Horticulturists have used it indiscriminately for any variant of the species; botanists have considered it to be (1) a morphological variant of the species without regard for distribution, (2) a morphological variant having its own geographical distribution, (3) a morphological variant sharing an area in common with one or more other varieties of the same species, and (4) a variant representing only a color or habit phase. *From this it is clear that the same plant may be designated a subspecies by one botanist and a variety by another,* or that the variety of one author is placed in the category of forma by another author. This lack of unanimity of concept is disconcerting, but it is a factor to be recognized in any appraisal of taxonomic literature. In this regard, it is not especially important that agreement exist if by even diverse modes of evaluation the same pattern of relationship is reached. There is no historical basis for priority of usage of either the term subspecies or variety."

Lyman Benson (1957. Plant Classification. D.C. Heath and Company, Boston. p. 3.) emphasized the use of the rank variety as the major subdivision of species for plants: "Species are made up of varieties." Although the term variety in plant toxonomy is often regarded by laymen as representing a trivial distinction, Benson emphasized (italic supplied): "The botanical variety is not to be confused with the horticultural 'variety,' which is not a taxon but a minor variant or hybrid of economic or aesthetic significance. *The term subspecies is used by some authors in exactly the same sense as variety.* Others employ it as a designation for a group of higher rank than variety but lower than species. The majority of botanists have not used the term, but it is in common usage in zoology."

C. L. Porter (1959. Taxonomy of Flowering Plants. W. H. Freeman and Company, San Francisco, p. 61.) reached a similar conclusion (italic supplied). *"Unfortunately, clear distinctions are not always drawn between subspecies and varieties and the two categories are used more or less interchangeably."*

In recent years there has been a tendency to use the rank subspecies to designate the major subdivisions of plant species. This tendency has been particularly prevalent in the case of morphologically distinct, allopatric populations. The rank variety in turn has become more commonly associated with individual plants that are morphologically distinct, but sympatric with other dissimilar members of the same species. Such an interpretation was made by the editors of *Flora Europaea* (1964. Tutin, T. G. et al. Cambridge University Press. Vol. I. p. xx). In that work those varieties considered to biologically represent subspecies were elevated to the rank of subspecies.

Congress has clearly indicated in Section 3(11) of the Act defining the term "species" that infraspecific taxa should be included and conserved. As the rank variety has been used by botanists as the major infraspecific subdivision for many plant species, the Service considers it appropriate to consider plant varieties for determination as Endangered or Threatened.

This interpretation has not been shared by every individual who has addressed this issue in the comments received by the Service. In a letter dated August 22, 1975, the Governor of the State of Hawaii noted ". . . the varietal level is not necessary to protect species nor is it required by the Endangered Species Act (Section 3(11))." With this letter, the Governor submitted a list of about 300 Hawaiian plants that he felt should be considered for designation as Endangered species or Threatened species under the Act. That list was examined by staff botanists at the Office of Endangered Species who discovered numerous instances where the failure to designate varieties resulted in the inclusion of plants that had not been recommended as Endangered or Threatened by the Smithsonian Institution.

The Service received several comments that supported the designation of plant varieties as Endangered or Threatened. The desirability of precision in the listing process was emphasized in a comment from an oil shale corporation: ". . . it is necessary that action be taken to protect endangered plants; but the law should be very specific. If even the variety name is omitted, it has a tremendous impact and changes the conservation of a rare plant to plants that are quite common."

The Service feels its resources would be best appropriated by concentrating on those plants and animals that would most benefit from the provisions in the Act for their conservation. As the Service desires to insure that major infraspecific plant taxa are considered for designation as Endangered species or Threatened species, we intend to carefully review endangered plant varieties to ascertain which should be so designated.

This final rulemaking determines one plant variety, the Contra Costa wallflower, as an Endangered species. The Contra Costa wallflower is represented by a morphologically distinct population which has unique ecological requirements.

Comments that pertain directly to the plants in this rulemaking.—Northern wild monkshood, (*Aconitum noveboracense*). In a petition (dated August 12, 1974) Dr. Hugh H. Iltis, among others, requested the Service to designate the Northern wild monkshood and 16 other plants as Threatened under the Act. Subsequently, the Service included the Northern wild monkshood in the two notices of review and the proposed rulemaking for 1,783 plants. In each of these publications the Service requested data concerning the subject taxon.

Fifteen comments were received concerning the Northern wild monkshood in response to these requests and to other requests by Service personnel for data. The Army Corps of Engineers submitted a report prepared by Robert H. Read on certain Driftless Area flora and cliff communities that lie primarily within the proposed impoundment area of the La Farge Dam north of La Farge, Vernon County, Wis. The comments contained data on the taxonomy, ecology, and the historical and present distribution of the Northern wild monkshood. In addition, several individuals supplied relevant scientific articles and reports.

Rydberg milk-vetch (*Astragalus perianus*) The Service received one comment concerning the locations of two populations of this species in Garfield and Piute Counties, Utah.

Hairy rattleweed (*Baptisia arachnifera*) One comment was received with notes on the range, distribution, and status of the hairy rattleweed. It was noted that this plant grows on sandy soil in pine woods and some mixed woodlands in Wayne and Brantley Counties, Ga.

Virginia round-leaf birch (*Betula uber*) The two comments received concerning this species contained notes on its distribution and an account of its rediscovery in Smyth County, Va.

Santa Barbara Island liveforever (*Dudleya traskiae*) The Service did not receive any comments concerning this plant by March 18, 1977. The California Native Plant Society recently provided an article on the species from the January, 1978, *Fremontia.*

Contra Costa wallflower (*Erysimum capitatum* var. *angustatum*) and Antioch Dunes evening-primrose (*Oenothera deltoides* ssp. *howellii*) The Service did not receive any comments concerning the *Erysimum.* One comment on the *Oenothera* was received that noted over the past 30 years the habitat of this subspecies (i.e. Antioch Dunes, Contra Costa County, Calif.) had been reduced from 500 to 15 acres.

Eureka evening-primrose (*Oenothera avita* ssp. *eurekensis*) and Eureka dune grass (*Swallenia alexandrae*) The service received numerous letters and data before the June 16, 1976, proposed rulemaking concerning these two plants and their habitat, the Eureka Valley, Inyo County, Calif. Much of the correspondence expressed concern about the use of the Eureka Dunes and other parts of the Eureka Valley by off-road vehicles. The use of the Eureka Dunes for vehicular recreation was felt to be a serious threat to the unique Eureka Dunes ecosystem. The Eureka Dunes is the major habitat for the Eureka evening-primrose, the Eureka dune grass, and several other endemic animals and plants. The Service did not receive additional comments concerning these taxa during the formal comment period. In December, 1977, a comment reported recent heavy vehicle use of the dunes.

Furbish lousewort (*Pedicularis furbishiae*) In the summer of 1976, Dr. Charles E. Richards, University of Maine, found several small colonies of the Furbish lousewort on the banks of the St. John River near the town of Allagash, Aroostook County, Maine. This was the first time that this plant had been seen in the wild in 30 years. Dr. Richards made his discovery while under contract to the Army Corps of Engineers to prepare a report on the flora that might be impacted by the proposed construction of two dams on the St. John River, the Dickey-Lincoln School Lakes Project. This report was contracted by the Corps to support their Environmental Impact Statement for this project. On October 27, 1976, the Corps submitted the report prepared by Dr. Richards to the Service.

On November 9, 1976, the Natural Resources Council of Maine submitted a petition to the Service to designate the Furbish lousewort and Josselyn's sedge (*Carex josselynii*) as Endangered. The sedge has not been located in any of the recent surveys of the St. John River Valley. The New England Coastal Oceanographic Groups (letter dated December 1, 1976) expressed support for the petition submitted to the Service by the Natural Resources Council of Maine.

In addition, the Service received seven other comments concerning the Furbish lousewort. Two of the comments supplied data on the present and historical distribution of the plant. In a letter dated October 8, 1976, the Maine State Planning Office notified the Service that the Critical Areas Program of the State Planning Office had contracted Maine botanists to prepare reports on three plants, including the Furbish lousewort. The reports were to be used to aid their investigations to determine whether some of the habitat of these three plants should be included in their Critical Areas Program. Several comments supported the designation of the Furbish lousewort as an Endangered species. In contrast, one individual noted that although she did not like to see the plant become extinct, she felt that it should not interfere with plans to construct the Dickey-Lincoln School Lakes Project. Another comment noted that efforts would be made in the summer of 1977 to look for the Furbish lousewort along the St. John River in Canada.

Various articles on this species were published after March, 1977. The New York Botanical Garden provided the Service with one by Dr. Howard S Irwin, from their September/October, 1977, Garden.

Persistent trillium (*Trillium persistens*) One comment was received concerning this species. Notes were included on the taxonomy, ecology, and distribution of the persistent trillium in the Tallulah-Tugaloo River System, Rabun and Habersham Counties, Ga., and Oconee County, S.C.

Hawaiian wild broad-bean (*Vicia menziesii*) The Service received one comment concerning this species. Included were notes on the distribution and size of the populations of the Hawaiian wild broad-bean on Mauna Loa, Island of Hawaii, and the major threat, feral pigs.

Texas wild-rice (*Zizania texana*) One comment was received which included notes on the distribution and size of the populations of Texas wild-rice in the San Marcos River. Relevant scientific reprints were also supplied.

Conclusion and Summary of Factors Affecting the Species

After a thorough review and consideration of all the information available, the Director has determined the

following 11 plants to be Endangered species: hairy rattleweed, *Baptisia arachnifera* Duncan; Virginia round-leaf birch, *Betula uber* (Ashe) Fernald; Santa Barbara Island liveforever, *Dudleya traskiae* (Rose) Moran; Contra Costa wallflower, *Erysimum capitatum* (Douglas) Greene var. *angustatum* (Greene) G. Rossbach; Eureka evening-primrose, *Oenothera avita* (W. Klein) W. Klein ssp. *eurekensis* (Munz & Roos) W. Klein; Antioch Dunes evening-primrose, *Oenothera deltoides* Torrey & Fremont ssp. *howellii* (Munz) W. Klein; Furbish lousewort, *Pedicularis furbishiae* Watson; Eureka dune grass, *Swallenia alexandrae* (Swallen) Soderstrom & Decker; persistent trillium, *Trillium persistens* Duncan; Hawaiian wild broad-bean, *Vicia menziesii* Sprengel; and Texas wild-rice, *Zizania texana* A. S. Hitchcock. The following two plants are determined to be Threatened species: Northern wild monkshood, *Aconitum noveboracense* A. Gray; and Rydberg milk-vetch, *Astragalus perianus* Barneby.

Section 4(a) of the Endangered Species Act of 1973 states that the Secretary of the Interior may determine a species to be an Endangered species, or a Threatened species, because of any of five factors. These factors are: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, sporting, scientific, or educational purposes; (3) disease or predation (the Service considers grazing under this factor); (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or man-made factors affecting its continued existence. The plants considered above for listing as either Endangered or Threatened species relate to these factors as follows (numbers refer to factors above):

Northern wild monkshood.(1) Historically, this monkshood has been collected in two localities in Chenango County, N.Y.; one locality in Orange County, N.Y.; three localities in Ulster County, N.Y.; one locality in Sullivan County, N.Y.; two localities in Summit County, Ohio; one locality in Portage County, Ohio; one locality each in Allamakee, Dubuque, Jackson, and Delaware Counties, Iowa; two localities in Clayton County, Iowa; one locality in Richland County, Wis.; three localities in Sauk County, Wis.; and seven localities in Vernon County, Wis., for a total of 27 locations.

The present known distribution of the Northern wild monkshood consists of 14 colonies, including one colony in Ulster County, N.Y.; one colony in Summit County, Ohio; one colony each in Allamakee, Clayton, and Jackson Counties, Iowa; one colony in Richland County, Wis.; two colonies in Sauk County, Wis.; and six colonies in Vernon County, Wis.

The disjunct distribution probably dates from the Ice Age when glaciers apparently destroyed intervening populations. The Northern wild monkshood appears to be restricted to moist soil pockets at the bottom of sandstone or limestone cliffs with a northern or eastern exposure. As such habitats are usually small in area and widely separated, the ability for this wildflower to migrate into similar unoccupied habitats is limited.

The restricted habitats of the Northern wild monkshood have also made many of its colonies vulnerable to extirpation. The New York colony is paralleled by a road. Widening the road could have an adverse impact on this population. The Ohio colony is in an urban park where it has been surrounded by construction projects. The Jackson County, Iowa, colony is in a private pasture. Three of the nine Wisconsin colonies would be destroyed by the normal level of the lake created by the La Farge Dam if that dam is constructed. At the highest water level (25-year flood) all but four of the nine colonies (25 percent of the Northern wild monkshoods in Wisconsin) could be destroyed.

Several of the known colonies of the Northern wild monkshood occur in areas where they should receive some protection. Three of the four Wisconsin colonies that would not be impacted by the La Farge Dam are in such areas. Two colonies are in State scientific areas, Parfrey's Glen and Lodde's Mill Bluff in Sauk County, and one colony is in Wildcat Mountain State Park in Vernon County. The Clayton County, Iowa, colony is in Bixby State Park. About 475 individual plants are located in these protected areas.

Rydberg milk-vetch. (1) This milk-vetch was first collected in the mountains north of Bullion Creek near Marysvale, Piute County, Utah in 1905. As this was the only known collection for about 70 years, the Smithsonian Institution in 1975 noted in their report that *A. perianus* was possibly extinct. In the summer of 1975 this species was collected in Piute and Garfield Counties, Utah. The Piute County population (consisting of about 100 individual plants) was found in the same general area as the 1905 collection in the Tushar Mountains at 10,000 feet altitude, Fish Lake National Forest. This population is in an area subject to temporary road construction for mineral exploration. Such activities may result in the accidental extirpation of this population. The Garfield County population is found on Mount Dutton at 10,600 feet altitude, Dixie National Forest. The individual plants occur in an area of about one acre which is bisected by a road. Maintenance of this road or other activities promoted by its use may threaten the continued existence of this population.

(3) Both of the populations occur in areas used for grazing sheep.

Hairy rattleweed. (1) This species was first collected in 1942 about ten miles south of Jesup, Wayne County, Ga. The plant was abundant on low, sandy ridges in open, pine woods dispersed over an area about ten miles long, from southern Wayne County to northern Brantley County. In the area where the hairy rattleweed occurs, pines are clear-cut for lumber and pulp. The hairy rattleweed appears capable of surviving the cutting practices; however, the subsequent methods for site preparation and the replanting of the pines have greatly reduced the distribution of this species.

Virginia round-leaf birch. (5) This birch was first collected south of Rye Valley Station at 2,800 feet altitude in Smyth County, Va., in 1914. Since the early collections, several attempts have been made to relocate this species, none of which were successful as of early 1975 when the Smithsonian Institution published their report. Consequently the Smithsonian noted that the Virginia round-leaf birch was probably extinct.

In the summer of 1975, the Virginia round-leaf birch was rediscovered along Cressy Creek in Smyth County. Searches along Cressy Creek revealed 14 mature trees, 1 three-stemmed shoot and 21 seedlings. Most of the plants occurred on private land, but two were in the adjacent Jefferson National Forest.

The small population size of the Virginia round-leaf birch makes the continued existence of this species extremely vulnerable. Before the rediscovery, grazing by cows may have prevented some of the seedlings from reaching maturity. Since the birch was rediscovered, two trees have died, several seedlings have been removed for scientific purposes, several seedlings have been stolen, and all but two of the remaining seedling have been damaged by vandals. The private landowners have erected fences around their trees.

Santa Barbara Island liveforever. (1 and 3) this species is endemic to Santa Barbara Island, Santa Barbara County, Calif. The native vegetation of the island has been largely destroyed by such former practices as farming, grazing and intentional burning. In addition, the island has an introduced population of European hares which are a threat to the native plants. In 1975 the Smithsonian Institution noted in their report that the Santa Barbara Island liveforever had not been collected since 1968 and that is was possibly extinct.

In 1975 several plants were discovered regenerating from stubs that had been gnawed to the ground by the hares. This regeneration can probably be attributed to the efforts by the Na-

tional Park Service to eradicate the hares. Subsequently, a few hundred individual plants were discovered on the face of a sea cliff. Although this population is protected from the hares by its location on the cliff, the eventual recovery of this species and other plants on Santa Barbara Island will depend on the continued efforts of the National Park Service to control the hare population.

Eureka evening-primrose and Eureka dune grass. (1) The majority of the Eureka evening-primroses are restricted to the base of the Eureka Dunes in Inyo County, Calif. The Eureka dune grass is known from three locations in the Eureka Valley; however, most of the plants are on the Eureka Dunes.

In recent years the Eureka Dunes have been used for off-road vehicle recreation. The use of the dunes for this kind of recreation constitutes a serious threat to the animals and plants of the Eureka Dunes ecosystem. Since the Eureka dune grass and the Eureka evening-primrose were proposed as Endangered, the Bureau of Land Management has posted the dunes and part of the surrounding area closed to vehicles. Strict enforcement of the restrictions to vehicular access to the dunes will be necessary to insure the continued existence of the Endangered species found there.

Antioch Dunes evening-primrose and the Contra Costa wallflower. (1) These plants are endemic to the Antioch Dunes near Antioch, Contra Costa County, Calif. In their original state, the Antioch Dunes covered approximately 500 acres of the south bank of the Sacramento-San Joaquin River. Agricultural and industrial activities have reduced the original dunes by ninety percent. Dr. Paul Opler, Office of Endangered Species, U.S. Fish and Wildlife Service, found only 28 Contra Costa wallflowers when he visited the dunes on February 18, 1977.

Furbish lousewort. (1) This species is endemic to the St. John River Valley. Collection records document that it was found in numerous locations from Allagash Plantation, Maine to Andover, New Brunswick. Much of the former habitat suitable for Furbish louseworts below Allagash has been modified by farming and construction. In 1975 the Smithsonian Institution noted in their report that the Furbish lousewort had not been collected since 1943 and that it was probably extinct.

In 1976 the Army Corps of Engineers contracted Dr. Charles D. Richards, University of Maine, to survey the St. John River watershed for the numerous rare and unusual plants that are known to occur there. The results of his survey were to be used to support the Corps' Environmental Impact Statement for the Dickey-Lincoln School Lakes Project. Although Dr. Richards did not find any Furbish louseworts at the localities documented by herbarium specimens at the University of Maine, he did find six populations of the species (about 200 individual plants) within the township of Allagash. Further surveys in 1977 by Dr. Richards and others under contract to the Corps led to discovery of more louseworts. Presently 880 individuals in 21 colonies are known from the St. John River Valley in Maine and New Brunswick, Canada.

Dumping, natural landslides, and construction and lumbering near the banks of the river, represent serious threats to the continued existence of this species. In addition, 350 individuals in 13 colonies lie within the proposed impoundment area of the Dickey-Lincoln School Lakes Project. If this project is completed as planned, 40% of the known individuals of the Furbish lousewort will be extirpated.

Persistent trillium. (1) All of the populations of this trillium are found within four miles of each other in the Tallulah-Tugaloo River System in Rabun and Habersham Counties, Georgia, and Oconee County, South Carolina. Most of the individual plants are found in the Tallulah Gorge and surrounding ravines on private land. A few individual plants occur in the adjacent Sumter National Forest.

As this species has a restricted distribution, it could be adversely impacted by development in the Tallulah Gorge or the surrounding area. In addition, some silvicultural practices at the edges of the Gorge could have an adverse impact on the persistent trillium's habitat.

Hawaiian wild broad-bean. (3 and 5) This will broad-bean has been recorded as being present on both Mauna Kea and Mauna Loa at about 7,000 to 8,000 feet altitude on the Island of Hawaii. One population, consisting of about six mature vines and a dozen seedlings, is known, from the private Kilauea Forest Reserve on the southeast slope of Mauna Loa at about 5,200 feet altitude. The major threat to this species appears to be feral animals that use it as food.

As this species is represented by a small population, its continued existence is extremely precarious. The few individuals that remain may possess deleterious genes that through inbreeding could express themselves in future generations.

Texas wild-rice. (1 and 5) This aquatic grass is known only from the upper San Marcos River, Hays County, Texas. Currently, the grass is restricted to a 2.4 km section of the river where it was calculated in 1976 to occupy 1,131 square meters.

The primary threat to this species has been that some of the residents of the San Marcos area consider it to be a weed. Growth of the grass and other aquatic vegetation in Spring Lake and other sections of the San Marcos River within the park system of the city of San Marcos has been controlled by mowing, and harrowing and ploughing. The debris resulting from these activities floated downstream and entangled in the inflorescences of the Texas wild-rice dragging them below water, thus precluding any sexual reproduction.

These activities have been recently stopped and are no longer threats to the wild-rice.

In addition, two commercial enterprises have removed wild-rice from the river and replaced it with plants used in home aquaria. Currently, one enterprise is engaged in this type of activity on a limited basis.

Finally, there has been some sewage pollution in the San Marcos River. This pollution may have an adverse impact on the habitat of Texas wild-rice. Although most of the threats to Texas wild-rice in the San Marcos River have been recently abated, the plants have not reproduced sexually in many years. The recovery of the grass in the river will depend on the conservation of the upper San Marcos River ecosystem and require research to identify the factors that are preventing sexual reproduction.

Effect of Rulemaking

The determination set forth in these rules makes all 13 species eligible for consideration provided by section 7 of the Act. Section 7 has been reprinted in the Summary and Discussion of Comments in this final rulemaking. Final regulations for section 7 appear in the January 4, 1978, Federal Register (43 FR 869).

Critical Habitat has only been proposed for the Antioch Dunes evening-primrose and the Contra Costa wallflower. The other provisions of section 7 are applicable for all the subject plants.

Regulations which appear in Part 17, Title 50 of the Code of Federal Regulations, were published in the Federal Register of June 24, 1977 (42 FR 32373) and set forth a series of general prohibitions and exceptions which apply to plant species. They provide for the issuance of permits to carry out otherwise prohibited activities concerning Endangered or Threatened plants under certain circumstances. Permits involving Endangered plants are available for scientific purposes or to enhance the propagation or survival of the species. Permits involving Threatened species are available for scientific purposes; the enhancement of the propagation or survival of the species; economic hardship; botanical or horticultural exhibition; educational purposes; or other purposes consistent with the purposes and policy of the Act.

Effect Upon the States

The determination that 11 of these plants are Endangered species and 2 of these plants are Threatened species will enable the States of California, Georgia, Hawaii, Iowa, Maine, New York, Ohio, South Carolina, Texas, Utah, Virginia, and Wisconsin to enter into Management Agreements pursuant to section 6(b) of the Act, for the management of any area established for the conservation of these species. In addition, the determination of the Hawaiian wild broad-bean as an Endangered species under the Act will automatically include the plant as an Endangered species under the Hawaii endangered species law.

Effect Internationally

The Furbish lousewort is determined as Endangered in its entire range, including New Brunswick, Canada. In addition to the protection provided by the Act, the Service will review these 13 species to determine whether they should be considered under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, or other appropriate international agreements.

National Environmental Policy Act

An Environmental Assessment has been prepared and is on file in the Service's Office of Endangered Species. It addresses this action as it involves all 13 plants. The assessment and public comments received on this rulemaking are the basis for a decision that these determinations are not major Federal actions which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

This rulemaking is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884).

This rulemaking was prepared by Mr. Roger E. McManus, Dr. Raymond F. Altevogt, and Dr. Bruce MacBryde, Office of Endangered Species, 202-343-7814.

Note.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: April 12, 1978.

Lynn A. Greenwalt,
Director,
Fish and Wildlife Service.

Accordingly Part 17, Subpart B of Title 50 of the Code of Federal Regulations is amended as set forth below:

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, and species, the following plants:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Betulaceae—Birch family:						
Betula uber	Virginia round-leaf birch.	U.S.A. (Virginia)	Entire	E	39	NA
Brassicaceae—Mustard family:						
Erysimum capitatum var. *angustatum.*	Contra Costa wallflower	U.S.A. (California)	do	E	39	NA
Crassulaceae—Stonecrop family:						
Dudleya traskiae	Santa Barbara Island liveforever.	do	do	E	39	NA
Fabaceae—Pea family:						
Astragalus perianus	Rydberg milk-vetch	U.S.A. (Utah)	do	T	39	NA
Baptisia arachnifera.	Hairy rattleweed	U.S.A. (Georgia)	do	E	39	NA
Vicia menziesii	Hawaiian wild broad-bean.	U.S.A. (Hawaii)	do	E	39	NA
Liliaceae—Lily family:						
Trillium persistens	Persistent trillium	U.S.A. (Georgia, South Carolina).	do	E	39	NA
Onagraceae—Evening-primrose family:						
Oenothera avita ssp. *eurekensis.*	Eureka evening-primrose.	U.S.A. (California)	do	E	39	NA
Oenothera deltoides ssp. *howellii.*	Antioch Dunes evening-primrose.	do	do	E	39	NA
Poaceae—Grass family:						
Swallenia alexandrae	Eureka dune grass	do	do	E	39	NA
Zizania texana	Texas wild-rice	U.S.A. (Texas)	do	E	39	NA
Ranunculaceae—Buttercup family:						
Aconitum noveboracense.	Northern wild monkshood.	U.S.A. (Iowa, New York, Ohio, Wisconsin).	do	T	39	NA
Scrophulariaceae—Snapdragon family:						
Pedicularis furbishiae.	Furbish lousewort	U.S.A. (Maine); Canada (New Brunswick).	do	E	39	NA

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Federal Register

WEDNESDAY, APRIL 26, 1978
PART III

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

■

ABANDONED MINE LAND RECLAMATION PROGRAM PROVISIONS

[4310-05]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[30 CFR Parts 840, 841, 843, 845, 848, 850, 852, 855]

ABANDONED MINE LAND RECLAMATION PROGRAM PROVISIONS

Proposed Rules

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

ACTION: Proposed rules.

SUMMARY: The regulations added to this chapter by these parts establish the abandoned mine land reclamation program as required by the Surface Mining Control and Reclamation Act of 1977 (Act). The Act requires that regulations be promulgated for the mine land reclamation program, which incorporates the provisions of Title IV of the Act. The regulations establish procedures and requirements for the preparation, submission and approval of State and Indian programs, consisting of a plan and annual submissions of projects.

DATES: Comments must be received by June 26, 1978. Public hearings will be held starting at 9 a.m. on May 22, 1978, in Denver, Colo.; May 25, 1978, in St. Louis, Mo.; and June 1, 1978, in Washington, D.C.

ADDRESSES: Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Washington, D.C. 20240. Public hearings will be held at the Department of the Interior Auditorium, 18th & C Streets NW., Washington, D.C.; Wyer Auditorium, Denver Public Library, 1357 Broadway, Denver, Colo.; and Federal Building Auditorium, 405 South 12th Street, 12th & Spruce Streets, St. Louis, Mo.

FOR FURTHER INFORMATION CONTACT:

M. Richard Nalbandian, Chief, Division of Reclamation Planning and Standards, Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement, 202-343-4057.

SUPPLEMENTARY INFORMATION: The Surface Mining Control and Reclamation Act of 1977 (Act), Pub. L. 95-87, requires the Secretary of the Interior to publish regulations implementing an abandoned mine land reclamation program incorporating the provisions of Title IV of the Act. The regulations establish procedures and requirements for the preparation of State and Indian programs, consisting of a Reclamation Plan, annual submissions of projects and applications for annual grants. The proposed additional parts to this chapter also include implementation of the Federal, State and Indian Abandoned Mine Reclamation Funds; general reclamation objectives and requirements; conditions and procedures for entry on land for study, exploration, reclamation and emergency reclamation work; requirements for acquisition, management and disposition of eligible land and water; authorization for reclamation on private land; and establishment of interim procedures for Indian reclamation projects.

The public is urged to comment on these proposed regulations. The Office of Surface Mining Reclamation and Enforcement believes that full public participation in the rulemaking process will improve the quality of its Abandoned Mine Land Reclamation Program. The Office reserves the right to limit the time allotted for individual presentations during the public hearings but will give equal consideration to written materials supplementing such oral presentations.

These regulations are proposed pursuant to the authority of sections 201(c) and 412(a) of the Act (30 U.S.C. 1211, 1242). It should be noted that the regulations implementing the provisions of Title IV relating to the amount and collection of reclamation fees have already been promulgated in 30 CFR Part 837 on December 13, 1977 (42 FR 62713). A brief discussion of the parts and major sections of the proposed regulations follows:

Part 840 sets forth general responsibilities for administration of abandoned mine reclamation funds to finance the programs. It defines source and use of moneys deposited in the Funds and responsibility of Federal, State agencies and Indian tribes in the conduct of the program.

Part 841 establishes requirements for the selection of work to be performed with moneys from the applicable Fund. It includes land and water eligibility requirements, reclamation project objectives, and project evaluation factors.

Part 843 sets forth procedures for entry on land by the Office, State or Indian tribe under an approved Reclamation Plan to conduct studies or exploratory work to determine the existence of adverse effects of past coal mining practices, or reform necessary reclamation work.

Part 845 contains procedures for the acquisition, management and disposition of eligible land and water by the Office or a State or Indian tribe under an approved Reclamation Plan. This part also provides requirements for the collection and disposition of charges from the use or sale of acquiring lands.

Part 848 authorizes reclamation activity on private land after the procedures under part 843 have been met. Sections 848.12-14 establish procedures for the recovery of the cost of reclamation on privately-owned land.

Part 850 establishes requirements and procedures for the preparation, submission and approval of State Reclamation Plans. Sections 850.15 and 850.16 contain provisions for amendments to State Plans or withdrawal of Plan approval.

Part 852 sets forth procedures for grants to States having an approved State Reclamation Plan for the reclamation of eligible land and water and for other activities necessary to carry out the Plan as approved. This part also contains provisions for the reduction or termination of grants under certain circumstances and requirements for the administration of the grants.

Part 855 establishes interim procedures for conducting reclamation activities on Indian land in recognition of the unique status of Indian tribes under Title IV as a result of section 710 of the Act. This part is included to provide a method for beginning reclamation of Indian lands which are determined to be emergency or extreme danger situations or are of otherwise high priority for reclamation activities.

Abandoned Mine Reclamation Funds

Part 840 sets forth general responsibilities for administration of State and Indian Reclamation Programs, the Rural Lands Reclamation Program, and reclamation activities to be carried out by the Office of Surface Mining Reclamation and Enforcement (Office). It provides definition of terms used in the Abandoned Mine Land Reclamation Programs. It also states the sources or revenue and authorized uses for Federal, State and Indian Abandoned Mine Reclamation Funds.

Section 840.4(b) assigns responsibility to Regional Directors of the Office to consult with Indian tribes to develop an orderly approach to reclamation until such time as the study required by section 710 of the Act is completed. This section is consistent with proposed Part 855 and section 405(c) and 710 of the Act which, at this time, do not authorize the approval of an Indian Reclamation Plan. For a further explanation, see the discussion under Indian Reclamation Program below.

Section 840.5(b) defines "emergency." This definition establishes the basis for the Office to use the emergency powers of section 410 of the Act to enter on private property to do reclamation work. The alternative to requiring a formal declaration of an emergency or disaster before the powers of section 410 are used is not considered appropriate in light of Congressional intent expressed in the Act

and the legislative history to act expeditiously in emergency situations. Such declarations generally apply to larger areas or regions than may be required or eligible for reclamation activities under the Abandoned Mine Land Reclamation Program.

Section 840.5(c) defines "extreme danger." This definition identifies work which is to be carried out first. The definition has been somewhat narrowed by requiring that persons or improvements to real property be currently exposed to considerable physical harm for the danger to be extreme. The alternative of requiring only a reasonable expectation of considerable physical harm to persons or property does not provide the degree of distinction necessary for setting priorities. The definitions of "Imminent danger to the health and safety of the public" and of "Significant, imminent environmental harm to land, air or water resources" found in 30 CFR 700.5 are not considered appropriate for the determination of "extreme dangers" in the Abandoned Mine Land Reclamation Program since almost any area subject to treatment under the Program might meet one or both of the conditions they defined under those phrases.

Sections 840.11(b)(2) and (b)(3) indicate the time when "allocation" of revenues to States and Indian tribes will occur. The proposed rules are intended to maximize the span of time during which States and Indian tribes with approved Reclamation Plans can obtain grants from their allocation. The three-year period provided in section 402(g)(2) of the Act for expenditure of allocated moneys by States or Indian tribes would be extended under the proposal, if moneys had been granted during the three years and were still required for the program for which they were granted. Finally, provisions are included to avoid allocation of moneys to a State or Indian tribe which has declared its intent not to develop an approved program. These provisions are needed to prevent freezing of moneys for three years when those moneys may be required to carry out needed reclamation elsewhere.

A variety of alternatives to the ones selected were considered in developing these sections. The first alternative considered was to begin allocation of fees to States or Indian tribes at the time those fees were received, i.e., within 30 days from the end of the calendar quarter in which the fees were due. This approach, however, would actually shorten the time available to States or Indian tribes for use of allocated moneys during the early years of the Program because a greater portion of the three years would run concurrently with the time required for program development.

The second alternative examined was to begin allocation of fees only after a Reclamation Plan had been approved. This option would assure a full three years for use but would provide no start-up balance for a State or Indian tribe upon initial plan approval.

Two alternatives focused attention on the time for expenditure of moneys after a grant has been made to a State or Indian tribe from their respective allocations. The first would have required expenditure (i.e., the payment of cash) of granted moneys within three years of the date of allocation. This approach might stimulate faster use of grant moneys but it may prevent the use of longer term contracts which might be desirable. The second alternative would have required only that a grant be made within three years after the allocation is made. This approach contrasts with the proposed rule which provides that moneys allocated and granted must be expended within three years from the date of allocation. Although such an approach would increase the flexibility of States or Indian tribes to program allocated moneys, it was rejected because itwould substantially compromise Congress' intent that reclamation Fund moneys be used expeditiously.

Sections 840.12(b)(2) and 840.13(b)(2) authorize the deposit of use charges in State or Indian Abandoned Mine Reclamation Funds in accordance with section 401(b)(2) of the Act. Reports on the use of these receipts are required under proposed Part 852. The alternative of requiring such receipts to be deposited in the national fund might result in more control over their use by the Office but would create additional accounting complexities that are not considered necessary. This approach is also consistent with Congress' intent to give States responsibility and authority to implement a reclamation program for eligible land and water under their jurisdiction.

General Reclamation Requirements

Part 841 sets forth requirements relating to eligibility, priorities, selection and evaluation that are applicable to State, Indian and Rural Lands Reclamation Programs and reclamation activities to be carried out directly by the Office. Consideration was given to including in this part standards for reclamation project operations comparable to the environmental performance standards for current coal mining operations. Such standards are not proposed at this time because a more extensive review is required to define specific national standards which are appropriate for the disparate rehabilitation activities to be conducted. Comments on the nature and content of standards which should be developed are requested.

Section 841.12(a)(3) defines "abandoned" as used in section 404 of the Act to mean there is no continuing responsibility for reclamation under State or Federal law. It is recognized that both the word and the definition given it are used in section 404. Consideration was given to defining "abandoned" to mean that no legal owner could be identified. This meaning would be inconsistent with other provisions of Title IV relating to owner consent, liens and land acquisition. The present definition provides an ascertainable standard consistent with the Act.

Section 841.12(c) defines "inadequately reclaimed" in terms of continuing degradation to the environment, damage to the use of resources or danger to health and safety. Concideration was given to defining the term to include any site not reclaimed to the standards of section 515 and section 516 of the Act. Such a definition would encompass many sites which are no longer creating problems as a result of natural renovation. The narrower definition places appropriate constraints on the areas to be reclaimed with the limited moneys that will be available over the life of the Fund.

Section 841.12(b) establishes eligibility requirements for reclamation of land and water affected by past noncoal mining activities. This section incorporates the provisions of section 409 of the Act and, when read with § 841.12(a), establishes eligibility priorities consistent with sections 404 and 409(c) of the Act.

Section 841.13 incorporates the objectives and priorities of section 403 of the Act. The section interprets the priorities as applying to competing projects, i.e., those which could be undertaken at any given time with money available at that time. An alternative interpretation would be that all projects meeting the highest priority nationwide, or statewide, must be completed before projects in the next priority are undertaken. Such an interpretation could delay any work on desirable objectives for years and effectively make the lower priority objectives stated by Congress meaningless because money would never be assigned to them.

Section 841.14 establishes a minimum list of factors to be considered in selecting, assigning priorities to and evaluating reclamation projects. Neither a ranking order nor weights or values are assigned to the factors. The importance assigned each factor would be left to the State, Indian tribe or Federal office carrying out the reclamation activities. Alternatives of assigning strict values to the factors or of limiting the section to general guidelines on how ranking should be accomplished were considered. The

first of these is deemed unresponsive to potentially unique program needs of individual States or Indian tribes. The second fails to give a meaningful basis for national program management and evaluation.

Rights of Entry

Part 843 establishes procedures for entry on private lands for purposes of study or exploratory work, and reclamation. The proposed rules state a policy preference for entry under a written consent from the owner rather than under the police powers provided in sections 407(a) and (b) and 410(b) of the Act. When advance consent cannot be obtained, entry for study or exploration and reclamation is limited to those cases, or discovering those cases, where there is reason to believe that the adverse effects of past coal mining may be harmful to the public health, safety or general welfare. Notice requirements and procedures for certain written findings are proposed for those cases when consent cannot be obtained.

Section 843.11 requires a written consent which includes a legal description of the lands to be entered and the nature of the work to be performed. Consideration was given to accepting oral consent which would provide almost no protection to those entering on the land. A less restrictive requirement for describing the land to be entered was considered but this would diminish the protection offered to both the owner and those entering on the land.

Sections 843.12(b) and 843.13(c) each require 30 days' advance notice of a proposed entry. Each section also requires posting of the notice on the property and publication once in a newspaper of general circulation if the owner is unknown. A variety of shorter or longer notice times and alternative posting or publication requirements were considered. The proposed rules provide reasonable minimum requirements for notice when consent cannot be obtained and entry is in the interest of the public health, safety and welfare.

Section 843.14 incorporates the provisions of section 410 of the Act for entry without notice to correct an emergency situation. Consideration was given to requiring consent or some limited form of notice prior to entry. While consent or prior notice is desirable, the delays which could be involved are likely to be inconsistent with the need to take rapid action to abate an emergency where the public health, safety or general welfare is at stake.

Acquisition, Management and Disposition of Land and Water

Part 845 reflects several provisions of Title IV of the Act for acquisition, use and disposal of land and water. For the convenience of reviewers, the following table reflects the primary authority in the Act for selected provisions of this part.

Section of proposed rules	Section of the act
845.11(a)	407(c)(1) and (2) and 407(f)
(b)	407(c)(3) and 407(f)
(c)	407(h)
(d)	409(e)
845.12(c)	407(c)
(d), (e) and (f)	407(d)
845.13	407(c) and 409(e)
845.14	407(f)
845.15(a)	407(g)(2)
(b) and (c)	412(b)
(d) and (e)	407(e)
(f)	407(h)
(g)	407(g)(1)

Sections of the regulations not specifically identified in the above table, as well as some portions of the sections identified, are proposed under section 412(a) of the Act, which allows the Secretary to promulgate rules that are necessary or expedient to implement or administer the provisions of Title IV.

Section 845.11(e) includes a proposed policy which would restrict the acquisition of interest in land or water to only those interests necessary for reclamation or post-reclamation land use. This policy will help assure that excessive moneys are not tied up in real estate holdings. The alternative to this policy would require that full interests, including severable interests, be acquired for each project. It should be noted that the United States and its agencies are not bound by State law in acquiring severable interests in land. However, the section expresses a strong preference for following State law or local custom during acquisition to avoid title problems at the time of sale.

Sections 845.12 (b) and (c) state a policy preference for acquisition from a willing seller instead of acquisition by condemnation. Consideration was given to establishing more detailed requirements for seeking a willingness to sell before the start of condemnation procedures. Such procedures do not seem necessary because reason will dictate diligent efforts to acquire by purchase before cumbersome and costly condemnation procedures are started.

Sections 845.12 (e), (f) and (g) state how title to interests in land acquired by the Office, State or Indian tribe shall be held. When authorized by law, title to interests in land acquired by an Indian tribe will be held in the name of the United States in trust for the benefit of the Indian tribe.

Section 845.13 provides for acceptance of offers of donations of land or interest in land even if the land is not free and clear of encumbrances. It is reasoned that the encumbrances may not preclude necessary reclamation work and if they do preclude such work it is likely that the cost of removing the encumbrance would be less than purchase of the land. The gift need not be accepted if neither of these conditions is true or if the encumbrance is otherwise unacceptable. The major alternative considered was to require a free and clear title to all gifts accepted which could serve to foreclose some desirable gifts.

Section 845.14(b) establishes a general requirement for use fees which could be waived by the Regional Director of the Office. It also provides broad options for determining the amount of fees to be charged. Alternatives of charging fees only for uses which would result in financial gain or charging fees only when it is in the "public interest" were considered. The first of these is too narrow while the second is so broad that the results would be unpredictable.

Section 845.15(a) establishes requirements for public notice, public hearing and written findings prior to any disposition of lands acquired under this part. The Act in section 407(g)(1) requires such procedures only for disposal through a public sale. The additional requirements are considered desirable to assure broad public involvement in all phases of the Abandoned Mine Land Reclamation Program.

Sections 845.15(b) and (c) authorize the Office, a State or an Indian tribe to assign administrative responsibility for acquired lands to other governmental agencies. This authorization is intended to facilitate assignment of lands to organizations best qualified to manage them according to the purposes for which they were acquired. The alternative of not providing such an authorization could require reclamation agencies to become extensively involved in land management at the expense of their primary missions.

Sections 845.15(b), (c), (e) and (f) each require that agreements to dispose of land include provisions for return of the land to the acquiring agency if, at any time, it is no longer required for the purposes specified in the agreement. Section 407(e) of the Act requires such provisions specifically for disposal under § 845.15(e). Broader application of the requirement is deemed appropriate to assure that the specific and limited authorizations for acquisition granted by the Act are not, in fact, violated through subsequent disposal actions.

Reclamation on Private Lands

Part 848 states the authority of the Office, States and Indian tribes to perform reclamation on private lands. It establishes a requirement for appraisals of the land value before and after reclamation work consistent with uni-

form appraisal standards. The proposed rules also establish conditions and procedures for the filing of liens on private property equal to the increase in fair market value that results from reclamation work.

Section 848.12 requires appraisals of the fair market value of private land in accordance with the handbook on *Uniform Appraisal Standards for Federal Land Acquisitions* (Interagency Land Acquisition Conference, 1973). This requirement is considered necessary to support (1) a decision on whether or not a lien should be filed and (2) the lien, if one is filed. It is considered desirable in all cases for purposes of evaluating program results. The alternative of requiring appraisals only when it is likely that a lien would be filed would be less costly but would not provide needed information for effective program evaluation and could result in inadequate information for subsequent filing of a lien. It is also noted that the costs of reclamation offset any claims of alleged damage by virtue of entry under section 407 and 410 of the Act and Part 843 of these proposed rules.

Section 848.13 would require that a lien be filed if reclamation results in an increase in fair market value. A general exception to this requirement, consistent with section 408 of the Act, applies if the surface owner acquired the land before May 2, 1977, and did not benefit from the mining. Two other exceptions are authorized where (1) it is determined that the cost of filing a lien exceeds the increase in fair market value of the proerty after reclamation and (2) the Director waives the lien in return for the owner's dedication of the land or an interest in the land for a valid public use for a specific period of time. The alternatives of requiring liens in all cases not exempt under section 408 was considered. This alternative was rejected because in some circumstances it may be inappropriate to file a lien if the purpose of section 408 of the Act (to avoid windfall profits) would not be served or a greater public benefit could be achieved. Alternatives also were considered which would make the lien optional with the reclamation agency or which would establish different criteria for waiving the lien. The first of these is highly susceptible to abuse and the second may produce results that would be inconsistent with the intent of Congress to avoid windfall profits.

Each of the two administrative exceptions to requiring a lien is also consistent with the Congressional intent to avoid windfall profits. Either there would be no windfall involved or the increase in fair market value would be pro-rated over an appropriate dedication period during which time the benefits of reclamation would inure to the public. The exceptions proposed are based, in part, on successful experiences of the State of Pennsylvania and are deemed reasonable at this time. Comments on alternative criteria are solicited.

Section 848.14 establishes the requirement, also consistent with Congress' intent to deter windfall profits, that liens shall be satisfied within five years of the date of filing or action to execute the lien shall commence.

State Reclamation Plans

Part 850 establishes the procedures and requirements for the State plan required by section 405(b) of the Act. Such plans are required before the Office is authorized to make grants to the States for reclamation work. A State is not eligible to have a plan approved until it has an approved State regulatory program pursuant to section 503 of the Act.

Section 850.12 permits the inclusion of non-coal reclamation activities in the State plan when it is first submitted. Including of such activities in the plan should facilitate longer range program planning and avoid the potential need for earlier or more frequent amendments. The alternative of excluding non-coal activities from the plan was considered inappropriate because in some cases, a State may have limited amounts of land disturbed by coal mining in the past and, in other cases, serious health and safety hazards resulting from non-coal mining may require work before all coal mined lands are reclaimed.

Section 850.13 includes proposed requirements regarding the format and detail of State Reclamation Plans. A variety of alternatives to these requirements might be proposed ranging from a very loose set of objectives to much more stringent and detailed requirements (e.g., specific site location and hazard data). A less stringent set of requirements would probably complicate the annual grant process proposed in Part 852. More stringent requirements could become counterproductive if they resulted in dealys in meeting State programs or caused States to reject the role given them by the Act. The Office believes that the proposed requirements are reasonable and consistent with its stewardship responsibilities under Title IV of the Act.

Specific comments are requested on the paperwork and reporting burden this section would place on States. The Office solicits comments on how the burden can be reduced while meeting the requirements of the Act. The office also welcomes information about any duplication between the requirements in section 850.13 and other Federal reporting requirements. These comments will be provided to GAO as part of the clearance process required under section 201(e) of the Act and sections 3502 and 3512 of Title 44, United States Code.

Section 850.13(c)(3) requires the States to describe its policies and procedures regarding coordination of reclamation work with the Soil Conservation Service and any Indian tribes within the State. This proposal will probably result in differing coordination mechanisms and procedures in different States and is believed to be most consistent with State leadership of the overall reclamation program. Some consideration has been given to defining specific coordination mechanisms on a nationwide basis. However, specific national mechanisms could interfere with viable organizational arrangements in the various States and are therefore deemed unnecessary.

Section 850.14(a)(1) requires the Director to hold a public hearing within the State before he approves the plan, unless the State planning process included a hearing which provided adequate public notice and opportunity to comment on the proposed plan and the record of the hearing does not reflect major unresolved controversies. The objective of this proposed rule, in conjunction with § 850.13(e), is to insure meaningul public participation in the development of the State Reclamation Program. The Office believes that such participation was a clear intent of Congress as reflected in many sections of the Act and is also consistent with the requirements of the National Environmental Policy Act. Comments on alternative participation requirements are solicited.

State Reclamation Grants

Part 852 includes procedures and requirements for annual grants to States to conduct reclamation activities under their approved Reclamation Plans. Grant applications would be approved by the Regional Directors of the Office. The procedures for processing grant applications follow closely the procedures for other grant programs administered by the Office (Parts 725 and 740) with one major exception: Grant applications would be submitted according to the requirements of OMB Circular A-102 in the format for Federal Assistance Applications for Construction Programs. Limited variations to this format are described in the proposal.

Section 852.3(b) authorizes the Director to approve grants to a State in excess of the amounts previously allocated and, therefore, available to the State. Such grants are authorized by section 402(g)(3) of the Act. Consideration was given to reserving all moneys, above the amounts allocated, for use on direct programs of the Office. While specific conditions under which such grants would be made have not been proposed, the Office be-

lieves it desirable to retain the flexibility of doing so on a case-by-case basis where an additional grant is the expeditious method for getting work done.

Section 852.15 proposes content and format requirements for annual grant applications. To a significant extent these requirements are established by OMB Circular A-102. The limited variations proposed include deletion of the Circular's requirement for advance submission of plans and specifications because such a requirement is not allowed under section 405(i) of the Act. Comments regarding additional, specific variations from the requirements or format of OMB circular A-102 are solicited.

Specific comments are requested on the paperwork and reporting burden this section would place on States. The Office solicits comments on how the burden can be reduced while meeting the requirements of the Act and identification of any duplication between the section and other Federal reporting requirements. These comments will be provided to GAO as part of the clearance process required under section 201(e) of the Act and sections 3502 and 3512 of Title 44, United States Code.

Section 852.15(b)(2)(ii) requires a description of the public involvement obtained or planned for each project. This requirement is not a part of the requirements of OMB Circular A-102. The requirement is proposed as a reflection of the intent of Congress that the public should participate in the development of reclamation objectives and plans. More stringent requirements such as detailed procedures to be followed in obtaining public comment could be stated and may be necessary. The degree of public involvement required in the development and approval of State Reclamation Plans and in decisions regarding disposal of reclaimed lands are believed to be adequate at this time.

Section 852.17(b)(2) authorizes States to adjust the budget for individual projects by $5,000 or five percent without advance approval. Such changes could not involve changes in project scope or objectives. This degree of adjustment is the maximum authorized by OMB Circular A-102 and should provide needed flexibility for State program management. A variety of more restrictive provisions are available, including a requirement that all changes be approved in advance. Such provisions may be unduly burdensome for effective program administration by a State. Furthermore, more restrictions, unless necessary, would be inconsistent with Congress' intent to give States primary program responsibility under Title IV of the Act.

Indian Reclamation Program

Part 855 proposes special interim procedures for identifying and conducting needed reclamation work on Indian lands. Such procedures are necessary because the Act does not provide for Indian regulatory programs until a study of how Indian lands are to be regulated is completed (section 710 of the Act). Section 405(c) of the Act prohibits approval or funding of a State abandoned mine reclamation program unless the State has an approved State regulatory program. Section 405(k) of the Act requires that Indian tribes be considered as States for purposes of Title IV. Thus, the Office lacks authority to approve or fund an Indian Reclamation Plan at this time because Indian tribes are not authorized to develop and get approval of a regulatory program.

The proposal would authorize the Regional Directors of the Office to work with Indian tribes and to consult with the Bureau of Indian Affairs to develop plans for reclamation activities on Indian lands. Such a procedure is authorized by section 412(a) of the Act. No significant alternative has been identified other than deferral of Indian programs until the section 710 study is completed. Such an alternative might effectively preclude reclamation work on Indian lands and would be detrimental to developing a systematic approach for reclamation activities on Indian land during the development of the Abandoned Mine Land Program. Deferral of Indian programs at this time would also be in conflict with the overall structure of Title IV which anticipates Indian tribe participation at the same level as States, section 710 of the Act not to the contrary.

In this regard, Indian tribes have been included in the drafting of Parts 840-848 in anticipation of specific legislative authority granting regulatory status to them. If the authorization is the same as for States, Part 855 may be deleted. If the authorization differs from that given States, Parts 840-848 can be appropriately amended and Part 855 may also be amended and expanded. It should be observed, however, that Parts 840-848 do not contain any independent authority for Indian tribes to act beyond that allowed by statute. Part 855 is proposed to provide an administrative vehicle for the Office to begin necessary reclamation activities on Indian lands in accordance with Parts 840-848 when the Indian tribe desires such activity.

Environmental Impacts

The Office has determined, after conducting an environmental assessment of the proposed rules, that regional analyses will be performed on the environmentally significant aspects of the various programs. This approach will be more meaningful because it will ensure that the level of analysis is consistent with the regional operations of the program. The region is the level at which most program decision will be made and most proposals requiring other decisions will be generated. Furthermore, regional analyses will more clearly develop issues relating to the various physio-geographic areas to be impacted by the programs.

An environmental impact statement on the proposed rules is not required under section 102(2)(c) of the National Environmental Policy Act because they will not have a significant effect on the quality of the human environment. The proposed rules only establish procedures, required by section 405(g) of the Act, for abandoned mine land reclamation programs. The rules do not propose an action entailing the commitment of resources at this time, but rather establish procedures for the consideration of commitments in the future. However, the Office believes that the cumulative impacts of State and Federal Abandoned Mine Land Programs should be evaluated from an environmental perspective at an early date. Thus, the Office will undertake regional analyses of anticipated environmental impacts of the program once the rules become final. Regional analyses and environmental impact statements will be developed under the supervision of the Division of Reclamation Planning and Standards, Abandoned Mine Land Program. This Division will coordinate the development of format and content in order to permit interregional comparisons and to provide a national focus.

The Office invites comments to help identify issues and aspects of the program considered to be of significant environmental concern that should be addressed in these environmental analyses.

Drafting Information

The principal authors of these proposed regulations are Daniel Jones, Bureau of Mines; Don O'Bryan, Environmental Protection Agency; Paul Reeves, Ray Booker, and Richard Nalbandian, Office of Surface Mining Reclamation and Enforcement; and John Beattie, Office of the Solicitor.

Interested persons may examine the information, comments and legal opinions relied on by the authors during normal business hours in the Office of the Assistant Director, Abandoned Mine Land Reclamation, Office of Surface Mining Reclamation and Enforcement.

Note.—The Department of the Interior has determined that this document does not contain a proposal having major economic consequences which would require a regulatory analysis under Executive Order 12044.

Dated: April 24, 1978.

JOAN M. DAVENPORT,
Assistant Secretary,
Energy and Minerals.

It is proposed to add Parts 840, 841, 843, 848, 850, 852 and 855 to Title 30, Chapter VII to read as follows:

PART 840—ABANDONED MINE RECLAMATION FUNDS

Sec.
840.1 Scope.
840.2 Objectives.
840.3 [Reserved]
840.4 Responsibilities.
840.5 Definitions.
840.6–840.10 [Reserved]
840.11 Abandoned Mine Reclamation Fund.
840.12 State Abandoned Mine Reclamation Funds.
840.13 Indian Abandoned Mine Reclamation Funds.

AUTHORITY: Secs. 201(c) Pub. L. 95–87, 91 Stat. 449 (30 U.S.C. 1211) and section 412(a), Pub. L. 95–87, 91 Stat. 466 (30 U.S.C. 1242).

§ 840.1 Scope.

(a) This part sets forth general responsibilities for administration of Abandoned Mine Land Reclamation Programs and procedures for the Abandoned Mine Reclamation Funds to finance such programs.

(b) Included in this part are general provisions describing—

(1) The source of moneys and use of such moneys to administer the Abandoned Mine Land Reclamation Programs; and

(2) the general responsibilities of agencies of the Federal Government, States, and Indian tribes in the conduct of the programs.

(c) Regulations for implementation of the Rural Lands Reclamation Program are published by the Secretary of Agriculture in 7 CFR Part 632. The Department of Agriculture has identified this program as the Rural Abandoned Mine Program (RAMP).

§ 840.2 Objectives.

The objectives of this part are to provide an overview of the Abandoned Mine Land Reclamation Program responsibilities and to provide detailed procedures for administration of State, Indian and Federal Abandoned Mine Reclamation Funds.

§ 840.3 [Reserved]

§ 840.4 Responsibilities.

(a) The Director, under the general direction of the Assistant Secretary, Energy and Minerals, is responsible for exercising the authority of the Secretary for administration of the Abandoned Mine Reclamation Fund and Abandoned Mine Land Reclamation Program.

(b) The Regional Directors of the Office are responsible for—

(1) Conducting reclamation activities where work is performed by the Office using the funds available to the Secretary;

(2) Reviewing and approving annual submissions of project grant applications by States and Indian tribes under approved reclamation programs;

(3) Consulting with Indian tribes for which receipts to the Abandoned Mine Reclamation Fund are allocated to develop an orderly approach to reclamation until such time as the study required by section 710 of the Act is completed and authorities provided for Indian regulatory programs comparable to those of States under section 503 of the Act;

(4) Coordinating activities under Rural Lands, State and Indian Reclamation Programs conducted with moneys from the Fund and projects carried out by the Office; and

(5) Consulting with other Federal agencies as necessary and developing cooperative agreements with the appropriate surface management agency when Federal lands are considered for inclusion in a Federal or State Reclamation Program.

(c) The States are responsible for—

(1) Preparing and submitting a State Reclamation Plan to the Director if the State elects to participate in the Abandoned Mine Land Reclamation Program;

(2) Establishing a State Abandoned Mine Reclamation Fund for use in conducting the State Reclamation Program;

(3) Submitting annual applications for grants, including descriptions of proposed projects;

(4) Submitting requests to the Regional Director for work to be done on noncoal mined lands;

(5) Submitting requests to the Regional Director for construction of specific facilities in communities impacted by coal development;

(6) Conducting reclamation work in accordance with grant agreements; and

(7) Submitting reports annually to the Regional Director describing progress on previously funded projects.

(d) The Secretary of Agriculture through the Soil Conservation Service is responsible for—

(1) Promulgating regulations for conducting the Rural Lands Reclamation Program;

(2) Submitting annual requests to the Director for allocation of moneys for use in the Rural Lands Reclamation Program;

(3) Submitting annual reports to the Director describing progress of work previously funded; and

(4) Coordinating the Rural Lands reclamation Program with State and Indian Reclamation Programs and with reclamation activities conducted by the Office.

§ 840.5 Definitions.

(a) *The Abandoned Mine Reclamation Fund,* or *Fund* is a trust fund established on the books of the United States Treasury for the purpose of accumulating revenue designated for reclamation of abandoned mine lands, and other activities authorized by Title IV, Pub. L. 95–87.

(b) *Allocate* means the administrative identification in the records of the Office of moneys in the Fund for a specific purpose; e.g. identification of moneys for exclusive use by a State.

(c) *Emergency* means an extreme danger which presents a high probability of considerable physical harm to persons, property or the environment before the danger can be abated under normal program operation procedures.

(d) *Expended* means that moneys have been paid out by a State or Indian tribe for work that has been accomplished or services rendered.

(e) *Extreme danger* means a condition which could reasonably be expected to cause considerable physical harm to persons, property, or the environment and to which persons or improvements on real property are currently exposed.

(f) *Indian Abandoned Mine Reclamation Fund,* or *Indian Fund,* means a separate fund established by an Indian tribe for the purpose of accounting for moneys granted by the Director under an approved Indian Reclamation Program and other moneys authorized by these regulations to be deposited in the Indian Fund.

(g) *Indian Reclamation Program* means a program established by an Indian tribe in accordance with this chapter for reclamation of land and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

(h) *Reclamation activities* means restoration, reclamation, abatement, control or prevention of adverse effects of mining.

(i) *Reclamation Plan* means a plan submitted and approved under Part 850 of this chapter.

(j) *State Abandoned Mine Reclamation Fund* or *State Fund,* means a separate fund established by a State for the purpose of accounting for moneys granted by the Director under an approved State Reclamation Program and other moneys authorized by these regulations to be deposited in the State Fund.

(k) *State Reclamation Program* means a program established by a State in accordance with this chapter for reclamation of land and water adversely affected by past mining, including the reclamation plan and annual applications for grants under the plan.

§§ 840.6–840.10 [Reserved]

§ 840.11 Abandoned mine reclamation fund.

(a) Revenue to the Fund shall include—

(1) Reclamation fees collected under section 402 of the Act and Part 837 of this chapter;

(2) Amounts collected by the Office from charges for use of land acquired or reclaimed with moneys from the Fund under Part 845 of this chapter;

(3) Moneys recovered by the Office through satisfaction of liens filed against privately owned lands reclaimed with moneys from the Fund under Part 848 of this chapter;

(4) Moneys recovered by the Office from the sale of lands acquired with moneys from the Fund or by donation under Part 845 of this chapter; and

(5) Moneys donated to the Office for the purpose of abandoned mine land reclamation.

(b) Moneys deposited in the Fund and appropriated by the Congress shall be used for the following purpose—

(1) An amount not exceeding 10 percent of the reclamation fees collected each quarter, up to a maximum of $10,000,000 each year, shall be used to finance the Small Operator Assistance Program under Part 795 of this chapter.

(2) An amount equal to 50 percent of the reclamation fees collected from within a State shall be allocated at the end of the fiscal year in which they are collected for use in that State under an approved State Reclamation Plan. Reclamation fees collected from Indian reservations shall not be included in the calculation of amounts to be allocated to a State. If a State advises the Office in writing that it does not intend to submit a State Reclamation Plan, no moneys shall be allocated to that State. Amounts allocated to a State that have not been granted to the State within 3 years from the date of allocaton shall be available to the Director for other purposes under paragraph (b)(5) of this section. Amounts allocated and granted to the State that have not been expended within 3 years from the date of allocation may be withdrawn from the State if the Director finds in writing—

(i) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities.

(3) An amount equal to 50 percent of the reclamation fees collected from within an Indian reservation shall be allocated at the end of the fiscal year in which they are collected for use within that reservation under an approved Indian Reclamation Plan. If an Indian tribe advises the Office in writing that it does not intend to submit an Indian Reclamation Plan, no moneys shall be allocated to that tribe. Amounsts allocated to an Indian reservation that have not been granted to the Indian tribe for the reservation within 3 years from the date of allocation shall be availbale to the Director for other purposes under paragraph (b)(5) of this section. Amounts allocated and granted to the Indian tribe that have not been expended within 3 years from the date of allocation may be withdrawn from the Indian tribe if the Director finds in writing—

(i) That the amounts involved are not necessary to carry out the approved reclamation activities; or

(ii) That failure to expend is a result of avoidable delays in conducting approved reclamation activities.

(4) An amount not exceeding 20 percent of the moneys deposited in the Fund annually may be transferred to the Secretary of Agriculture to carry out the Rural Lands Reclamation Program pursuant to 7 CFR Part 632.

(5) All amounts not used for the above purposes shall be available to the Director for the following purposes—

(i) Acquisition, reclamation and restoration of land and water resources adversely affected by past coal mining.

(ii) Filling of voids and sealing of tunnels, shafts, and entryways and the reclamation of the adverse surface impacts of underground or surface mining for other minerals and materials including acquisition of land and water if required. This work shall be done only with those moneys allocated or available for allocation to a State or Indian reservation under paragraphs (b) (2) or (3) of this section.

(iii) Studies by contract with public or private organizations to provide information, advice or technical assistance, including research and development projects.

(iv) Reclamation fee collection activities and other administrative expenses necessary to accomplish the purposes of Title IV of the Act.

(v) Reclamation grants to States or Indian tribes in excess of amounts provided under paragraph (b) (2) or (3) of this section.

§ 840.12 State abandoned mine reclamation funds.

(a) An account to be known as the State Abandoned Mine Reclamation Fund shall be established in each State with an approved State Reclamation Plan. The State Fund shall be managed in accordance with Office of Management and Budget Circular No. A-102.

(b) Revenue to the State Fund shall include—

(1) Amounts granted to the State by the Office for purposes of conducting the approved State Reclamation Plan under Part 852 of this chapter.

(2) Moneys collected by the State from charges for uses of lands acquired or reclaimed with moneys from the State Fund under Part 845 of this chapter.

(3) Moneys recovered by the State through the satisfaction of liens filed against privately owned lands reclaimed with moneys from the State Fund under Part 848 of this chapter.

(4) Moneys recovered by the State from the sale of lands acquired with moneys from the State Fund under Part 845 of this chapter.

(5) Such other moneys as the State decides should be deposited in the State Fund for use in carrying out the State Reclamation Program.

(c) Moneys deposited in the State Fund shall be used to carry out the State Reclamation Plan approved under Part 850 of this chapter.

§ 840.13 Indian abandoned mine reclamation funds.

(a) An account to be known as the Indian Abandoned Mine Reclamation Fund shall be established by each Indian tribe with an approved Indian Reclamation Plan. The Indian Fund shall be managed in accordance with Office of Management and Budget Circular No. A-102.

(b) Revenue to the Indian Fund shall include—

(1) Amounts granted to the Indian tribe by the Office for purposes of conducting the approved Indian Reclamation Plan.

(2) Moneys collected by the Indian tribe from charges for uses of land acquired or reclaimed with moneys from the Indian Fund under Part 845 of this chapter.

(3) Moneys recovered by the Indian tribe through the satisfaction of liens filed against privately owned lands reclaimed with moneys from the Indian Fund under Part 848 of this chapter.

(4) Moneys recovered by the Indian tribe from the sale of lands acquired with moneys from the Indian Fund under Part 845 of this chapter.

(5) Such other moneys as the Indian tribe decides should be deposited in the Indian Fund for use in carrying out the Indian Reclamation Program.

(c) Moneys deposited in the Indian Fund shall be used to carry out reclamation activities under Part 855 of this chapter.

PART 841—GENERAL RECLAMATION REQUIREMENTS

Sec.
841.1 Scope.
841.2 Objectives.
841.3–841.10 [Reserved]
841.11 Applicability.
841.12 Eligible land and water.
841.13 Reclamation objectives and priorities.

Sec.
841.14 Reclamation project evaluation.

AUTHORITY: Sec. 201(c) Pub. L. 95-87, 91 Stat. 449 (30 U.S.C. 1211) and Section 412(a), Public Law 95-87, 91 Stat. 466 (30 U.S.C. 1242).

§ 841.1 Scope.

This part establishes general requirements for the selection of work to be performed with moneys from the Abandoned Mine Reclamation Fund, State and Indian Abandoned Mine Reclamation Fund. It includes land and water eligibility requirements, reclamation project objectives and standards, and project evaluation factors.

§ 841.2 Objectives.

The objectives of this part are to establish conditions for the use of Abandoned Mine Reclamation Funds that are common to approved State and Indian Reclamation Programs, the Rural Lands Reclamation Program, and the reclamation activities conducted or funded directly by the Office.

§§ 840.3-840.10 [Reserved]

§ 841.11 Applicability.

The provisions of this Part apply to all reclamation projects to be carried out with money from the Fund or a State or Indian Fund as defined by Part 840 of this chapter.

§ 841.12 Eligible Lands and Water.

(a) Land and water are eligible for reclamation activities if—

(1) They were mined or affected by mining processes before August 3, 1977;

(2) They were inadequately reclaimed; and

(3) They were abandoned, in that there is no continuing responsibility on the part of any operator, permittee, or agent of the operator or permittee, or the State as a result of a bond forfeiture, to reclaim them under State of Federal law.

(b) Land and water which were mined or affected by mining for minerals and materials other than coal shall be eligible for reclamation activities under a State of Indian Reclamation Program if the Director finds in writing that—

(1) The conditions of paragraph (a) of this section have been met;

(2) The reclamation has been requested by the Governor of the State or head of the tribal governing body;

(3) All reclamation with respect to abandoned coal mine land and water has been accomplished within the State or Indian reservation in which they are located or the reclamation is necessary for the protection of public health and safety; and

(4) Moneys allocated to the State or Indian Reservation under § 840.11 (b) (2) and (3) of this chapter are available for the work.

(c) For purposes of this section, inadequately reclaimed land means land or water affected by mining or mining processes conducted before August 3, 1977, which continue, in their present condition, to substantially degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

§ 841.13 Reclamation Objectives and Priorities.

Reclamation projects shall meet one or more of the objectives stated in this section. The objectives are stated in the order of priority with the highest priority first. Preference among those projects competing for available resources shall be given to projects meeting higher priority objectives.

(a) Protection of public health, safety, general welfare and property from extreme danger resulting from the adverse effects of past mining practices.

(b) Protection of public health, safety, and general welfare from adverse effects of past mining practices which do not constitute an extreme danger.

(c) Restoration of eligible land and water and the environment previously degraded by adverse effects of past mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity.

(d) Research and demonstration projects relating to the development of surface coal mining reclamation and water quality control program methods and techniques.

(e) Protection, repair, replacement, construction or enhancement of public facilities such as utilities, roads, recreation and conservation facilities adversely affected by past coal mining practices.

(f) Development of publicly owned land adversely affected by past coal mining practices, including land acquired under Part 845 of this chapter, for recreation, and historic purposes, conservation, and reclamation purposes or open space benefits.

841.14 Reclamation Project Evaluation.

Proposed reclamation projects and completed reclamation work shall be evaluated in terms of the factors stated in this section. The factors shall be used to determine whether or not proposed reclamation will be undertaken and to assign priorities to proposals intended to meet the same objective under § 841.13. Completed reclamation shall be evaluated in terms of the factors set forth below as a means to identify conditions which should be avoided, corrected or improved in plans for future reclamation work. The factors shall include—

(a) The need for reclamation work to accomplish one or more specific reclamation objectives as stated in § 841.13.

(b) The availability of technology to accomplish the reclamation work with reasonable assurance of success. In the case of research and demonstration projects, the research capability and plans shall provide reasonable assurance of beneficial results without residual adverse impacts.

(c) The specific benefits of reclamation which are desirable in the area in which the work will be carried out. Benefits to be considered include but are not limited to—

(1) Protection of human life, health or safety.

(2) Protection of the environment, including air and water quality, fish and wildlife habitat, visual beauty, historic or cultural resources and recreation resources.

(3) Protection of public or private property.

(4) Abatement of adverse social and economic impacts of past mining on persons or property including employment, income and land values or uses, or assistance to persons disabled, displaced or dislocated by past mining practices.

(5) Improvement of environmental conditions which may be considered to generally enhance the quality of human life.

(6) Improvement of the use of natural resources, including post-reclamation land uses which—

(i) Increase the productive capability of the land to be reclaimed.

(ii) Enhance the use of surrounding lands consistent with existing land use plans.

(iii) Provide for contruction or enhancement of public facilities.

(iv) Provide for residential, commercial or industrial developments consistent with the needs and plans of the community in which the site is located.

(7) Demonstration to the public and industry of methods and technologies which can be used to reclaim areas disturbed by mining.

(d) The acceptability of any additional adverse impacts to people or the environment that will occur during reclamation and of uncorrected conditions, if any, that will continue to exist after reclamation.

(e) The costs of reclamation. Consideration shall be given to both the economy and efficiency of the reclamation work and to the results obtained or expected as a result of reclamation.

(f) The availability of additional coal or other mineral or material resources within the project area which—

(1) Results in a reasonable probability that the desired reclamation will be accomplished during the process of future mining; or

(2) Requires special consideration to assure that the resource is not lost as a result of reclamation and that the benefits of reclamation are not negated by subsequent, essential resource recovery operations.

(g) The acceptability of post-reclamation land uses in terms of compatability with land uses in the surrounding area, consistency with applicable State and local land use plans and laws, and the needs and desires of the community in which the project is located.

(h) The probability of post-reclamation management and control of the area consistent with the reclamation completed.

(i) Additional factors and values as developed by State, Indian or Federal agencies administering reclamation programs and projects.

PART 843—RIGHTS OF ENTRY

Sec.
843.1 Scope.
840.2–840.10 [Reserved].
843.11 Consent to entry.
843.12 Entry for studies or exploration.
843.13 Entry for reclamation.
843.14 Entry for emergency reclamation.

AUTHORITY: Sec. 201(c), Pub. L. 95-87, 91 Stat. 449 (30 U.S.C. 1211) and Sec. 412(a), Pub. L. 95-87, 91 Stat. 466 (30 U.S.C. 1242).

§ 843.1 Scope.

This part establishes procedures for entry to lands or property by the Office, or a State or Indian tribe under an approved Reclamation Plan, for the purposes of conducting studies or exploratory work to determine the existance of adverse effects of past coal mining practices and performing reclamation work.

§§ 840.2–840.10 [Reserved].

§ 843.11 Consent to entry.

The Office, State or Indian tribe shall take all reasonable actions to obtain written consent from the owner of record of the land or property to be entered in advance of such entry. The consent shall be in the form of a signed statement by the owner of record or his authorized agent which, as a minimum, includes a legal description of the land to be entered, the projected nature of work to be performed on the lands and any special conditions for entry. The statement shall not include any commitment by the Office, State or Indian tribe to perform reclamation work nor to compensate the owner for entry.

§ 843.12 Entry for studies or exploration.

(a) The Office, State or Indian tribe under an approved Reclamation Plan, or their agents, employees or contractors, shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects.

(b) If the owner of the land to be entered under this section will not provide consent to entry, the Office, State or Indian tribe shall give notice in writing to the owner of its intent to enter for purposes for study and exploration to determine the existence of adverse effects of past coal mining practices which may be harmful to the public health, safety or general welfare. The notice shall be by mail, return receipt requested, to the owner, if known, and shall include a statement of the reasons why entry is believed necessary. If the owner is not known, or the current mailing address of the owner is not known, or the owner is not readily available, the notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. Notice shall be given at least 30 days before entry.

§ 843.13 Entry for reclamation.

(a) The Office, State or Indian tribe under an approved Reclamation Plan, or their agents, employees or contractors, may enter upon land to perform reclamation if the consent of the owner cannot be obtained.

(b) Prior to entry under this section, the Regional Director, State or Indian tribe shall find in writing with supporting reasons that—

(1) Land or water resources have been adversely affected by past coal mining practices;

(2) The adverse effects are at a stage where, in the interest of the public health, safety or the general welfare action to restore, reclaim, abate, control, or prevent should be taken; and

(3) The owner of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices is not known or readily available; or

(4) The owner will not give permission for the Office, the State or Indian tribe, their agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(c) The Regional Director, State, or Indian tribe shall give notice of its intent to enter for purposes of conducting reclamation at least 30 days before entry upon the property. The notice shall be in writing and shall be mailed, return receipt requested, to the owner, if known, with a copy of the findings required by this section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted in one or more places on the property to be entered where it is readily visible to the public and advertised once in a newspaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement of where the findings required by this section may be inspected or obtained.

§ 843.14 Entry for emergency reclamation.

(a) The Office, its agents, employees or contractors shall have the right to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists to restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices and to do all things necessary or expedient to protect the public health, safety or general welfare.

(b) Prior to entry under this section, the Regional Director shall make a written finding with supporting reasons that—

(1) An emergency exists constituting a danger to the public health, safety or general welfare;

(2) Emergency restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining is necessary and;

(3) No other person or agency will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(c) Notice to owner shall not be required prior to entry for emergency reclamation. The Regional Director shall make reasonable efforts to notify such owner and obtain consent prior to entry consistent with the emergency conditions that exist. Written notice shall be given to the owner as soon after entry as practical. The notice shall be mailed, return receipt requested, to the owner, if known, and shall include a copy of the findings required by this section. If the owner is not known, or if the current mailing address of the owner is not known, notice shall be posted on the property entered in one or more places where it is readily visible to the public and advertised once in a newpaper of general circulation in the locality in which the land is located. The notice posted on the property and advertised in the newspaper shall include a statement that an emergency existed and where the findings required by this section may be inspected or obtained.

(d) The moneys expended for such work, and the benefits accruing to any such premises so entered, shall be chargeable against such land and shall mitigate or offset any claim in, or any action brought by any owner of any interest in such premises for any alleged damages as a result of the entry.

PART 845—ACQUISITION, MANAGEMENT AND DISPOSITION OF LANDS AND WATER

Sec.
845.1 Scope.
845.2–845.10 [Reserved]
845.11 Land eligible for acquisition.
845.12 Procedures for acquisition.
845.13 Acceptance of gifts of land.
845.14 Management of acquired land.
845.15 Disposition of reclaimed land.

AUTHORITY: Sec. 201(c), Pub. L. 95-87, 91 Stat. 449 (30 U.S.C. 1211) and Sec. 412(a), Pub. L. 95-87, 91 Stat. 466 (30 U.S.C. 1242).

§ 845.1 Scope.

This part establishes procedures for acquisition, management and disposition of eligible land and water for reclamation purposes by the Office or a State or Indian tribe under an approved Reclamation Plan. It also establishes requirements for the collection of charges for the use of acquired land and disposition of the proceeds from the use or sale of acquired land.

§§ 845.2–845.10 [Reserved]

§ 845.11 Land eligible for acquisition.

(a) Land adversely affected by past coal mining practices may be acquired by the Office or by a State or Indian tribe if approved in advance by the Office. Prior to approval of the acquisition of such land, the Regional Director shall find in writing that acquisition is necessary for successful reclamation and that—

(1) The acquired land will serve recreation, historic, conservation and reclamation purposes or provide open space benefits after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal mining practices; and

(2) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

(b) Coal refuse disposal sites and all coal refuse thereon may be acquired by the Office or by a State or Indian tribe if approved in advance by the Office. Prior to approval of the acquisition of such sites, the Regional Director shall find in writing that the acquisition of such land is necessary for successful reclamation and will serve the purposes of the Abandoned Mine Land Reclamation Program or that public ownership is desirable to meet an emergency situation and prevent recurrence of adverse effects of past coal mining practices.

(c)(1) Land adversely affected by past mining practices may be acquired by the Office if the Director finds in writing that acquisition with moneys from the Fund is an integral and necessary element of an economically feasible plan for a project to construct or rehabilitate housing for—

(i) Persons disabled as the result of employment in the mines or work incidental thereto;

(ii) Persons displaced by acquisition of land under these regulations;

(iii) Persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency for which the Regional Director has made the determination required by § 843.14 of this chapter; or

(iv) Persons dislocated as the result of natural disasters or catastrophic failures from any cause.

(2) The Director may acquire such land in the name of the United States directly or through a State, any department, agency or instrumentality of a State, or any public body or nonprofit organization designated by a State.

(d) Land or interests in land needed to fill voids, seal abandoned tunnels, shafts, and entry ways or reclaim surface impacts of underground or surface mines may be acquired by the Office if the Director finds that acquisition is necessary under § 841.12(b) of this chapter.

(e) The Office, State or Indian tribe which acquires land under this part shall acquire only such interests in the land as are necessary for the reclamation work planned or the post-reclamation use of the land. Interests in improvements on the land, mineral rights or associated water rights may be acquired if—

(1) The customary practices and laws of the State in which the land is located will not allow severance of such interests from the surface estate; or

(2) Such interests are necessary to the reclamation work planned or the post-reclamation use of the land; and

(3) Adequate written assurances cannot be obtained from the owner of the severed interest that future use of the severed interest will not be in conflict with the reclamation to be accomplished.

§ 845.12 Procedures for acquisition.

(a) An appraisal of the fair market value of all land or interest in land to be acquired shall be obtained from a professional appraiser. The appraisal shall state the fair market value of the land as adversely affected by past mining and shall otherwise conform to the requirements of the handbook on *Uniform Appraisal Standards for Federal Land Acquisitions* (Interagency Land Acquisition Conference 1973).

(b) When practical, acquisition shall be by purchase from a willing seller. The amount paid for interests acquired shall reflect the fair market value of the interests as adversely affected by past mining.

(c) When necessary, land or interests in land may be acquired by condemnation. Condemnation procedures shall not be started until all reasonable efforts have been made to purchase the land or interests in lands from a willing seller.

(d) The Office, State or Indian tribe which acquires land under this part shall comply, at a minimum and to the extent applicable, with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C., section 4601, et seq., 41 CFR Part 114-50; Solicitor of the Interior's regulations for Approval of Title to Lands and Condemnation, I SRM 6.1 et seq.; and Regulations of the Attorney General under Order No. 440-70 dated October 2, 1970, establishing standards for title approval of lands to be acquired for Federal public purposes.

(e) Title to all interests in land acquired by the Office shall be in the name of the United States.

(f) Title to all interests in land acquired by a State shall be in the name of the State and shall be recorded in accordance with applicable State law and regulation.

(g) Title to all interests in land acquired by an Indian tribe shall, where authorized by law, be held in the name of the United States in trust for the benefit of that tribe and shall be recorded in the appropriate office of the Bureau of Indian Affairs. In absence of a trust authorization, title shall be held in the name of the tribe and shall be recorded in accordance with applicable law.

§ 845.13 Acceptance of gifts of land.

(a) The Director in accordance with Department of Justice procedures for the acquisition of real property, or a State of Indian tribe under an approved Reclamation Plan, may accept donations of title to land or interest in land which is necessary for reclamation activities.

(b) Offers to make a gift of such land or interest in land shall be in writing and shall include—

(1) A statement of the interest which is being offered.

(2) A legal description of the land and a description of any improvements on it.

(3) A description of any limitations on the title or conditions as to the use or disposition of the land existing or to be imposed by the donor.

(4) A statement that—

(i) The offeror is the record owner of the interest being offered.

(ii) The interest offered is free and clear of all encumbrances except as clearly stated in the offer.

(iii) There are no adverse claims against the interest offered.

(iv) There are no unredeemed tax deeds outstanding against the interest offered.

(v) There is no continuing responsibility under State or Federal law for reclamation.

(5) An intemization of any unpaid taxes or assessments levied, assessed or due which could operate as a lien on the interest offered.

(c) If the offer is accepted, a deed of conveyance shall be executed, acknowledged, and recorded. The deed shall state that it is made "as a gift under the Surface Mining Control and Reclamation Act of 1977." Title to donated land shall be in the name of the United States if the donation is to the Office or in the name of the State if the donation is to a State. Title to land donated to an Indian tribe shall, where authorized by law, be taken in the name of the United States in trust for the benefit of that tribe. In the absence of a trust authorization, title shall be taken in the name of the tribe.

§ 845.14 Management of acquired lands.

(a) Land acquired under this part may be used pending disposition under § 845.15 for any lawful purpose that is not inconsistent with the reclamation activities and post-reclamation uses for which it was acquired.

(b) Any user of land acquired under this part shall be charged a use fee. The fee shall be determined on the basis of the fair market value of the benefits granted to the user, charges for comparable uses within the surrounding area, or the costs to the Office, State or Indian tribe for providing the benefit, whichever is appropriate. The Regional Director may waive the fee if he finds in writing that such a waiver is in the public interest.

(c) All use fees collected shall be deposited in the appropriate Abandoned Mine Reclamation Fund in accordance with Part 840 of this chapter, unless previously appropriated or otherwise authorized by the Congress, State legislature or tribal governing body for the specific purpose of operating and maintaining improvement of the land.

§ 845.15 Disposition of reclaimed lands.

(a) Prior to the disposition of any land acquired under this part, the Regional Director, State or Indian tribe which acquired the land shall—

(1) Publish a notice which describes the proposed disposition of the land in a newspaper of general circulation within the area where the land is located for a minimum of four successive weeks. The notice shall provide at least 30 days for public comment and state where copies of plans for disposition of the land may be obtained or reviewed and the address to which comments on the plans should be submitted. The notice shall also state that a public hearing will be held if requested by any person.

(2) Hold a public hearing if requested as a result of the public notice. The Regional Director, State or Indian tribe may determine that a hearing is appropriate even if a request is not received. It shall be scheduled at a time and place that affords local citizens and governments the maximum opportunity to participate. The time and place of the hearing shall be announced in a newspaper of general circulation in the area in which the land is located at least 30 days before the hearing. All comments received at the hearing shall be recorded.

(3) Make a written finding that the proposed disposition is appropriate considering all comments received and consistent with any local, State or Federal laws or regulations which apply.

(b) The Director may transfer the administrative responsibility for land acquired by the Office to any other Federal Department or agency, with or without cost to that Department or agency. The agreement, including amendments, under which a transfer is made shall specify—

(1) The purposes for which the land may be used be consistent with the authorization under which the land was acquired; and

(2) That the administrative responsibility for the land will revert to the Office if, at any time in the future, deemed appropriate by the Director and he upon a finding that the land is not used for the purposes specified.

(c) A State or Indian tribe may transfer, with approval of the Regional Director, the administrative responsibility for land acquired under this part to any agency or political subdivision of the State or Indian tribe with or without cost to that agency. The agreement, including amendments, under which a transfer is made shall specify—

(1) The purposes for which the land may be used consistent with the authorization under which the land was acquired; and

(2) That the administrative responsibility for the land will revert to the State or Indian tribe which acquired the lands if, at any time in the future, the land is not used for the purposes specified.

(d) A State or Indian tribe may, with approval by the Regional Director, transfer title to abandoned and unreclaimed land to the United States to be reclaimed and administered by the Office. The State or Indian tribe which transfers land to the Office under this paragraph shall have a preference right to purchase such land from the Office after reclamation is completed. The price to be paid by the State or Indian tribe shall be the fair market value of the land in its reclaimed condition less any portion of the land acquisition price paid by the State or Indian tribe.

(e) The Director may sell any land acquired and reclaimed under this part except that acquired under § 845.11(c) to the State or local government within whose borders the land is located or to an Indian tribe if the land is within the exterior boundaries of an Indian reservation.

(1) Before reclaimed land is sold to a State, local government or Indian tribe, the purchaser shall state in writing the public purposes for which the land is to be used. The public purpose shall be considered valid if it is authorized as a public function by appropriate State law or Indian tribal ordinance and is consistent with the conditions under which the land was acquired.

(2) The price to be paid by the State, local government or Indian tribe shall be the fair market value of the land in its reclained condition. The land may be sold at a lower price negotiated by the Director, but the price shall not be less than the cost to the United States for acquiring and reclaiming the land.

(3) The sales agreement for land sold under this paragraph shall state valid public purposes for which the land may be used. If, at any time in the future, the land is not used for the purposes stated, all right and title to or interest in such land shall revert to the United States.

(f) The Director may transfer or sell land acquired under § 845.11(c), with or without monetary consideration, to any State or political subdivision of a State to any Indian tribe, or to any person, firm, association or corporation.

(1) The transfer or sale shall not be made unless the Director finds in writing that the transfer or sale is an intergral and necessary element of an economically feasible plan for the project for which the land was acquired.

(2) The price at which land is sold under paragraph (f) of this section shall be negotiated between the Director and the purchaser. The price may be below the fair market value if economically necessary for the success of the project.

(3) If the price at which the land is sold is below the fair market value of the land, or if the land is transferred at no cost to the recipient, the recipient shall agree in advance that no portion of the difference between the amount paid and the fair market value will accrue as a profit, or as an offset to other business losses, to any private person, firm, association or corporation.

(4) The transfer or sales agreement for land disposed of under paragraph (f) of this section shall state the purposes for which the land was acquired and will be used. If, at any time in the future the land is not used for the purposes stated, all right, title and interest in such land shall revert to the United States.

(g) The Director, a State or Indian tribe with the approval of the Region-

al Director may sell land acquired under this part by public sale if such land is suitable for industrial, commercial, residential or recreational development and if such development is consistent with local, State or Federal land use plans for the area in which the land is located.

(1) Land shall be sold by public sale only if it is found that retention by the Office, State or Indian tribe, or disposal under other paragraphs of this section, is not in the public interest.

(2) Land shall be sold for not less than fair market value under a system of competitive bidding which includes at a minimum—

(i) Publication of a notice once a week for 4 weeks in a newspaper of general circulation in the locality in which the land is located. This notice shall describe the land to be sold, state the appraised value, state any restrictive covenants which will be a condition of the sale, and state the time and place of the sale.

(ii) Provisions for sealed bids to be submitted prior to the sale date followed by an oral auction open to the public.

(h) All moneys received from disposal of land under this part shall be deposited in the appropriate Abandoned Mine Reclamation Fund in accordance with Part 840 of this chapter.

PART 848—RECLAMATION ON PRIVATE LAND

Sec.
848.1 Scope.
848.2-848.10 [Reserved].
848.11 Operations on private land.
848.12 Appraisals.
848.13 Liens.
848.14 Satisfaction of liens.

AUTHORITY: Sec. 201(c), Pub. L. 95-87, 91 Stat. 449 (30 U.S.C. 1211) and Sec. 412(a), Pub. L. 95-87, 91 Stat. 466 (30 U.S.C. 1242).

§ 848.1 Scope.

This part authorizes reclamation on private land and establishes procedures for recovery of the cost of reclamation activities conducted on privately owned land by the Office, State or Indian tribe.

§ 848.2-848.10 [Reserved]

§ 848.11 Operations on private land.

Reclamation activities may be carried out on private land if a consent to enter is obtained under § 843.11 of this chapter, or if entry is required and made under § 843.13 or § 843.14 of this chapter.

§ 848.12 Appraisals.

(a) An appraisal of the fair market value of all land to be reclaimed shall be obtained in accordance with the handbook on: Uniform Appraisal Standards for Federal Land Acquisitions (Interagency Land Acquisition Conference 1973). The appraisal shall be obtained before any reclamation activities are started, unless the work must start without delay to abate an emergency. If work must start because of an emergency, the appraisal shall be completed at the earliest practical time and before related nonemergency work is commenced. The appraisal shall state the fair market value of the land as adversely affected by past mining.

(b) An appraisal of the fair market value of all land reclaimed shall be obtained after all reclamation activities have been completed. The appraisal shall be obtained in accordance with paragraph (a) of this section and shall state the fair market value of the land as reclaimed.

§ 848.13 Liens.

(a) The Regional Director, State or Indian tribe which performed the reclamation work shall place a lien against land reclaimed if the reclamation resulted in an increase in the fair market value based on the appraisals obtained under § 848.12.

(1) A lien shall not, however, be placed against the property of a surface owner who acquired title prior to May 2, 1977, and who did not consent to, participate in, or exercise control over the mining operation which necessitated the reclamation work.

(2) The lien may be waived by the Regional Director, State or Indian tribe if the cost of filing it, including indirect costs to the Office, State or Indian tribe, exceeds the increase in fair market value as a result of reclamation activities.

(3) The Director may waive the lien if he determines in writing that the lien would not be consistent with the purposes for which the reclamation was performed and the owner dedicates the land for a valid public use for an appropriate period of time. The dedication period shall reflect the cost of the reclamation performed and the public use to be made of the land.

(b) The amount of the lien shall be the total of all moneys expended for the reclamation work, but shall not exceed the resulting increase in the fair market value.

(c) A written statement of moneys expended for the reclamation work, together with notarized copies of the appraisals obtained under § 848.12 shall, within six months after completion of the reclamation work, be filed in the Office which has responsibility under local law for recording judgments against land in the county in which the land lies. Such statement shall constitute a lien upon the land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

(d) Within 60 days after the lien is filed, the landowner may proceed as provided by local law to petition for determination of the increase in the market value as a result of the restoration, reclamation, abatement control or prevention of the adverse effects of past mining practices. The increase in value shall constitute the amount of the lien and shall be recorded with the statement filed under paragraph (c) of this section. Any party aggrieved by the decision may appeal as provided by local law.

§ 848.14 Satisfaction of liens.

(a) The Office, State or Indian tribe which files a lien on private property shall initiate action to execute the lien if it is not satisfied within five years of the date of filing.

(b) Moneys derived from the satisfaction of liens established under this part shall be deposited in the appropriate Abandoned Mine Reclamation Fund.

PART 850—STATE RECLAMATION PLANS

Sec.
850.1 Scope.
850.2 Objectives.
850.3-850.10 [Reserved]
850.11 State eligibility.
850.12 Activities eligible for inclusion in State Reclamation Plan.
850.13 Content of Proposed State Reclamation Plan.
850.14 State Reclamation Plan approval.
850.15 State Reclamation Plan amendment.
850.16 Withdrawal of plan approval.

AUTHORITY: Secs. 201(c), Pub. L. 95-87, 91 Stat. 449 (30 U.S.C. 1211) and Section 412(a), Pub. L. 95-87, 91 Stat. 466 (30 U.S.C. 1242).

§ 850.1 Scope.

This part establishes the procedures and requirements for the preparation, submission and approval of State Reclamation Plans. A State must have an approved State Reclamation Plan to be eligible to administer a State Abandoned Mine Land Reclamation Program under this chapter and to receive grants for abandoned mine land reclamation projects under Part 852 of this chapter.

§ 850.2 Objectives.

The objectives of this part are to encourage maximum participation by the States in the reclamation of eligible land and water through effective use of moneys in the Abandoned Mine Reclamation Fund and to—

(a) Establish uniform guidelines and procedures for preparation and submission of proposed State Reclamation Plans; and

(b) Ensure that State Reclamation Plans meet the requirements of Title IV of the Act.

§§ 850.3–850.10 [Reserved].

§ 850.11 State eligibility.

A State is eligible to submit a State Reclamation Plan if it has eligible land and water as defined in § 841.12 of this chapter within its boundaries. A State is eligible for a State Reclamation Plan to be approved by the Director if it has an approved State regulatory program under section 503 of the Act and meets the other requirements of this chapter and the Act.

§ 850.12 Activities eligible for inclusion in State reclamation plan.

The State Reclamation Plan may provide for any or all of the following activities—

(a) Acquisition and reclamation and restoration of land and water resources adversely affected by past coal mining practices in accordance with the reclamation objectives stated in § 841.13 of this chapter.

(b) Acquisition and filling of voids and sealing tunnels, shafts and entry ways and the reclamation of the adverse surface impacts of underground or surface mining for minerals and materials other than coal. The plan shall not, however, provide for reclamation of such land with moneys from State Fund until all reclamation with respect to coal mining has been accomplished or the Director has determined that reclamation is necessary for the protection of the public and safety under § 841.12(b) of this chapter.

(c) Acquisition of land which is an integral and necessary part of an economically feasible plan to construct or rehabilitate housing under § 845.11(c) of this chapter.

(d) Construction of specific public facilities in communities impacted by coal development. The plan shall not, however, provide for construction of such facilities with moneys from the State Fund until the Governor of the State has certified, and the Director has concurred, that—

(1) All reclamation with respect to past coal mining and with respect to the mining of other minerals and materials has been accomplished;

(2) The specific public facilities are required as a result of coal development; and

(3) Impact funds which may be available under the Federal Mineral Leasing Act of 1920, as amended, or the Act of October 20, 1976, Pub. L. 94-565 (90 Stat. 2662) are inadequate for such construction.

§ 850.13 Content of proposed State reclamation plan.

Each proposed State Reclamation Plan shall be submitted to the Director in writing and shall include as a minimum the following information:

(a) A designation by the Governor of the State of the agency authorized to administer the State Reclamation Program and to receive and administer grants under Part 852 of this chapter.

(b) An opinion of the State's chief legal officer that the designated agency has the authority under State law to conduct the program in accordance with the requirements of Title IV of the Act, the regulations of this chapter and the State Reclamation Plan.

(c) A detailed description of the policies and procedures to be followed by the designated agency in conducting the reclamation program including, but not limited to—

(1) The goals and objectives of the State Reclamation Program;

(2) Reclamation project ranking and selection procedures;

(3) Policies regarding the coordination of reclamation work between the State Reclamation Program, the Rural Lands Reclamation Program administered by the Soil Conservation Service and the reclamation programs of any Indian tribes located within the State;

(4) Policies and procedures regarding land acquisition, management and disposal under Part 845 of this chapter;

(5) Policies and procedures regarding reclamation on private land under Part 848 of this chapter;

(6) Policies and procedures regarding rights of entry under Part 843 of this chapter; and

(7) Policies regarding public participation and involvement in the State Reclamation Program.

(d) A detailed description of the administrative and management structure to be used in conducting the reclamation program including, but not limited to—

(1) A description of the organization of the designated agency and of its relationship to other State organizations or officials which will participate in conducting or managing the State Reclamation Program.

(2) A description of personnel staffing policies which will govern the assignment of personnel to the State Reclamation Program.

(3) A description of the purchasing and procurement system to be used by the agency. Such system shall meet the requirements of Office of Management and Budget Circular No. A-102, Attachment O.

(4) A description of the accounting system to be used by the agency, including specific procedures for the operation of the State Fund required by § 840.12 of this chapter.

(e) A detailed description of the extent of public involvement in the preparation of the proposed State Reclamation Plan. At a minimum, the public shall be given an opportunity to inspect and comment on the proposed plan in the counties having eligible land and water within their boundaries before it is submitted for approval. The comments shall be recorded and considered.

(f) A general description of the reclamation activities to be conducted under the State Reclamation Plan, including as a minimum—

(1) A general description of the known or suspected eligible land and water within the State which require reclamation, including a map showing their general location at a scale of 1:250,000 or larger;

(2) A general description of the problems occurring on the eligible land and water identified on the map and how the plan proposes to deal with each;

(3) A general description of how the land to be reclaimed and the proposed reclamation relates to the existing and planned uses of lands in surrounding areas;

(4) A table summarizing the quantities (e.g. acres, miles) of land and water affected by the problems identified under paragraph (f)(2) of this section and an estimate of the quantities proposed for reclamation during each year covered by the plan.

(5) A general narrative description of the social, economic, and environmental conditions prevailing in the different geographic areas of the State where reclamation is planned including, but not limited to—

(i) The economic base;

(ii) The primary sociologic and demographic characteristics;

(iii) Significant aesthethic, historic or cultural, and recreational values;

(iv) Hydrology, including any surface or underground water quality or quantity problems associated with past mining;

(v) Flora and fauna, including wildlife and fish habitat;

(vi) Underlying or adjacent beds of commercially mineable coal and other minerals and materials and projected methods of extraction; and

(vii) Anticipated benefits from reclamation.

§ 850.14 State reclamation plan approval.

(a) The Director shall approve, disapprove or otherwise act upon a State Reclamation Plan within 60 days after it is submitted or after a State Regulatory Program is approved, whichever is later. The Director shall not approve a State Reclamation Plan until he has—

(1) Held a public hearing on the plan within the State which submitted it. The Director may waive the public hearing if he finds that the State has given the public adequate notice and opportunity to comment in public hearings and that the record of such hearings does not reflect major unresolved controversies.

(2) Solicited and considered the views of other Federal agencies having an interest in the plan.

(3) Determined that the State has the legal authority, policies and administrative structure necessary to carry out the proposed plan.

(4) Determined that the proposed plan meets all the requirements of this chapter.

(5) Determined that the State has an approved State Regulatory Program.

(6) Determined that the proposed plan is in compliance with all applicable State and Federal laws and regulations.

(b) If the Director disapproves a proposed State Reclamation Plan, he shall advise the State in writing of the reasons for disapproval. The State may submit a revised proposed State Reclamation Plan at any time under the procedures of this part.

§ 850.15 State Reclamation plan amendment.

A State may, at any time, submit to the Director a proposed amendment or revision to its approved Plan. If the amendment or revision changes the objectives, scope or major policies followed by the State in the conduct of its reclamation program, the State shall include a description of the extent of public involvement in the preparation of the amendment or revision. The Director shall follow the procedures set out in § 850.14 in approving or disapproving an amendment or revision of a State Reclamation Plan.

§ 850.16 Withdrawal of plan approval.

(a) The Director shall withdraw approval of a State Reclamation Plan, in whole or in part, if he determines that—

(1) The State Regulatory Program has been terminated; or

(2) The State is not conducting the State Reclamation Program in accordance with the Plan or a Reclamation Program Grant Agreement.

(b) If the Director determines that plan approval should be withdrawn, he shall notify the State by mail, return receipt requested, of his proposed action. The notice shall state the reasons for the proposed action and the proposed effective date. Within 30 days the State must show cause why such action should not be taken. The Director shall afford the State an opportunity for consultation prior to withdrawing approval.

(c) The Director shall notify the State of his decision in writing. Within 20 days from receipt of the Director's decision to withdraw approval of a State Reclamation Plan the State may appeal to the Office of Hearings and Appeals under procedures contained in 43 CFR Part 4.

PART 852—STATE RECLAMATION GRANTS

Sec.

AUTHORITY: Secs. 201(c), Pub. L. 95-87, 91 Stat. 449 (30 U.S.C. 1211) and Section 412(a), Pub. L. 95-87, 91 Stat. 466 (30 U.S.C. 1242).

§ 852.1 Scope.

This part sets forth procedures for grants to States having an approved State Reclamation Plan for the reclamation of eligible land and water and for other activities necessary to carry out the plan as approved.

§ 852.2 Objectives.

The objectives of this part are to assure that adequate information is provided by the State to support its application for a grant and that funds granted to the State are handled in accordance with applicable Federal laws and regulations.

§ 852.3 Authority.

(a) The Regional Director is authorized to approve or disapprove applications for grants under this part if the total amount of the grant does not exceed the moneys appropriated by the Congress and specifically allocated to the State under § 840.11 (b) (2) of this chapter. The Regional Director is responsible for assuring that any required approvals by the Director are obtained before the grant is made.

(b) The Director is authorized to approve, or to authorize the Regional Director to approve, additional grants to a State from the moneys available to the Director under § 840.11(b)(5) of this chapter.

§ 852.4 [Reserved]

§ 852.5 Definitions.

Agency means the State agency designated by the Governor to administer the State Reclamation Program and to receive and administer grants under this part.

§§ 852.6–852.10 [Reserved]

§ 852.11 Eligibility for grants.

A state is eligible for grants under this part if it has a State Reclamation Plan approved under Part 850 of this chapter.

§ 852.12 Coverage and amount of grant.

(a) An agency may use moneys granted under this part to administer the approved State Reclamation Plan and to carry out the specific reclamation activities included in the plan and described in the annual grant agreement. The moneys may be used to cover direct costs to the agency for services and materials obtained from other State agencies or local governments if approved by the Regional Director.

(b) Grants may be approved for up to 100 percent of the total agreed upon costs for the reclamation of eligible land and water, construction of public facilities, and program administration.

(c) Grants may be approved for up to 90 percent of the total agreed upon costs for the acquisition of land, including any improvements on the land, and mineral or water rights associated with the land.

§ 852.13 Grant period.

Grants shall be approved for a period of one year. Grants for projects that extend for more than one year may be approved if the projects are to be carried out under a single contract which cannot be subdivided into shorter time periods without additional cost to the State.

§ 852.14 Submission of estimated annual budgets.

The agency shall cooperate with the Regional Director in the development of advance budget estimates for use by the Director in the preparation of his requests for appropriation of moneys from the Fund. The schedule for such estimates shall be determined by the Director on an annual basis.

§ 852.15 Grant application procedures.

(a) The agency shall submit its grant application to the Regional Director no later than July 1 for funding during the fiscal year commencing October 1. An application for funding during the fiscal year in which a State Reclamation Plan is approved may be submitted with the proposed Plan for approval when the Plan is approved.

(b) The agency shall use the application format for Federal Assistance Application for Construction Programs and other procedures specified in Office of Management and Budget Circular No. A-102, Attachment M. A pre-application is not required if the total of the grant requested is within the amounts allocated to the State under §840.11(b)(2) of this chapter.

(1) Part I of the application shall be a single Standard Form 424 covering all administrative costs and projects included in the grant application. Section IV of the form shall include a listing of the individual projects to be funded. Program administration cost

may be considered as a single project program administration cost.

(2) Parts I, III and IV of the application shall be completed for each individual project in accordance with Office of Management and Budget Circular No. A-102.

(i) Complete copies of plans and specifications for projects shall not be required before the grant is approved. The Regional Director may review such plans and specifications in the agency office or on the project site.

(ii) A description of the actual or planned public involvement in the decision to undertake the work, in the planning of the reclamation activities, and in the decision on how the land will be used after reclamation shall be included in Part IV of the application.

(c) The Regional Director shall notify the agency within 30 days after receipt of a complete application, or as soon thereafter as possible, whether or not it is approved. If the application is not approved, the Regional Director shall set forth in writing the reasons for disapproval and may propose modifications if appropriate. The agency may resubmit the application or appropriate revised portions of the application.

§ 852.16 Grant agreement.

(a) If the Regional Director approves an agency's grant application, the Regional Director shall prepare a grant agreement which includes—

(1) A statement of the work to be covered by the grant;

(2) A statement of the approvals of specific actions required under these regulations or of the conditions to be met before such approvals can be given if moneys are included in the grant for such actions;

(3) The amounts approved for each individual project included in the grant application; and

(4) Allowable transfers of funds to other State agencies.

(b) The Regional Director may allow an agency to assign functions and funds to other State agencies. The Regional Director shall require the grantee agency to retain responsibility for overall administration of the grant, including use of funds and reporting.

(c) The Regional Director shall transmit four copies of the grant agreement by mail, return receipt requested, or by hand to the agency for signature. The agency shall execute the grant agreement and return all copies within three weeks after receipt, or within an extension of time granted by the Regional Director.

(d) The Regional Director shall sign the agreement upon its return from the agency or when funds are available for the grants, whichever is later, and return one copy to the agency. The grant is effective and constitutes an obligation of Federal funds at the time the Regional Director signs the agreement.

(e) Neither the approval of the grant application nor the award of any grant shall commit or obligate the United States to award any continuation grant or to enter into any grant amendment, including grant increases to cover cost overruns.

§ 852.17 Grant amendments.

(a) A grant amendment is a written alteration of the amount, terms, conditions, budget, time, administrative, technical, financial or other provisions of the grant agreement, whether accomplished on the initiative of the agency or the Regional director.

(b) The agency shall promptly notify the Regional director in writing of events or proposed changes which may require a grant amendment. at a minimum, the agency shall notify the Regional director in advance of—

(1) Planned changes in the scope or objective of any individual project, whether or not the change will result in a change in the total cost for the project.

(2) Changes which will result in an increase or decrease in the total cost of any individual project of more than $5,000 or 5 percent of the budgeted amount, whichever is greater. Changes of lesser amounts may be made by the agency without advance notification or approval if the change can be made within the total grant to the agency and does not involve a change in the scope or objective of the projects involved.

(c) The Regional Director shall approve or disapprove each proposed amendment within 30 days of receipt, or as soon thereafter as possible. The procedures of § 852.16 shall be followed.

§ 852.18 Grant reduction and termination.

(a) *Conditions for reduction or termination.* (1) If an agency violates the terms of a grant agreement or an approved Reclamation Plan, the Regional Director may reduce or terminate the grant.

(2) If an agency fails to expend moneys allocated and granted within three years from the date of allocation, the Director may reduce the grant in accordance with § 840.11(b)(2) of this chapter.

(3) If an agency fails to implement, enforce or maintain an approved State Regulatory Program and, as a result, the administration and enforcement grant provided under Part 740 of this chapter is terminated, the Regional Director shall terminate the grant awarded under this part.

(4) If an agency is not in compliance with the following nondiscrimination provisions, the Regional Director shall terminate the grant—

(i) Title VI of the Civil Rights Act of 1964 (78 Stat. 252), Nondiscrimination in Federally Assisted Programs, which provides that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, and the implementing regulations in 43 CFR Part 17.

(ii) Executive Order 11246, as amended by Executive Order 11375, Equal Employment Opportunity, requiring that employees or applicants for employment not be discriminated against because of race, creed, color, sex, or national origin, and the implementing regulations in 41 CFR Part 60.

(iii) Section 504 of the Rehabilitation Act of 1973, as amended by Executive Order 11914, Nondiscrimination With Respect to the Handicapped in Federally Assisted Programs.

(5) If an agency fails to enforce the financial interest provisions of Part 705 of this chapter, the Regional Director shall terminate the grant.

(6) If an agency fails to submit reports required by this part or Part 705 of this chapter, the Regional Director shall terminate the grant.

(b) *Grant reduction and termination procedures.* (1) The Regional Director shall give at least 10 days written notice to the agency by mail, return receipt requested, of intent to reduce or terminate a grant. The Regional Director shall include in the notice the reasons for the proposed action and the proposed effective date of the action.

(2) The Regional Director shall afford the agency opportunity for consultation and remedial action prior to reducing or terminating a grant.

(3) The Regional Director shall notify the agency of the termination or reduction of the grant in writing by mail, return receipt requested.

(4) Upon termination, the agency shall refund or credit to the United States that portion of the grant money paid or owed to the agency and allocated to the terminated portion of the grant. However, any portion of the grant that is required to meet contractual commitments made prior to the effective date of termination shall be retained by the agency.

(5) The agency shall reduce the amount of outstanding commitments as much as possible and report to the Regional Director the uncommitted balance of funds awarded under the grant.

(6) Upon notification of intent to terminate the grant the agency shall not make any new commitments without the approval of the Regional Director.

(7) The Regional director may allow termination costs as determined by applicable Federal cost principles listed in Federal Management Circular 74-4.

(c) *Appeals.* (1) Within 30 days of the Regional Director's decision to reduce or terminate a grant, the agency may appeal the decision to the Director.

(2) The agency shall include in the appeal—

(i) A statement of the decision being appealed; and

(ii) The facts which the agency believes justify a reversal or modification of the decision.

(3) The Director shall act upon appeals within 30 days of their receipt.

§ 852.19 Audit.

The agency shall arrange for independent audit at least once every two years, pursuant to the requirements of Office of Management and Budget Circular No. A-102. The audit will be performed in accord with the *Standards for Audit of Governmental Organizations, Programs, Activities, Functions* published by the Comptroller General of the United States and audit guides provided by the Department of the Interior.

§ 852.20 Administrative procedures.

The agency shall follow administrative procedures governing accounting, payment, property and related requirements contained in Office of Management and Budget Circular No. A-102.

§ 852.21 Allowable costs.

(a) Reclamation project costs which shall be allowed include up to 90 percent of costs of the acquisition of land or interest in land, actual construction costs, actual operation and maintenance costs for permanent facilities, planning and engineering costs, and construction inspection costs.

(b) The Regional Director shall determine costs which may be reimbursed according to Federal Management Circular 74-4.

(c) Costs must be in conformity with any limitations, conditions, or exclusions set forth in the grant agreement.

(d) Costs must be allocated to the grant to the extent of benefit properly attributable to the period covered by the grant.

(e) Costs must not be allocated or included as a cost of any other federally assisted program.

§ 852.22 Financial management.

(a) The agency shall account for grant funds in accordance with requirements of Office of Management and Budget Circular No. A-102. Agencies shall use generally accepted accounting principles and practices, consistently applied. Accounting for grant funds must be accurate and current.

(b) The agency shall adequately safeguard all funds, property, and other assests and shall assure that they were used solely for authorized purposes.

(c) The agency shall provide a comparison of actual amounts spent with budgeted amounts for each grant.

(d) When advances are made by a letter-of-credit method, the agency shall make drawdowns from the U.S. Treasury through its commerical bank as closely as possible to the time of making the disbursements.

(e) The agency shall design a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

§ 852.23 Reports.

(a) The agency shall, for each grant made under this part, submit annually to the Regional Director a Financial Status Report in accordance with Office of Management and Budget Circular No. A-102, Attachment H.

(b) The agency shall, in each year after the first grant, submit to the Regional Director, no later than September 1, a performance report prepared according to Office of Management and Budget Circular No. A-102, Attachment H. The report shall include—

(1) For each project previously funded and completed during the year, a brief description of the project and the type of reclamation performed, the project location, the landowner's name, the amounts of land or water reclaimed, and a summary of achieved benefits.

(2) For each project previously funded but not yet completed, a brief description of the project and the status of reclamation work, the project location, landowner's name, and a summary of expected benefits.

(3) For any land previously acquired but not disposed of, a statement of current or planned uses, location and size in acres, and any revenues derived from use of the land.

(4) For any permanent facilities acquired or constructed but not disposed of, a description of the facility and a statement of current or planned uses, location, and any revenues derived from the use of the facility.

(c) The reports required under this section shall reflect revenue deposited in the State Abandoned Mine Reclamation Fund under § 840.12 of this chapter.

§ 852.24 Records.

The agency shall maintain complete records in accordance with Office of Management and Budget Circular No. A-102, Attachment C. This includes, but is not limited to, books, documents, maps, and other evidence and accounting procedures and practices, sufficient to reflect properly—

(a) The amount and disposition by the agency of all assistance received for the program.

(b) The total direct and indirect costs of the program for which the grant was awarded.

Subgrantees and contractors, including contractors for professional services, shall maintain books, documents, papers, maps, and records which are pertinent to a specific grant award.

PART 855—INDIAN RECLAMATION PROGRAM

Sec.
855.1 Scope.
855.2 Objectives.
855.3-855.10 [Reserved]
855.11 Interim Procedures.

AUTHORITY: Sec. 201(c), Pub. L. 95-87, 91 Stat. 449 (30 U.S.C. 1211) and Section 412(a), Pub. L. 95-87, 91 Stat. 466 (30 U.S.C. 1242).

§ 855.1 Scope.

This part is reserved for any additional or unique regulations that may be required as a result of the special study report submitted pursuant to Section 710 of the Act and to achieve the purpose of the Act on Indian land. Because of the special jurisdictional status of Indian land, general responsibilities for administration of Indian Reclamation Programs are set forth on an interim basis.

§ 855.2 Objectives.

(a) The objectives of this part are to provide a temporary vehicle for mitigation of emergency situations or extreme danger situations arising from past mining practices and to begin reclamation of other areas determined to have high priority on Indian land.

(b) Upon completion of the special study report and enactment of any required legislation, this part will be either deleted and supplemented by the other parts of this chapter delaying with State and Indian Abandoned Reclamation Programs or expanded as required to achieve the purposes of the Act.

§ 855.3-855.10 [Reserved]

§ 855.11 Interim procedures.

(a) The Regional Director is authorized to receive proposals from Indian tribes for projects which should be carried out on Indian land and to carry out such projects pursuant to Parts 845 through 848 of this chapter.

§ 855.11 Interim procedures.

(a) The Regional Director is authorized to receive proposals from Indian tribes for projects pursuant to Parts 845 through 848 of this chapter.

(b) The Regional Director shall consult with the Indian tribe and the Bureau of Indian Affairs office having jurisdiction over the Indian land on all reclamation activities carried out on Indian land under this chapter.

(c) If a proposal is made by an Indian tribe and approved by the Regional Director, the tribal governing body shall approve the project plans. The costs of the project may be charged against the money allocated to the Indian tribe under § 840.11(c)(3) of this chapter.

(d) Approved projects may be carried out directly by the Regional Director or through such arrangements as the Regional Director may make with the Bureau of Indian Affairs or other agencies.

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