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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Temporary Revision of Diversion Limitation Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rules.

SUMMARY: This action temporarily relaxes for the months of September 1985 through March 1986 the limit on how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool manufacturing plants and still be priced under the Nebraska-Western Iowa order. The revision is made in response to a request by a cooperative association representing a substantial number of producers supplying the market in order to prevent uneconomic movements of milk.

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Temporary Revision of Diversion Limitation Percentages: Issued August 2, 1985; published August 9, 1985 (50 FR 32227).

William T. Manley, Deputy Administrator, Agricultrual Marketing Service, has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This temporary revision is issued pursuant to the provisions of the Agricultrual Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1065.13(d)(4) of the Nebraska-Western Iowa order.

Notice of proposed rulemaking was published in the **Federal Register** (50 FR 32227) concerning a proposed increase in the amount of milk that may be moved directly from producer farms to nonpool manufacturing plants for the months of September 1985 through March 1986. The public was afforded the opportunity to comment on the proposed notice by submitting written data, views and arguments by August 16, 1985.

Statement of Consideration

After consideration of all relevant material, data, views and arguments filed and other available information, it is hereby found and determined that, for the months of September 1985 through March 1986, the diversion limitation percentage as set forth in § 1065.13(d) should be increased from the present 40 percent to 60 percent.

Pursuant to the provisions of § 1065.13(d), the diversion limitation percentages set forth in § 1065.13(d) (2) and (3), respectively, may be increased or decreased up to 20 percentage points during any month. Such changes may be made to encourage additional needed milk shipments to pool distributing plants or to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Associated Milk Producers, Inc., a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of September 1985 through March 1986, the percentage of allowable diversions be increased 20 percentage points.

The basis of the cooperative's request is that for the period in question, the order provisions require more milk to move through pool plants than is necessary to meet the fluid, or bottling, requirements of the market. The cooperative cited improved milk quality as a result of less pumping and more economic hauling as the benefits to be gained from the proposed temporary relaxation. According to the cooperative, the financial status of its producer members may be jeopardized unless the more economic hauling practices resulting from increased diversion allowances can be adopted.

The cooperative also stated that diversion percentages should be the reciprocal of supply plant shipping percentages in order to allow the maximum amount of milk to move directly to manufacturing plants. The 60-percent diversion limit for September through March 1986 will complement the 40-percent supply plant shipping requirement for the same period.

The temporary revision was supported also in comments filed by the National Farmers' Organization, Inc., a dairy farmer cooperative that also represents producers.

Without the temporary revision, milk of some dairy farmers would first have to be received at a pool plant to qualify it for pooling rather than being shipped directly from the farm to nonpool manufacturing plants for surplus use. These requirements would result in costly and inefficient movements of milk. It is concluded that the relaxation of the diversion limits by 20 percentage points for the months of September through March 1986 will prevent uneconomic movements of milk through pool plants merely for the purpose of qualifying it as producer milk under the order.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of September 1985 through March 1986;

(b) This temporary revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision.

Therefore, good cause exists for making this temporary revision effective upon publication of this notice in the **Federal Register.**

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk, Dairy products.

§ 1065.13 [Amended]

It is therefore ordered, that in paragraphs (d) (2) and (3) of § 1065.13, the provision "40 percent" is revised to "60 percent" for the months of September 1985 through March 1986.

The authority citation for 7 CFR Part 1065 continues to read as follows:

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

Effective date: August 29, 1985.

Signed at Washington, D.C., on: August 23, 1985.

W.H. Blanchard,

Acting Director, Dairy Division.

[FR Doc. 85–20577 Filed 8–28–85; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 506a

[No. 85–745]

Definitive-Form Securities

Dated: August 21, 1985.

AGENCY: Federal Home Loan Bank Board ("Board").

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board is amending 12 CFR 506a to permit the issuance of Federal Home Loan Bank ("Bank") securities in printed or engraved ("definitive") form, rather than book-entry form, to the extent expressly permitted by the terms of the securities. Currently, Part 506a requires that Bank securities be issued in book-entry form unless specifically excepted by the regulations. The amendment also includes conforming changes pertaining to the conversion, withdrawal, and delivery provisions of Part 506a.

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Attorney, Office of General Counsel, (202–377–6455), Federal Home Loan Bank Board, 1700 G Street NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: Although the Board is amending Part 506a to facilitate the issuance of definitive Bank securities, the Board reaffirms its policy adopted in 1977 of requiring the issuance of Bank securities in book-entry form to the extent feasible. 42 FR 56316 (October 25, 1977). The Board's experience has confirmed its initial views that issuance in book-entry form benefits investors, the Board, and the financial community by (1) reducing the risk of loss due to theft, mishandling and counterfeiting; (2) decreasing the cost of issuing, storing and delivering physical certificates; and (3) minimizing the paperwork created by the growing volume of public debt transactions. The Board's views are confirmed by the recent decisions of the Treasury to issue Treasury notes and bonds solely in book-entry form commencing in 1986, *see* U.S. Department of the Treasury, Press Release (Feb. 22, 1985), and of the Federal Home Loan Mortgage Corporation to issue mortgage-backed securities solely in book-entry form, *see* 1 CFR 462 (1985).

However, the Board must have the flexibility to issue Bank securities in definitive form if circumstances warrant. For example, on December 4, 1984, the Board amended Part 506a to permit the issuance in definitive form of registered securities targeted to markets outside the United States. 49 FR 48177 (December 11, 1984). This amendment was designed, in accordance with revised Treasury regulations, to facilitate sale in the Eurodollar market of Bank securities not subject to the 30-percent withholding tax on the payment of U.S.-source interest to foreign investors and foreign corporations.

Rather than amending Part 506a each time that a new type of Bank security requires issuance in definitive form, the Board, as requested by the Banks, is amending Part 506a to authorize the issuance of Bank securities in definitive form to the extent expressly permitted by the terms of the securities. This allows deletion of a list of exceptions to the book-entry rule, including issuance of registered securities targeted to markets outside the United States and of consolidated discount notes. The Board will continue to restrict the issuance of definitive-form securities by ensuring that the terms of Bank securities permit issuance in definitive form only to the extent necessitated by the particular factual circumstances. Furthermore, although the terms of such securities permit issuance in definitive form, the terms do not prohibit issuance in, or conversion to, book-entry form. In fact, it is the Board's understanding that most institutional holdings of registered securities targeted to markets outside the United States are maintained in book-entry form. The Board is also making conforming changes to the conversion, withdrawal, and delivery provisions of Part 506a.

The Board finds that observance of the notice and comment procedures prescribed by 5 U.S.C. 553(b) and 12 CFR 508.12 and 508.13, and delay of the effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14, is unnecessary for the following reasons: (1) The amendments are minor and conforming in nature, and (2) the revisions relate to internal agency procedures regarding securities issuance by the Banks.

List of Subjects in 12 CFR Part 506a

Federal home loan banks, Savings and loan associations.

Accordingly, the Board hereby amends Part 506a of Subchapter A of Chapter V, Title 12 of the *Code of Federal Regulations*, as set forth below.

SUBCHAPTER A—GENERAL

PART 506a—BOOK-ENTRY PROCEDURES FOR FEDERAL HOME LOAN BANK SECURITIES

1. The authority citation for 12 CFR Part 506a will continue to read:

Authority: Sec. 11, 47 Stat. 733, as amended; Sec. 17, 47 Stat. 736, as amended, 12 U.S.C. 1431, 1437; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1947 Supp.

PART 506a—[AMENDED]

2. Delete the phrase "Federal home loan bank(s)" whenever it appears in Part 506a and substitute the phrase "Federal Home Loan Bank(s)".

§ 506a.1 [Amended]

3. Amend § 506a.1(c) by removing the phrase "or" before the phrase "registered" and by inserting before the final period at the end thereof, the following: ", or other Federal Home Loan Bank securities, to the extent that their terms expressly permit issuance in definitive form".

§ 506a.2 [Amended]

4. Amend § 506a.2(b) by removing the phrase "registered securities targeted to markets outside the United States, to the extent permitted by the terms of the securities" and by substituting the phrase "other Federal Home Loan Bank securities, to the extent that their terms expressly permit issuance in definitive form".

§ 506a.4 [Amended]

5. Amend § 506a.4(d) by removing the phrase "registered securities targeted to markets outside the United States, to the extent permitted by the terms of the securities" and by substituting the phrase "other Federal Home Loan Bank securities, to the extent that their terms expressly permit issuance and delivery in definitive form".

§ 506a.5 [Amended]

6. Amend § 506a.5(a) by removing from the first sentence thereof the phrase "registered securities targeted to

markets outside the United States," and by substituting the phrase "other Federal Home Loan Bank securities, to the extent that their terms expressly permit withdrawal in definitive form,"; and by amending the second sentence thereof by removing the phrase "registered securities targeted to markets outside the United States in definitive form if not" and substituting the phrase "any Federal Home Loan Bank securities in definitive form, if not expressly".

§ 506a.6 [Amended]

7. Amend § 506a.6 by removing from the second sentence thereof the phrase "registered securities issued in definitive form targeted to markets outside the United States, or Federal Home Loan Bank consolidated discount notes," and substituting the phrase, "or other Federal Home Loan Bank securities, to the extent expressly permitted by their terms,".

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-20657 Filed 8-28-85; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM 79-14]

Natural Gas Policy Act; Order of the Director, OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order Prescribing Incremental Pricing Thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: September 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street N.E., Washington, DC 20426, (202) 357-8500.

Issued: August 23, 1985.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of September 1985 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to September 1985 are found in the tables in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I.—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

[Calendar year 1984]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Incremental pricing threshold	$2.283	$2.291	$2.299	$2.307	$2.315	$2.323	$2.331	$2.338	$2.345	$2.352	$2.359	$2.366
NGPA section 102 threshold	3.586	3.609	3.632	3.656	3.680	3.705	3.730	3.752	3.774	3.797	3.821	3.845
NGPA section 109 threshold	2.359	2.367	2.375	2.383	2.391	2.399	2.407	2.414	2.421	2.428	2.436	2.444
130 pct of No. 2 fuel oil in New York City threshold	7.730	7.570	7.570	8.550	8.590	7.670	7.930	7.740	7.650	7.230	7.040	7.290

[Calendar year 1985]

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.			
Incremental pricing threshold	$2.373	$2.378	$2.383	$2.388	$2.399	$2.410	$2.421	$2.427	$2.433			
NGPA section 102 threshold	3.869	3.890	3.911	3.932	3.962	3.992	4.022	4.045	4.068			
NGPA section 109 threshold	2.452	2.457	2.462	2.467	2.478	2.489	2.500	2.506	2.512			
130 pct of No. 2 fuel oil in New York City threshold	7.170	7.310	7.090	6.920	7.210	7.120	7.400	7.000	6.520			

[FR Doc. 85-20634 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[T.D. ATF-208; Correction]

Retention of Firearms Transaction Records

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision); Correction.

SUMMARY: This document corrects a section number cited in FR Doc. 85-15529, published in the Federal Register on June 28, 1985, at 50 FR 26702, which changed the retention period for most firearms licensee records.

FOR FURTHER INFORMATION CONTACT: J. Barry Fields, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202-566-7591).

SUPPLEMENTARY INFORMATION:

Paragraph 1. The table of sections in 27 CFR Part 178 was amended (50 FR 26703) by adding a new entry. This new entry should be § 178.129, not § 178.128.

Paragraph 2. The revised §178.121(a) (50 FR 26703) refers to a new § 178.128: this reference should be § 178.129, not § 178.128.

Paragraph 3. The new section added (50 FR 26704) should be § 178.129, not § 178.128.

Signed: August 21, 1985.

W.T. Drake,

Acting Director.

[FR Doc. 85-20692 Filed 8-28-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

West Virginia Permanent Regulatory Program; Preemption and Supersession of Certain Provisions of State Law

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 948 to preempt and supersede certain provisions of Article Three of Chapter 22A of the Code of West Virginia, which article is part of the West Virginia Energy Act (WVEA) and the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These provisions involve the exclusion of support facilities from the definition of surface-mining operations, the establishment of special requirements for surface-mining operations two acres or smaller in size, final bond release requirements, the Commissioner's authority to grant variances from performance standards, limits on an operator's liability for injuries sustained by citizens accompanying inspectors, and the Commissioner's authority to issue permits to applicants in violation of Federal laws or the environmental laws of other States

This action is being taken because the Director has determined that these provisions are inconsistent with the requirements of SMCRA. The Director's determination is based on the reasons cited in Findings 4, 5, 6, 7, 8 and 10 of the section entitled "Director's Findings" in a notice of final rulemaking pertaining to the West Virginia program published in the July 11, 1985 **Federal Register** (50 FR 28316–28324).

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background

On April 12, 1985, the West Virginia legislature adopted a bill known as the West Virginia Energy Act, which the Governor signed into law on May 3, 1985. The Act repealed the West Virginia Surface Coal Mining and Reclamation Act and incorporated it into the WVEA in a somewhat altered fashion. On July 11, 1985, the Director approved the WVEA as an amendment to the West Virginia program, with the exception of six provisions found to be inconsistent with SMCRA (50 FR 28316–28324). By separate notice on the same date, the Director proposed to preempt and supersede these six provisions and invited comment on this proposal (50 FR 28343–28345). Detailed background on the actions announced in this document can be found in the two **Federal Register** notices referenced above.

II. Director's Findings and Decision

1. Support Facilities

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director has decided to preempt and supersede specific wording in WVEA section 22A–3–3(2), which is part of the definition of "surface-mining operations." The complete text reads as follows:

(2) The areas upon which the above activities occur or where such activities disturb the natural land surface. Such areas shall also include any adjacent land, the use of which is incidental to any such activities; all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of such activities and for haulage; and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to such activities: Provided, That such activities do not include the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal prospecting subject to section seven of this article: Provided, however, That permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage, or processing of the coal shall not be subject to the provisions of this article. Such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply areas.

The specific wording being preempted and superseded is:

Provided, however, That permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage, or processing of the coal shall not be subject to the provisions of this article. Such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply areas.

The Director is taking this action because he has determined that this provision is inconsistent with section 701(28)(B) of SMCRA, based on the reasons cited in Finding 4 of the section entitled "Director's Findings" in a notice of final rulemaking pertaining to the West Virginia program published in the July 11, 1985 **Federal Register** (50 FR 28318).

2. Special Requirements for Mines Not Exceeding Two Acres

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director has decided to preempt and supersede, in part, specific wording in WVEA section 22A–3–9a(a)(8), which sets bonding requirements for surface-mining operations affecting two acres or less. The complete text of WVEA section 22A–3–9a(a)(8) reads as follows:

(8) A bond, or cash or collateral securities or certificates of the same type, in the form as prescribed by the director and in the minimum amount of five thousand dollars per acre, for a maximum disturbance of two acres, exclusive of roadways and temporary spoil placement. The bond shall be payable to the State of West Virginia and conditioned that the applicant shall complete regrading to approximate original contour and revegetation of all disturbed areas; and

The specific wording being preempted and superseded in part is the phrase "exclusive of roadways and temporary spoil placement."

The Director is taking this action because, to the extent that this language could be interpreted as allowing operations affecting in excess of two acres to qualify for the special requirements, this provision is inconsistent with section 528(2) of SMCRA and is less effective than the definition of "affected area" at 30 CFR 701.5. The Director's determination is based on the reasons cited in Finding 5 of the section entitled "Director's Findings" in a notice of final rulemaking pertaining to the West Virginia program published in the July 11, 1985 **Federal Register** (50 FR 28318–28319). The Director recognizes West Virginia's authority to establish whatever bonding requirements it chooses for operations affecting two acres or less; the

preemption and supersession only prohibit the use of bonded area criteria to determine the size of the affected area as well.

3. Final Bond Release Requirements

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director has decided to preempt and supersede specific wording in WVEA section 22A-3-23(c)(3), which in certain circumstances would permit final bond release prior to attainment of revegetation in accordance with the approved reclamation plan. The complete text of WVEA section 22A-3-23(c)(3) reads as follows:

(3) When the operator has completed successfully all surface mining and reclamation activities, the release of the remaining portion of the bond, but not before the expiration of the period specified in subdivision (20), subsection (b), section twelve of this article: Provided, That the revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan: Provided, however, That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

The specific wording being preempted and superseded is:

Provided, however, That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

The Director is taking this action because he has determined that this provision is inconsistent with section 519(c)(3) of SMCRA, based on the reasons cited in Finding 6 of the section entitled "Director's Findings" in a notice of final rulemaking pertaining to the West Virginia program published in the July 11, 1985 Federal Register (50 FR 28319).

4. Variances From Performance Standards

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director has decided to preempt and supersede WVEA section 22A-3-12(e), which grants the Commissioner authority to allow variances from performance standards, in its entirety. The complete text being preempted and superseded reads as follows:

(e) The commissioner may permit variances from the requirements of this section: Provided, That the watershed control of the area is improved: Provided, however, That complete backfilling with spoil material shall be required to completely cover the highwall, which material will maintain stability following mining and reclamation.

The Director is taking this action because he has determined that this provision is inconsistent with section 515(e) of SMCRA, based on the reasons cited in Finding 7 of the section entitled "Director's Findings" in a notice of final rulemaking pertaining to the West Virginia program published in the July 11, 1985 Federal Register (50 FR 28319).

5. Operator Liability Limits

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director has decided to preempt and supersede specific wording in WVEA section 22A-3-15(g), which limits operator liability for injuries suffered by citizens accompanying inspectors on inspections. The complete text of WVEA section 22A-3-15(g) reads as follows:

(g) Whenever on the basis of available information, including reliable information from any person, the commissioner has cause to believe that any person is in violation of this article, any permit condition or any regulation promulgated under this article, the commissioner shall immediately order State inspection of the surface-mining operation at which the alleged violation is occurring unless the information is available as a result of a prior State inspection. The commissioner shall notify any person who supplied such reliable information when the State inspection will be carried out. Such person may accompany the inspector during the inspection: Provided, That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip. Any such person accompanying an inspector on an inspection shall be responsible for supplying any safety equipment required for his use.

The specific wording being preempted and superseded is:

Provided, That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip.

The Director is taking this action because he has determined that this provision is inconsistent with section 521(a)(1) of SMCRA, based on the reasons cited in Finding 8 of the section entitled "Director's Findings" in a notice of final rulemaking pertaining to the West Virginia program published in the July 11, 1985 Federal Register (50 FR 28319). The Director previously set aside an identical provision in section 20-6-15(g) of the now-repealed West Virginia Surface Coal Mining and Reclamation Act as being inconsistent with section 521(a)(1) of SMCRA (49 FR 1489-1490, January 12, 1984).

6. Permit Issuance to Persons in Violation of Federal Laws or Environmental Laws in Other States

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a) the Director has decided to preempt and supersede specific wording in WVEA section 22A-3-18(c), which governs permit issuance to persons with outstanding violations or patterns of violations. The complete text of WVEA section 22A-3-18(c) reads as follows:

(c) Where information available to the department indicates that any surface-mining operation located in the State of West Virginia, owned or controlled by the applicant, is currently in violation of this article or other environmental laws or regulations, the permit shall not be isssued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the commissioner or the department or agency which has jurisdiction over the violation, and no permit may be issued to any applicant after a finding by the commissioner, after an opportunity for hearing, that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstration pattern of willful violations of this article of such nature and duration with such irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article: Provided, That if the commissioner finds that the applicant is or has been affiliated with, or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who has had a surface-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this State, he shall not issue a permit to the applicant: Provided, however, That subject to the discretion of the commissioner and based upon a petition for reinstatement, permits may be issued to any applicant if, after the revocation or forfeiture, the operator whose permit has been revoked or bond forfeited shall have paid into the special reclamation fund any additional sum of money determined by the commissioner to be adequate to reclaim the disturbed area, and the commissioner is satisfied that the petitioner will comply with this article.

The specific wording being preempted and superseded is the phrase "located in the State of West Virginia" in the first clause and the phrase "of this article" following "demonstrated pattern of willful violations."

The Director is taking this action because he has determined that these phrases render the State law inconsistent with section 510(c) of SMCRA, based on the reasons cited in Finding 10 of the section entitled "Director's Findings" in a notice of final rulemaking pertaining to the West Virginia program published in the July

11, 1985 **Federal Register** (50 FR 28319–28320).

III. Effect of Director's Decision

Because 30 CFR 732.17(g) provides that no changes to State laws or regulations shall take effect for purposes of a State program until approved as an amendment, it is generally not necessary to use the preemption and supersession provisions of 30 CFR 730.11(a) and section 505(b) of SMCRA. However, in this case the State of West Virginia enacted legislation repealing the West Virginia Surface Coal Mining and Reclamation Act and is replacing it with the West Virginia Energy Act without a provision clearly specifying that program changes would not take effect until approved by OSM.

Therefore, to remove any ambiguity regarding the status of those provisions which the Director found inconsistent with SMCRA and less effective than the Federal regulations, the Director, pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), is preempting, superseding and setting aside six provisions of State law, as discussed in the section of this notice entitled "Director's Findings and Decision." This action clarifies that those provisions cannot be implemented or enforced by any party.

IV. Public Comment

No objections to or comments on this action were received during the public comment period, which closed on August 12, 1985.

V. Procedural Requirements

1. Compliance With the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action, OSM is exempt from the requirement to prepare a Regulatory Impact Analysis, and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

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

List of Subjects in 30 CFR Part 948

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

Dated: August 23, 1985.

Jed D. Christensen,

Director, Office of Surface Mining.

PART 948—WEST VIRGINIA

1. The authority citation for Part 948 continues to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq).

2. 30 CFR 948.13 is revised to read as follows:

§ 948.13 State statutory and regulatory provisions set aside.

(a) The following wording in section 22A–3–3(w)(2) of the Code of West Virginia is inconsistent with section 701(28)(B) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

Provided, however, That permanent facilities not within the area being mined and not directly involved in the excavation, loading, storage, or processing of the coal shall not be subject to the provisions of this article. Such facilities include, but are not limited to, offices, garages, bathhouses, parking areas, and maintenance and supply areas.

(b) Section 22A–3–9a(a)(8) of the Code of West Virginia is inconsistent with section 528(2) of the Surface Mining Control and Reclamation Act of 1977 and less effective than the definition of "affected area" at 30 CFR 701.5. This provision is hereby set aside to the extent that it could be interpreted as excluding roadways and temporary spoil placement sites from the area considered to be affected for purposes of determining eligibility for the special regulatory program governing operations two acres or smaller in size.

(c) The following wording in section 22A–3–23(c)(3) of the Code of West Virginia is inconsistent with section 519(c)(3) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

Provided, however, That such a release may be made where the quality of the untreated postmining water discharged is better than or equal to the premining water quality discharged from the mining site.

(d) Section 22A–3–12(e) of the Code of West Virginia is inconsistent with section 515(e) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside in its entirety.

(e) The following wording in section 22A–3–15(g) of the Code of West Virginia is inconsistent with section 521(a)(1) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

Provided, That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip.

(f) The following italicized wording in section 22A–3–16(c) of the Code of West Virginia is inconsistent with section 510(c) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside:

(c) Where information available to the department indicates that any surface-mining operation *located in the State of West Virginia*, owned or controlled by the applicant, is currently in violation of this article or other environmental laws or regulations, the permit shall not be issued until the applicant submits proof that such violation has been corrected or is in the process of being corrected to the satisfaction of the commissioner or the department or agency which has jurisdiction over the violation, and no permit may be issued to any applicant after a finding by the commissioner, after an opportunity for hearing, that the applicant or the operator specified in the application controls or has controlled mining operations with a demonstrated pattern of willful violations *of this article* of such nature and duration with such irreparable damage to the environment as to indicate an intent not to comply with the provisions of this article: Provided, That if the commissioner finds that the applicant is or has been affiliated with, or managed or controlled by, or is or has been under the common control of, other than as an employee, a person who has had a surface-mining permit revoked or bond or other security forfeited for failure to reclaim lands as required by the laws of this State, he shall not issue a permit to the applicant: Provided, however, That subject to the discretion of the commissioner and based upon a petition for reinstatement, permits may be issued to any applicant if, after the revocation or forfeiture, the operator whose permit has been revoked or bond forfeited shall have paid into the special reclamation fund any additional sum of money determined by the commissioner to be adequate to reclaim the disturbed area, and

the commissioner is satisfied that the petitioner will comply with this article.

[FR Doc. 85-20635 Filed 8-28-85; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 85-39]

Special Local Regulations; Charleston Sternwheel Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Mile 58.0 to 61.0, Kanawha River. The "Charleston Sternwheel Regatta", an approved marine event, will be held on August 31 thru September 1, 1985, at Charleston, West Virginia. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective from 11:00 a.m. on August 31, and terminate at 10:30 p.m. on September 1, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR. B.J. Willis, Chief, Boating Technical Branch Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR Part 100.35, for the purpose of promoting the safety of life and property on the Kanawha River between miles 58.0 and 61.0 during the "Charleston Sternwheel Regatta", August 31 and September 1, 1985. This event will consist of rowing races, an innertube race, jet ski competition, canoe races, sky diving, sternwheel races, towboat races, a towboat shoving contest and a fireworks display, which could pose hazards to navigation in the area. Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 60 days from the date of publication. Following normal rule making procedures would have been impracticable. The application for this event was not received until July 5, 1985, and there was insufficient time in which to publish proposed rules in advance of the event, or to provide for a delayed effective date. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W.L. Giessman, USCGR, project officer, Boating Technical Branch, and LT. R.E. Kilroy, USCG, project attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. In Part 100, a new temporary § 100.35-0239 is added, to read as follows:

§ 100.35-0239 Kanawha River, mile 58.0 through 61.0.

(a) *Regulated Area.* The area between Mile 58.0 and 61.0 Kanawha River is designated the regata area, and may be closed to commercial and recreational navigation or mooring between the hours of 11:00 a.m. on August 31, and 10:30 p.m. on September 1, 1985. All times listed are local time. These times represent a guideline for possible intermittent river closures not to exceed Four (4) hours in duration. Marines will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations.* The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35-0239 will be effective from 11:00 a.m. on August 31, and terminate at 10:30 p.m. on September 1, 1985. (local time).

Dated: August 16, 1985.

R.J. Collins,

Captain, U.S. Coast Guard Acting Commander, Second Coast Guard District.

[FR Doc. 85-20666 Filed 8-28-85; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 100

[CGD2 85-42]

Special Local Regulations; Lawrenceville Community Day Festival

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Mile 3.0 to 4.0,

Allegheny River. The "Lawrenceville Community Day Festival", an approved marine event, will be held on August 31, 1985, at Pittsburgh, Pennsylvania. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective from 1:00 p.m. on August 31, and terminate at 5:00 p.m. on August 31, 1985. All times listed are local time.

FOR FURTHER INFORMATION CONTACT: LCDR. B.J. Willis, Chief, Boating Technical Branch, Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35, for the purpose of promoting the safety of life and property on the Allegheny River between miles 3.0 and 4.0 during the "Lawrenceville Community Day Festival", August 31, 1985. This event will consist of pleasure boat races, which could pose hazards to navigation in the area. Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective less than 60 days from the date of publication. Following normal rule making procedures would have been impracticable. The application for this event was not received until August 5, 1985, and there was insufficient time in which to publish proposed rules in advance of the event, or to provide for a delayed effective date. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaulation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information

The drafters of this regulation are BMCM W.L. Giessman, USCGR, project officer, Boating Technical Branch, and LT. R.E. Kilroy, USCG, project attorney, Second Coast Guard District Legal Office.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. In part 100, a new temporary § 100.35-0242 is added, to read as follows:

§ 100.35-0242, Allegheny River, mile 3.0 through 4.0.

(a) *Regulated Area.* The area between Mile 3.0 and 4.0 Allegheny River is designated the regatta area, and may be closed to commercial and recreational navigation or mooring between the hours of 1:00 p.m. and 5:00 p.m. on August 31, 1985. All times listed are local time. These times represent a guideline for possible intermittent river closures not to exceed three (3) hours in duration. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations.* The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(c) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall service as a signal to stop. Vessels so signalled shall stop and shall comply with the orders of the Patrol Vessel. Failure to do so may result in explusion from the area, citation for failure to comply, or both.

(d) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(e) The Patrol Commander may restrict vessel operation within the regatta area to vessels having particular operating characteristics.

(f) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(g) This § 100.35-0242 will be effective from 1:00 p.m. on August 31, and terminate at 5:00 p.m. on August 31, 1985. (local time.)

Dated: August 16, 1985.

R.J. Collins,

Captain, U.S. Coast Guard, Acting Commander, Second Coast Guard District.

[FR Doc. 85-20667 Filed 8-28-85; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Modification of the Special Regulations for the Grizzly Bear

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The Service issues an emergency rule modifying the special regulations that allow hunting of the threatened grizzly bear in northwestern Montana. This rule is applicable only to the 1985 hunting season, but the Service intends to issue new permanent regulations that will cover subsequent seasons. Available data indicate that grizzly bears in certain areas are declining and should not be hunted, but that increasing grizzly numbers in other areas are leading to bear-human interactions that pose a risk to the grizzly population in those areas. Therefore, an adjustment of hunting area boundaries and quotas is required for conservation purposes. For 1985, grizzly hunting in northwestern Montana will cease altogether once the total number of bears killed outside of Glacier National Park, from all causes.

reaches 15, or once the number of female grizzlies killed reaches 6.

DATES: This emergency rule is effective on August 29, 1985, and expires on April 28, 1986.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Region 6 office, 134 Union Boulevard, Fourth Floor, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Mr. Galen Buterbaugh, Regional Director, U.S. Fish and Wildlife Service, 134 Union Boulevard, P.O. Box 25486, DFC, Denver, Colorado 80225 (303/236-7920 or FTS 776-7920).

SUPPLEMENTARY INFORMATION: The grizzly bear (*Ursus arctos*) originally occurred throughout western North America, from Alaska to central Mexico. Its populations in the conterminous United States are now apparently restricted to northeastern Washington, northern and eastern Idaho, western Montana, and northwestern Wyoming. Fewer than 1,000 individuals are thought to survive in these areas, most of them in northwestern Montana. In the Federal Register of July 28, 1975, (40 FR 31734-31736), the Service determined threatened status for the grizzly in the conterminous U.S., pursuant to the Endangered Species Act of 1973. Simultaneously, special regulations were issued, which, among other things, provided for hunting of the grizzly in the Flathead National Forest, the Bob Marshall Wilderness Area, and the Mission Mountains Primitive Area (now Mission Mountains Wilderness Area) of northwestern Montana. Such hunting was to cease, once the number of grizzly bears killed throughout northwestern Montana during any one year, from all causes, reached 25. Subsequently, the known grizzly kill in this area has averaged 20 per year, including an average annual hunting kill of 10.6. Prior to 1975, the average annual grizzly mortality was 28 (Montana Department of Fish, Wildlife and Parks 1985).

The largest grizzly population in northwestern Montana, and in the conterminous United States, is that of the Northern Continental Divide Ecosystem (NCDE). This ecosystem comprises Glacier National Park; the Flathead and adjoining portions of the Helena, Kootenai, Lewis and Clark, and Lolo National Forests (including the Bob Marshall, Great Bear, Mission Mountains, and Scapegoat Wilderness Areas); and some adjacent Bureau of Land Management, State, private, and Indian reservation lands. Based on a number of recent studies, the Montana Department of Fish, Wildlife and Parks (1985) has estimated the grizzly population of the NCDE to contain 580 individuals, of which 387 are found outside of Glacier National Park. The Service is using this estimate in the formulation of this rule. In the remainder of northwestern Montana, there may be no more than a dozen individual bears.

The status of the grizzly varies from place to place within the NCDE. Studies undertaken in various parts of the NCDE indicate that the number of grizzlies is stable or increasing in some areas, but is decreasing in others (Aune and Stivers 1982, Aune *et al.* 1984, Claar 1985, Mace and Jonkel 1980, Martinka 1974, McClellan 1984, Servheen 1981). In particular, the studies indicate that numbers in the Mission Mountains are currently declining. It is thus evident that the original special regulations, which provided for grizzly bear hunting in most of the NCDE and a total kill of 25 bears throughout northwestern Montana, need to be revised in order to ensure the conservation of the species in all areas where it occurs.

A different situation exists along the Rocky Mountain front in the eastern part of the NCDE. The 1975 special regulations did not provide for hunting in the east front area beyond the boundaries of the Flathead National Forest and the Bob Marshall Wilderness Area. More grizzlies are now evident in some places along the front, and they are moving down onto private lands. This movement may be attributable to one or a combination of factors, such as climatic change, loss of previously utilized habitat, or an actual increase in the size of the overall bear population and consequent dispersal. In any case, the grizzlies in this area are preying on livestock and destroying property, and are a possible threat to human safety. Such difficulties are leading to confrontations between people and bears that may result in the destruction of the latter. Live-trapping and relocation of bears has met with only limited success. Moreover, the processes of trapping, immobilizing, handling, and relocating (usually by helicopter) pose considerable risks to the bears themselves. In 1985, as of July 23, six grizzlies have been captured in such control measures in the Choteau area of the Rocky Mountain east front; two of these animals died as a result of this action, one was placed in a zoo, and three were released in other parts of the NCDE. Only a single grizzly was removed by control operations in the Choteau area from 1980 to 1984. The 1985 loss represents a new and serious escalation of bear-human conflicts along the east front. Present indications are that such problems will continue to intensify and that currently available control measures are not adequate.

Because of the two different critical situations described above—the decline of the grizzly population in the Mission Mountains and the escalation of bear-human conflicts on the eastern front of the Rocky Mountains—the Service considers that there is an emergency posing a significant risk to the well-being of the grizzly. Section 4(b)(7) of the Act provides for the issuance of regulations in response to such emergencies. Modification of the special regulations dealing with hunting of the grizzly is needed immediately, because the 1985 hunting season will begin in less than a month. There is no time to issue an ordinary proposed rule, allow for the required 60-day public comment period, and then prepare and publish a permanent final rule. An emergency rule is therefore necessary.

In accordance with section 4(d) of the Act, special regulations on threatened species must be "necessary and advisable to provide for the conservation of such species." Section 3(3) defines conservation, essentially, as measures that are beneficial to the species, and contribute to its recovery and ultimate removal from the List of Endangered and Threatened Wildlife. Special regulations for the grizzly bear, therefore, must be beneficial to the species and be aimed at the particular factors that threaten the species.

In its original determination of threatened status for the grizzly, on July 28, 1975, the Service determined that strictly controlled hunting would be a necessary element for the conservation program for the grizzly. The Service continues to hold that regulated hunting is necessary and advisable for the conservation of the grizzly in northwestern Montana, and considers that such hunting should now be applicable in portions of the Rocky Mountain east front. Such hunting would tend to eliminate those bears that are unwary of humans and thus most likely to come into conflict with people. It would also help to cause remaining bears to be more fearful of people. This last point is supported by the studies of Elgmork (1978) and Mysterud (1977), who provided evidence that brown bear populations, long-exposed to human exploitation, did exhibit wariness, and by the work of Herrero (1985), who reported that bear-human confrontations are associated more frequently with unhunted, rather than hunted, bear populations. To help reduce the further escalation of problems on the east front, and in other areas, sport hunting also should

continue in the Flathead National Forest (except that portion including the Mission Mountains) and the Bob Marshall Wilderness Area, and should be extended into the adjoining Scapegoat Wilderness Area.

The Montana Department of Fish, Wildlife and Parks (1985), in developing its proposed levels of hunting, and female quotas, reviewed data from several studies and determined that the average annual human-induced mortality allowable to maintain a stable population was 7.5 percent. However, in order to achieve recovery of the bear in the NCDE, the conservation program must be geared toward establishing increasing populations instead of just maintaining stability. For the fall of 1985, hunting of the grizzly in the designated parts of the NCDE will cease once 15 grizzly bears have been killed during calendar year 1985, from all causes, in all of northwestern Montana, exclusive of Glacier National Park. This figure is based on the judgment that with an estimated 387 grizzlies in the NCDE, outside of Glacier National Park, an annual human-induced mortality of 6 percent can occur and the population can still experience a general increase in numbers. Six percent of 387 is approximately 23 bears, but it is also estimated, based on recovery of dead radio-collared grizzlies, that there is an estimated illegal kill of 8 bears each year in the NCDE (Montana Department of Fish, Wildlife and Parks 1985). Therefore, the allowable known kill in the area is 15.

The 15 bears that may be killed during calendar year 1985 will include not more than 6 females. This figure is based on records indicating that annual mortality from hunting, from 1967 to 1984, averaged 40 percent female, and the presumption that a greater rate of female mortality would be damaging to a grizzly population (Montana Department of Fish, Wildlife and Parks 1985). In addition, no more than 2 females may be killed in any one of the following areas: (1) The Flathead National Forest outside of the Bob Marshall Wilderness Area, (2) the Bob Marshall and Scapegoat Wilderness Areas, and (3) the remaining portion of the NCDE that is open to hunting. If 2 females are killed during calendar year 1985 in any one of these areas, all grizzly hunting will be prohibited in that area for the remainder of the year. There will be no hunting of grizzlies accompanied by young in any part of northwestern Montana, because such grizzlies would in all likelihood be females.

The portion of northwestern Montana that will be open to hunting during the fall 1985 season is being adjusted to account for the problems discussed above. If not contrary to State laws and regulations, and if the quotas described above have not been reached, grizzly hunting will be allowed in the Flathead National Forest, except for the portion west of State Highway 83 (which includes the Mission Mountains); in the Bob Marshall and Scapegoat Wilderness Areas; and in an additional area of Rocky Mountain east front, which includes a portion of the Lewis and Clark National Forest and adjacent lands to the east of the Bob Marshall Wilderness Area, to the south of Birch Creek, to the north of Sun River, and to the west of U.S. Highways 89 and 287. There will continue to be no grizzly hunting on the east front to the north of Birch Creek (the Badger-Two Medicine area), and in all other areas not specifically delineated in the regulations.

The limits and areas described above will remain in effect until April 28, 1986 or until new permanent regulations on the grizzly become effective, whichever comes first. If by April 28, 1986, new permanent regulations have not become effective, the original grizzly regulations, as were in effect until August 29, 1985, will again become effective. It is, however, the intent of the Service to coordinate and work closely with the Montana Department of Fish, Wildlife and Parks, and other involved parties, to analyze all available grizzly bear management data, and to subsequently propose and issue new permanent grizzly regulations, before the expiration of this emergency rule.

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Servheen, C. 1981. Grizzly Bear ecology and management in the Mission Mountains, Montana. Ph.D. Dissertation, University of Montana, Missoula, 138 pp.

Authors

The primary authors of this rule are Dr. Christopher Servheen, U.S. Fish and Wildlife Service, HS 105D, University of Montana, Missoula, Montana 59812 (406/329–3223); and Jane P. Roybal, U.S. Fish and Wildlife Service, 134 Union Boulevard, Lakewood, Colorado 80225 (303/236–7398 or FTS 776–7398).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, until April 28, 1986, Part 17, Subchapter B of Chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 83–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Section 17.40(b)(1)(i)(E) is revised to read as follows:

§17.40 Special rules—Mammals.

* * * * *

(b)(1)(i) * * *

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(E) *Northwestern Montana.* If it is not contrary to the laws and regulations of the State of Montana, a person may hunt grizzly bears, if such bears are not accompanied by young, in the Flathead National Forest, except that portion of the Forest west of State Highway 83; in the Bob Marshall and Scapegoat Wilderness Areas; and in that portion of the Lewis and Clark National Forest and adjoining lands of the eastern front of the Rocky Mountains with the following boundary: beginning at Badger Pass on the northern boundary of the Bob Marshall Wilderness Area, thence northeastward along a straight line to the head of the North Fork of Birch Creek, thence eastward along said Fork to Swift Dam, thence eastward along

Birch Creek to U.S. Highway 89, thence southward along U.S. Highway 89 to Choteau, thence southward along U.S. Highway 287 to the Sun River, thence westward along the Sun River to the eastern boundary of the Bob Marshall Wilderness Area, thence northward along said boundary to the point of beginning: *Provided*, That if in the calendar year 1985, 15 grizzly bears or 6 female grizzly bears have already been killed, for whatever reason, in that part of Montana, exclusive of Glacier National Park, which is bounded on the north by the United States-Canada Border, on the east by U.S. Highway 91, on the south by U.S. Highway 12, and on the west by the Montana-Idaho State line, the Director of the Montana Department of Fish, Wildlife and Parks shall post and publish a notice prohibiting such hunting, and any such hunting for the remainder of 1985 shall be unlawful: *Provided further*, That if in the calendar year 1985, 2 female grizzly bears have already been killed, for whatever reason, in the Flathead National Forest outside of the Bob Marshall Wilderness Area, or in the Bob Marshall and Scapegoat Wilderness Areas, or in that portion of the Lewis and Clark National Forest and adjoining lands of the eastern front of the Rocky Mountains with a boundary as described above, the Director of the Montana Department of Fish, Wildlife and Parks shall post and publish a notice prohibiting such hunting in the area where the 2 female grizzly bears have been killed, and any such hunting in this area for the remainder of 1985 shall be unlawful: *Provided further*, That any taking of a grizzly bear, for whatever reason, in the above-described portion of Montana shall be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 28006, Washington, D.C. 20005, and to the Montana Department of Fish, Wildlife and Parks, within 5 days after the taking occurs, except that any taking on an Indian reservation within the above-described area shall be so reported only to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 28006, Washington, D.C. 20005.

* * * * *

Dated: August 26, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-20769 Filed 8-27-85; 12:02 pm]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

[Docket No. 50694-5094]

High Seas Salmon Fishery Off Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of opening.

SUMMARY: NOAA issues this notice opening specific parts of the fishery conservation zone (FCZ) off southeast Alaska to commercial fishing for chinook salmon for 39 hours. This action is necessary to allow fishermen in southeast Alaska more time to harvest chinook salmon and complements similar actions taken by the State of Alaska for the salmon fisheries in its waters. The intended effect is to provide fishermen the opportunity to harvest the number of chinook salmon authorized by the Pacific Salmon Treaty.

DATES: This notice is effective at 0001 hours Alaska Daylight Time (ADT), August 25, 1985, through 1500 hours ADT on August 26, 1985. Public comments on this notice are invited until September 26, 1985.

ADDRESS: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 30-day comment period, the data upon which this notice is based will be available for public inspection during business hours (0800 to 1630 ADT Monday through Friday) at the NMFS Alaska Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS) 907-586-7229.

SUPPLEMENTARY INFORMATION: Salmon fishing in the FCZ off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska East of 175° East Longitude (FMP). This FMP was developed and amended by the North Pacific Fishery Management Council (Council) and is implemented by NOAA through regulations appearing at 50 CFR Part 674.

On July 23, 1985, the Secretary of Commerce (Secretary) closed the chinook salmon fishery in the FCZ off Alaska because statistics on the actual harvests of chinook salmon and forecasts of future catches indicated that the limit of 263,000 chinook salmon set by the U.S.-Canada Pacific salmon treaty would be reached (50 FR 30427, July 26, 1985). The notice closing the chinook fishery stated that if the actual total harvest fell short of 263,000, then the troll fishery would be reopened to harvest the remainder.

As of August 20, 1985, the estimated chinook salmon harvest in southeast Alaska by all fisheries amounted to 253,000. Of this total, the troll fishery harvested about 200,000; the seine fishery, 20,000; the gillnet fishery, 11,000; and the sport fishery, 22,000. Thus, the harvest to date falls short of the limit set by the treaty by approximately 10,000 chinook salmon.

In May 1985, the Alaska Board of Fisheries (Board) set guidelines for the harvests of chinook salmon by the various southeast Alaska fisheries. These guidelines were rough goals, not fixed quotas. The Board suggested that the treaty limit of 263,000 chinook salmon should be divided so that the gillent fisheries could harvest about 10,000; the seine fisheries, 10,000; the sport fisheries, 22,000; and the troll fisheries, 221,000. By August 10, 1985 the seine harvest of chinook of approximately 20,000 was well above the average of recent years and above the guideline suggested by the Board, so the Alaska Department of Fish and Game (ADF&G) issued a rule that the seiners could no longer retain chinook salmon. The gillnet fishery and the sport fishery have harvested close to the guidelines set by the Board; only the troll catch of about 200,000 was below the harvest guideline. The ADF&G, therefore, decided that the amount of the treaty limit still remaining by August 25, 1985, should go to the troll fishery.

To keep low the incidental catch of undersized chinook salmon, the ADF&G and the Secretary have decided to keep closed the areas that were closed to all salmon fishing on July 23, 1985 (50 FR 30427); for the U.S. FCZ off Alaska, only a small area known as the Outer Fairweather Grounds will be closed.

On August 15, 1985, in conjunction with similar action by the State of Alaska, the Secretary closed the U.S. FCZ off Alaska to all commercial troll salmon fishing for 10 days (50 FR 33346, August 19, 1985). The troll fishery was scheduled to reopen on August 25, 1985 for all salmon species but chinook. Because analyses of the harvests to date reveal that some more chinook may be harvested, this notice allows trollers to resume harvesting chinook as well as the other species.

Based on the number of boats expected to resume fishing and an allowable harvest of less than 10,000

chinook, and because of the logistics of unloading chinook after the chinook fishery closes, the ADF&G and the Secretary have decided that chinook may be harvested only during the first 39 hours after the fishery reopens on August 25, 1985; i.e., from 0001 hours on August 25, until 1500 hours on August 26. When this chinook harvesting period ends at 1500 hours on August 26, 1985, trollers may continue to harvest other salmon species after they have unloaded any chinook salmon they have on board.

After the actual chinook harvest from this fishery has been tabulated and the remaining harvests by the gillnet and sport fisheries have been forecasted, if the total chinook harvest is still short of the limit, then another short period for harvesting chinook will be granted the trollers before the season closes on September 20, 1985.

Section 674.23(a) of the regulations implementing the FMP provides that the Secretary may modify the time and area limitations governing the fishery whenever he determines that the condition of any salmon species in any part of the management area is substantially different from the condition anticipated in the FMP. In making such a determination, he may consider the following factors:

(a) The effect of overall fishing effort within any part of the management area;

(b) Catch per unit of effort and rate of harvest;

(c) Relative abundance of salmon stocks within the management area;

(d) Condition of salmon stocks throughout their ranges; and

(e) Any other factors relevant to the conservation of salmon.

Having reviewed evidence of the 1985 chinook harvest to date, the Secretary has determined that the effect of overall fishing effort in the FCZ, the catch per unit of effort and rate of harvest there, and the apparent relative abundance of chinook stocks within the FCZ portion of the management area indicate that the condition of chinook stocks is substantially different from the condition anticipated in the FMP. The Secretary has also found that this difference reasonably requires a modification of time or area limitations to manage the chinook fishery adequately. Therefore, the Secretary implements the 39-hour opening of the chinook fishery prescribed by this action.

This notice will become effective after it has been filed for public inspection with the Office of the Federal Register and the chinook fishery opening has been publicized for 48 hours through procedures of ADF&G.

Other Matters

The Assistant Administrator for Fisheries, NOAA, has determined that the chinook harvest in southeastern Alaska will fall short of the salmon treaty limit unless this notice takes effect promptly. He finds, therefore, that it would be impracticable and contrary to the public interest to provide advance notice and a prior opportunity for public comment or to delay for 30 days the effective date of this notice under the provisions of 5 U.S.C. 553 (b) and (c).

This action is authorized by 50 CFR Part 674 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 674

Fisheries, Reporting and recordkeeping requirements.

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

Dated: August 26, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator For Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-20708 Filed 8-26-85; 4:45 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 168
Thursday, August 29, 1985

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273, 275, and 276

[Amdt No. 268]

Food Stamp Program; Performance Reporting System

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: This rule contains proposed regulations for the Food Stamp Program to implement various changes to the requirements that State agencies and the Food and Nutrition Service (FNS) must meet regarding administration, conducting management evaluation (ME) reviews data analysis and evaluation, corrective action, and reporting as part of the Performance Reporting System (PRS). The Department is proposing these changes based on its experience administering the PRS. The result of implementing these changes will be to simplify the PRS and reduce workloads and costs. Several changes are also being proposed to the Quality Control (QC) System.

DATE: Comments on this proposed rulemaking must be received on or before October 28, 1985 to be assured of consideration.

ADDRESS: Comments should be submitted to Susan McAndrew, Chief, Program Design and Rulemaking Branch, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, VA 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m. Monday through Friday), at 3101 Park Center Drive, Alexandria, VA, room 708.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Keith Spinner, Supervisor, State Agency Management and Control Section, at the above address, or by telephone at (703) 756-3431.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified "not major." The rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Fedeal, State, or local government agencies, or geographic regions. Because this rule would not affect the business community, it would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of the Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule related Notice(s) to 7 CFR Part 3015, Subpart V (Cite 48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate, and any subsequent notices that may apply), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials

Regulatory Flexibility Act

This rule was also reviewed with regard to the requirements of Pub. L. 96-354, and Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that it will not have a significant economic impact on a substantial number of small entities. The rule proposes to implement various changes to simplify the PRS. State agencies should experience a reduction in workloads and costs.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget (OMB). They are not effective until OMB approval has been obtained.

Background

The Food Stamp Act of 1977 (Pub. L. 95-113, enacted on September 29, 1977) provides the Department authority to establish standards for the efficient and effective administration of the Food Stamp Progam by State agencies. Further, the Act requires the State agencies to submit regular reports specifying the administrative actions the State agencies propose to implement in order to meet these standards. On March 11, 1980, the Department issued final rules (at 45 FR 15884) which established the requirements that State agencies needed to meet regarding administration, conducting ME reviews, data analysis and evaluation, corrective action, and reporting as part of the PRS. In addition, the March 11, 1980, final rules established the requirements for Federal monitoring and determining State's program performance. On November 21, 1980, the Department issued final rules (at 45 FR 77258) that set forth the types of sanctions the Food and Nutrition Service may impose to enforce compliance with the Food Stamp Act, regulations, and State Plans of Operation.

The Department and the State agencies have had four years of experience conducting reviews and planning and initiating corrective action under these regulations. During this period of time the Department's Office of the Inspector General (OIG) and the General Accounting Office (GAO) have conducted audits of the management evaluation and corrective action processes. Both the OIG and the GAO have made recommendations to improve and update the processes.

In December 1981, a Regulatory Review Task Force met to consider possible improvements to the regulations. A major concern about the current regulations raised during the meeting was that the requirements were unnecessarily resource intensive. Further, resources were being devoted where they were not needed; and as a result, State agencies could not do in-depth reviews where needed. States were frequently able to identify problems with fewer casefile or other record reviews than currently required. Also, other methods were available,

such as ADP techniques, observation, and discussion, which could be used to detect problems more readily and efficiently. States were also monitoring project areas which historically did not have serious program deficiencies on a more frequent than deserved basis, due to the regulatory structure. States were also finding it difficult to do more than cursory reviews in order to cover the totality of program areas that the regulations require be reviewed. FNS Regional Offices experienced similar difficulties in conducting their reviews.

For two years FNS has been testing targeting of ME reviews. State agencies were granted waivers of certain program review requirements provided they could justify the need or the desirability of such a waiver. Areas in which waivers were allowed included frequency of reviews, reviews of subunits, review procedures, and review coverage. As part of the targeting process FNS established certain priority areas for review coverage. The Regional Offices also targeted their reviews of State agencies based on national priorities and knowledge of State agency problems.

As a result of these experiences we have determined that a number of changes are needed in order to direct resources to the areas where the greatest need for monitoring and/or corrective action exists. Therefore, we are proposing to target the review process. In addition, we are proposing to remove certain requirements, such as those concerning methods of review, from the regulations. FNS would still provide technical assistance on review methods, however, through the FNS Handbook 312, State Management Evaluation Handbook. Thus, States will have greater flexibility in the review process. Finally, it is proposed that prior FNS approval of the corrective action process will no longer be required, rather States will be held responsible for operating the program in accordance with the Food Stamp Act, the regulations, and the FNS-approved State Plans of Operation. These proposed changes are discussed in greater detail below.

FNS Monitoring

Currently, Federal monitoring requirements include, but are not limited to, a review of the State agency's administration of the Food Stamp Program, the State agency operations review (SAOR), a review of the State's Performance Reporting System, and an assessment of corrective action. Each of these reviews is to be done annually.

The SAOR is a review by the Regional Office of all functions performed at the State agency level. We are proposing to delete the requirement that all functions be reviewed. Instead, specific areas will be designated each year by the FNS National Office based on a determination of Agency priorities. The FNS Regional Offices may also review additional areas based on their knowledge of State agency weaknesses and problems. Regional Offices were expending large amounts of staff time and money conducting on-site SAORs that covered all program areas. The Regional Offices were only able to do cursory reviews in many instances. Therefore, we initiated a test of targeting specific program areas for review. For Fiscal Year 1985, the priority program areas include: Corrective action planning, implementation, and evaluation; claims establishment, collection, and reporting requirements (including wage match followup); intentional program violation requirements; issuance reporting and reconciliation requirements; and issuance system requirements. We have found such targeting to be an effective method of monitoring that uses resources as advantageously as possible. FNS also has the ability to analyze many State activities through reports provided by States to FNS. For example, States submit regular reports on claims establishment and collection, disqualification, and mail issuance losses. From these reports, we can get indicators of potential performance problems which can then be further investigated.

The PRS requirements have been in effect for more than four years. During that time FNS has been able to develop a base knowledge of each State agency's PRS. Based on our experience we have determined that it is no longer necessary to conduct annual reviews of each State's PRS. Therefore, we are proposing to conduct biennial reviews.A biennial review will allow us to continue to ascertain whether a State's system is functioning properly while utilizing resources more efficiently. We are also changing the name of this review from PRS to Management Evaluation System (MES) to reflect that only the ME and data analysis functions are reviewed. Quality control and corrective action are assessed separately.

FNS will continue to assess annually each State's corrective action process because of the importance of corrective action in reducing and eliminating waste. However, on-site visits of selected corrective actions will no longer be required semiannually, but only on an as needed basis when other methods are not available. The Department does not believe that mandating semi-annual on-site visits to monitor unspecified corrective actions enhances the corrective action process. On-site visits should be scheduled when there is no other way to ascertain whether corrective actions are being implemented timely or are effective.

PRS Coordinator

Currently each State agency is required to have a full-time PRS coordinator, unless an exception is granted by FNS. That coordinator is responsible for ensuring that all components of the PRS are accomplished. These components include data collection through ME and QC; analysis and evaluation of data from all sources; corrective action planning, implementation, and monitoring; and reporting to FNS on program performance. The State agency is also required to designate an organizational entity within the State structure that can ensure that corrective action is effected. These mandates were predicated upon the assumption that the PRS components would function as a unit. We are aware that in some States ME and QC functions are handled by different organizational units. The PRS coordinator may only be responsible for ME, data analysis, and/or corrective action processes under such a structure. We are concerned that the PRS system is not functioning as originally conceived. Therefore, the Department is seeking comments on how State agencies perceive the PRS structure and the role of the PRS coordinator. We have not proposed any changes to the role of the coordinator in this rulemaking. We will consider the comments received in determining whether to modify the role of the coordinator.

Management Evaluation Reviews

Currently, State agencies are required to conduct reviews once annually for large project areas, once every two years for medium project areas, and once every three years for small project areas. Additional reviews of small project areas are also required if the proportion of small project areas exceeds 70 percent of all project areas. In this rulemaking we are proposing to maintain these requirements except that we are proposing to delete the additional reviews where the number of small project areas exceeds 70 percent. In addition if a triennial review is sufficient in most instances, it should be sufficient in all, unless a known problem requires more frequent visits.

We are also proposing to allow States to use a different review schedule,

provided that FNS approves the alternate schedule and provided that all project areas are reviewed at least once every three years. We will not be authorizing a reduced commitment by a State agency to the ME process.The Department expects any State agency (which obtains approval for an alternate schedule) to maintain its current level of effort and commitment to the ME process. The alternate review schedule is intended to provide States with flexibility to dedicate resources to those areas most prone to problems. Currently 14 State agencies are using an alternate schedule approved under the targeting test. In order to obtain approval for an alternate schedule, a State agency will have to document that a project area review othewise required is unnecessary because the project area is known to be performing adequately. Examples of such documentation would include (as appropriate) duplicate participation data, duplicate ATP and mail issuance losses, claims collection activities, Quality Control data, fair hearing decision, timeliness of application processing and expedited service, training schedules, and civil rights complaints. The State would also need to include copies of the most recent ME reports and corrective action plans for those counties. FNS shall determine whether an alternate schedule will be approved. Further, FNS may approve an alternate schedule in whole or in part. Until a State agency receives approval for an alternate schedule, it shall continue to conduct reviews according to the standard schedule.

During ME reviews, State agencies are required to review project area sub-units that have food stamp functional responsibilities. These include certification and issuance offices, data management units, bulk storage points, and reporting points. Currently, the regulations specify how many sub-units of each type will be reviewed during a project area review. We are proposing to change the requirement to allow State agencies to select a representative number of each type of sub-unit. The ME review plans must identify how many sub-units will be selected and what criteria will be used to determine a representative number. FNS will monitor the States' sub-unit selection process as well as the States' findings during its MES review. Allowing States to determine the number of sub-units and the selection process will increase the States' ability to focus on suspected problem areas. States which choose to use the ME process to meet their regulatory responsibility to review all issuance offices and bulk storage points every three years will continue to be allowed to do so.

State agencies are currently required to review all program areas during each review. As discussed previously, reviewing all program areas during each review has resulted in a lot of unnecessary work with limited results. FNS has been testing targeting of reviews to specific program areas for two years. For Fiscal Year 1985, States are required to review the same areas as those listed above for the Regional Offices. Twenty State agencies currently have targeting waivers authorizing redirected program area review efforts. Results of the targeting test indicate that States are able to perform more in-depth reviews as a result of the targeting. The purpose of ME reviews is to identify problems so that they can be corrected. By conducting more in-depth reviews State agencies would be more likely to determine the cause of a problem, thereby facilitating corrective action. Therefore, we are proposing to delete the requirement that all program areas be reviewed. Each year FNS will determine what program areas must be reviewed at a minimum and will notify the States of those areas at least 60 days before the beginning of each annual review period. However, FNS may add additional areas during the annual review period if it deems necessary.

The Department is proposing to delete specific review procedures and methods from the regulations. As discussed earlier, specific review procedures and methods will be in the FNS Handbook 312, State Management Evaluation Handbook. The Handbook will provide technical guidance to the State agencies. Changing review procedures from requirements to guidance is not a reflection of FNS disinterest in the quality of States' reviews. By taking the specificity out of the regulations, the States will be given greater flexibility where they have the expertise. Further, there has been a significant increase in the automation of all aspects of program operations in many States. Therefore, there are additional ways of monitoring available to the States. FNS will also provide additional guidance on performing reviews upon request. States will be required in the project area review plans to identify the methods that will be used to review each of the targeted program areas. FNS will monitor this during its MES reviews.

Data Analysis

We are proposing to delete the requirements (1) that State agencies use error-prone profiles (if available) and QC findings in project areas with caseloads of 35,000 households and (2) that management information sources are listed. These requirements are unnecessary as States are already required to use all available management information sources.

Corrective Action

State agencies are currently required to implement corrective action on all identified deficiencies. State agencies are required to operate the program in accordance with the Food Stamp Act, regulations, and FNS-approved State Plans of Operation. Therefore, States will continue to be required to correct all known deficiencies. We are proposing to modify this section of the regulations to eliminate examples of deficiencies requiring preventive corrective action. Also, the current regulations require corrective action of any Statewide trend. Although we are not proposing to change the definition of a statewide trend at this time, the Department is seeking comments on what constitutes a statewide trend. Currently there are two criteria for determining whether a deficiency constitutes a statewide trend: (1) The deficiency occurs in a significant number (usually 25 percent) of a State's project areas and (2) that some action by the State is needed to correct the deficiency. States are required to review all data sources at least semiannually to determine whether there are any deficiences that meet the two criteria. GAO, in its audit of the corrective action process, recommended that considering dollar losses or percent of affected cases in some situations would be more appropriate than percent of project areas. FNS would like to have additional viewpoints on what constitutes a statewide trend. These comments will be considered when the final regulation is developed.

Although the sanction process is a significant incentive to correct deficiencies which result in high QC error rates, the Department believes that the corrective action planning process plays an important role in reducing QC errors. Therefore, we are continuing to require that QC errors be addressed through this process. Modifications to the requirements have been made to reflect the recent changes in the QC system.

If a State does not operate the program correctly, FNS has the option of initiating the warning process in Part 276 and potentially disallowing funds. FNS thus has sufficient means to induce States to correct known deficiencies. Therefore, the Department is proposing to delete the requirement that FNS approve States' corrective action plans.

However, States should be aware that inclusion of a deficiency in the corrective action plan may not be sufficient to prevent a warning being issued or funds being suspended or disallowed. FNS will make such determinations based on the extent of the deficiency, the adequacy of corrective action, the length of time that the deficiency has existed, and previous performance by the State in correcting deficiencies. States would still be required to submit the plan to FNS as required by the Food Stamp Act. Information in the plan would be used by FNS in its evaluation of a State's performance.

The Department is proposing to require States to submit a single open-ended corrective action plan with periodic updates that include deletions, additions, and modifications. Comments are being solicited on how frequently such updates should be submitted. The Department is considering either quarterly for semiannual updates. This should reduce the flow of paper while ensuring that FNS be kept apprised of the status of a State's operations.

Reporting

Under these proposed regulations State agencies shall submit ME review schedules such that they are received by FNS no later than August 1, 1986. The initial corrective action plan must be submitted within 90 days of publication of the final regulations. After the initial submission, the periodic updates must be submitted. As discussed above, FNS is seeking comments on how often these updates should be submitted.

Quality Control

Currently the regulations require FNS to validate States' active case error rates. However, no identifiable need to validate the active case error rate has been established. The payment error rate is the rate that is used to determine whether a State agency may qualify for enhanced funding or be liable. The active case error rate is not used by FNS for any purpose at this time. Therefore, we are proposing to delete the requirement in § 275.3(c) that FNS validate the active case error rate. If it becomes necessary the deletion of the requirement would not preclude FNS from validating the active case error rate for any State(s).

The Department is also proposing to add a statement to § 275.3(c) to provide for FNS validation reviews against the Food Stamp Program standards established in the Food Stamp Act and the regulations, taking into account any FNS authorized waivers to deviate from specific regulatory provisions. This provision is already in § 275.10 Scope and Purpose and was discussed in the preamble of the final rule on February 17, 1984 at 49 FR 6294. The provision is being placed in § 275.3(c) solely to emphasize that Federal rereviews will meet the same standards as State reviews. Federal rereviews will be conducted using the regulations regardless of whether a State agency has timely implemented a regulation or policy, unless a waiver concerning such implementation has been granted to State agency.

The Department is also proposing to require that a State agency determine a household ineligble if the household refuses to cooperate with a Federal QC reviewer. Currently, a household which refuses to cooperate with a State QC reviewer is to be determined ineligible, but there is not penalty for refusing to cooperate with a Federal QC reviewer. The Federal reviewers will be required to use the same procedures that the State agency must use in determining refusal to cooperate.

In the February 17, 1984, final rulemaking, the Department did not exclude negative disaster cases from the QC negative universe although active disaster cases were excluded. This omission was an oversight which we are proposing to correct in this rule. The Department has never intended that negative disaster cases be reviewed by QC while active cases be monitored through other procedures.

We are also proposing to change the dates that State agencies must submit the forms FNS–248, Status of Sample Selection and Completion, and FNS–247, Statistical Summary of Sample Distribution. State agencies are currently required to submit these reports such that they are received by FNS no later than 95 days after end of the sample month or annual review period (as appropriate). This has proven to be infeasible. The FNS–248 and FNS–247 reports are hard copy reports which are completed based on summaries of individual cases. State agencies have 95 days to complete individual cases and submit the findings to FNS. Findings are submitted via the Integrated Quality Control System computers. Thus State agencies may work on Cases right up to and including the 95th day. State agencies cannot submit accurate FNS–248 and FNS–247 reports timely if cases are not completed until the 95th day. We are primarily concerned that States complete individual cases and that submitted reports are accurate. Therefore, we are proposing to allow State agencies 105 days to submit these reports. However, State agencies will still be required to submit findings on individual cases within 95 days. This will ensure that State agencies have the maximum amount of time to complete individual cases and to prepare accurate reports.

An interim rulemaking published on July 29, 1983, at 48 FR 34650 stated that the nagative case error rate had to be less than the national weighted mean negative case error rate for the period of enhanced funding. In the February 17, 1984, rulemaking at 49 FR 6293, the Department stated that the final rule was changed to say that in order to be eligible for enhanced funding, a State agency's negative case error rate must be less than the national weighted mean nagative case error rate for the prior fiscal year. Section 275.25(d)(2) of the final regulations provides that enhanced funding will be given if the negative case error rate is less than the national weighted mean negative case error rate for the applicable period. However, it does not define the applicable period. Therefore, we are proposing to revise this section of the regulation to specify that the State's negative case error rate must be less than the national weighted mean negative case error rate for the prior fiscal year.

Finally, in the February 17, 1984, final rulemaking, in § 275.25(d)(2) the Department stated that a State agency would be eligible for enhanced funding if the State's combined official payment error rate and underissuance error rate was five percent or less for an annual review period. The Food Stamp Act, as amended, mandates combined error rates of less than five percent (7 U.S.C. 2025(c)(1)). The July 29, 1982, interim rulemaking and the preamble of the February 17, 1984, final rulemaking both provide for combined error rates of less than five percent. The provision "five percent or less" in § 275.25(d)(2) was an inadvertent error made by the Department during the development of the final rule. Therefore, we are proposing to correct the provision to read "Less than five percent."

We are also proposing several corrections to delete references to outreach and FNS-approved State manuals.

Implementation

The Department is proposing to require State agencies to implement these changes to the PRS beginning October 1, 1986.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs,

Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

7 CFR Part 276

Administrative practice and procedure, Food stamps, Fraud, Grant programs-social programs, Penalties.

Accordingly, Parts 272, 273, 275, and 276 are proposed to be amended as follows:

1. The authority citation for Parts 272, 273, 275, and 276 is revised to read:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2029).

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1 the first sentence in paragraph (d)(1) and paragraph (d)(2) are revised and a new paragraph (g)(71) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(d) *Information Available to the Public.* (1) Federal regulations, Federal procedures embodied in FNS notices and policy memos, State Plans of Operation, and corrective action plans shall be available upon request for examination by members of the public during office hours at the State agency headquarters as well as at FNS Regional and National offices. * * *

(2) Copies of regulations, plans of operation State manuals, State corrective action plans, and Federal procedures may be obtained from FNS in accordance with Part 295 of this chapter.

* * * * *

(g) *Implementation.* * * *

(71) *Amendment 266.* The provisions contained in Amendment 266 are effective October 1, 1986.

§ 272.2 [Amended]

3. In § 272.2 the eighth sentence is removed from paragraph (a)(2).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

§ 273.2 [Amended]

4. In § 273.2, paragraph (d)(2) is amended by adding the words "§ 275.3(c)(5) or" before the words "§ 275.12(g)(1)(ii)" and paragraph (f)(3)(ii) is amended by removing the words "in accordance with § 275.15(a)(2)" from the first sentence.

PART 275—PERFORMANCE REPORTING SYSTEM

5. In § 275.1, the parenthetical expression "(of which the State corrective action plan is a part)" is removed from the last sentence in paragraph (a) and paragraph (b) is revised. The revision to paragraph (b) reads as follows:

§ 275.1 General scope and purpose.

* * * * *

(b) The Food Stamp Act authorizes the Secretary to pay each State agency an amount equal to 50 percent of all administrative costs involved in each State agency's operation of the program. The Act further authorizes the Secretary to increase the share to 60 percent of all administrative costs for State agencies whose combined payment error rate and underissuance error rate is, as determined by quality control, less than five percent and whose negative case error rate is less than the national weighted mean negative case error rate for the prior fiscal year. Those State agencies whose combined payment and underissuance error rates are five percent or more are required to specify and carry out the corrective action which they propose to take to reduce errors. "Quality Control" means monitoring in an effort to reduce the rate of errors in determining basic eligibility and benefit levels.

6. In § 275.3, the introductory paragraph is revised. Paragraphs (a), (b), and (d) are revised. Introductory paragraph (c) is revised, the title and introductory paragraph of (c)(1) are revised, paragraph (c)(2) is removed, paragraphs (c)(3), (c)(4), and (c)(5) are redesignated as (c)(2), (c)(3), and (c)(4), respectively, and a new paragraph (c)(5) is added. The revisions read as follows:

§ 275.3 Federal monitoring.

The Food and Nutrition Service shall conduct the following reviews discribed below in this section to determine whether a State agency is operating the Food Stamp Program and the Performance Reporting System in accordance with program requirements. The Federal reviewer may consolidate the scheduling and conducting of these reviews to reduce the frequency of entry into the State agency. FNS Regional Offices will conduct additional reviews to examine State agency and project area operations, as considered necessary to determine compliance with program requirements. FNS shall notify the State of any deficiencies detected in program or system operations. The State agency shall develop corrective action addressing all deficiencies detected in either program or system operations and shall notify FNS of the planned corrective actions in the next scheduled periodic update ot its State corrective action plan as required in § 275.17.

(a) *Reviews of State Agency's Administration/Operation of the Food Stamp Program.* FNS shall conduct an annual review of certain functions performed at the State agency level in the administration/operation of the program. FNS will designate specific areas required to be reviewed each fiscal year.

(b) *Reviews of State Agency's Management Evaluation System.* FNS will review each State agency's management evaluation system on a biennial basis; however, FNS may review a State agency's management evaluation system on a more frequent basis if a review reveals noncompliance with program requirements. The review will include but not be limited to a determination of whether or not the State is complying with FNS regulations, an assessment of the State's methods and procedures for conducting ME reviews, and an assessment of the data collected by the State in conducting the reviews.

(c) *Validation of State Agency Error Rates.* FNS shall validate each State agency's payment error rate and underissuance error rate, as described in § 275.25(c), during each annual quality control review period. Federal validation reviews shall be conducted by reviewing against the Food Stamp Act and the regulations, taking into account any FNS authorized waivers to deviate from specific regulatory provisions. FNS shall validate the State agency's negative case error rate, as described in § 275.25(d), only when the State agency's payment and underissuance error rates for an annual review period appear to entitle it to an increased share of Federal administrative funding for that period as outlined in § 277.4(b)(2), and its reported negative case error rate for that period is less than the national weighted mean negative case error rate for the prior fiscal year. Any deficiencies detected in a State agency's QC system shall be included in the State agency's corrective action plan. The findings of validation reviews shall be used as outlined in § 275.25(e)(6).

(1) *Payment Error Rate.* The validation review of each State's agency's payment error rate shall consist of the following actions: * * *

* * * * *

(5) *Household cooperation.* A household is required to cooperate with a Federal QC reviewer. Refusal to cooperate shall result in termination of the household. The Federal reviewer shall follow the procedures in § 275.12(g)(1)(ii) in order to determine whether a household is refusing to cooperate with the Federal QC reviewer. If the Federal reviewer determines that the household has refused to cooperate, as opposed to failed to cooperate, the household shall be reported to the State agency for termination.

(d) *Assessment of Corrective Action.* (1) FNS will conduct a comprehensive annual assessment of a State's corrective action process by compiling all information relative to that State's corrective action efforts, including the State agency's system for data analysis and evaluation. The purpose of this assessment and review is to determine if: Identified deficiencies are analyzed in terms of causes and magnitude and are properly included in either the State or Project Area/Management Unit corrective action plan, the State agency is implementing corrective actions according to the appropriate plan, target completion dates for reduction or elimination of deficiencies are being met, and corrective actions are effective. In addition, FNS will examine the State's corrective action monitoring and evaluative efforts. The assessment of corrective action will be conducted at the State agency, project area, and local level offices, as necessary.

(2) In addition, FNS will conduct on-site reviews of selected corrective actions as frequently as considered necessary to ensure that States are implementing proposed corrective actions within the timeframes specified in the State and/or Project Area/Management Unit corrective action plans and to determine the effectiveness of the corrective action. The on-site reviews will provide States and FNS with a mechanism for early detection of problems in the corrective action process to minimize losses to the program, participants, or potential participants.

7. In § 275.5, paragraph (b) is revised and paragraph (c) is removed. The revision reads as follows:

§ 275.5 Scope and purpose.

* * * * *

(b) *Frequency of review.* (1) State agencies shall conduct a review once a year for large project area/management units, once every two years for medium project areas, and once every three years for all small project areas, unless an alternate schedule is approved by FNS. The most current and accurate information on active monthly caseload available at the time the review schedule is developed shall be used to determine project area size.

(2) A request for an alternate review schedule shall be submitted in writing with a proposed schedule and justification. In any alternate schedule, each project area must be reviewed at least once every three years. Approval of an alternate schedule is dependent upon a State's justifying that the project areas that will be reviewed less frequently than required in paragraph (b)(1) of this section are performing adequately and that previous reviews indicate few problems or that known problems have been corrected (copies of the most recent project area ME reviews and corrective action plans must be included). The State must also indicate how the resources that would otherwise be used in conducting these reviews will be used in the ME or corrective action process. FNS retains the authority for approving any alternate schedule and may approve a schedule in whole or in part. Until FNS approval of an alternate schedule is obtained, the State agency shall conduct reviews in accordance with paragraph (b)(1) of this section.

(3) FNS may require the State agency to conduct additional on-site reviews when a serious problem is detected in a project area which could result in a substantial dollar or service loss.

(4) States shall also establish a system for monitoring those project areas' operations which experience a significant influx of migratory workers during such migrations. This requirement may be satisfied by either scheduling ME reviews to coincide with such migrations or by conducting special reviews. As part of the review the State shall contact local migrant councils, advocate groups, or other organizations in the project area to ensure that migrants are receiving the required service.

(c) [Removed]

§ 275.6 [Amended]

8. In § 275.6, paragraph (a) is amended by removing "or sampling requirements" in the last sentence.

9. In § 275.7 paragraphs (b) and (e) are revised and (f) is removed. The revised paragraphs read as follows:

§ 275.7 Selection of sub-units for review.

* * * * *

(b) *Reviewing Issuance Offices and Bulk Storage Points.* As required in § 274.1(c)(2) of this chapter, State agencies must conduct on-site reviews of each bulk storage point and coupon issuer at least once every 3 years. This review requirement may be satisfied through the ME review system.

* * * * *

(e) *Selection of Sub-units for Review.* State agencies shall select a representative number of sub-units of each category for on-site review in order to determine a project area's compliance with program standards.

(f) [Removed]

10. Section 275.8 is revised to read as follows:

§ 275.8 Review coverage.

During each review period, State agencies shall review the areas of program operation specified by FNS. FNS will notify the States of the minimum program areas to be reviewed at least 60 days before the beginning of each annual review period. FNS may add additional areas during the review period if deemed necessary. State agencies shall be responsible for reviewing each program requirement based upon the provisions of the regulations governing the Food Stamp Program and the FNS-approved Plan of Operation. If FNS approves a State's request for a waiver from a program requirement, any different policy approved by FNS would also be reviewed. When, in the course of a review, a project area is found to be out of compliance with a given program requirement, the State shall identify the specifics of the problem including: The extent of the deficiency, the cause of the deficiency, and as applicable, the specific procedural requirements the project area is misapplying.

11. In § 275.9, paragraphs (a), (b), and (c) are revised, paragraphs (d), (e), and (f) are removed, and paragraph (g) is redesignated as paragraph (d) and introductory paragraph (d) is amended by removing the words "to be approved by FNS,". The revised paragraphs (a), (b), and (c) read as follows:

§ 275.9 Review process.

(a) *Review procedures.* State agencies shall review the program requirements specified for review in § 275.8 of this part using procedures that are adequate to identify problems and the causes of those problems. As each project area's operational structure will differ, States shall review each program requirement applicable to the project area in a manner which will best measure the project area's compliance with each program requirement.

(b) *ME review plan.* (1) State agencies shall develop a review plan prior to each ME review. This review plan shall specify whether the project area is large, medium, or small and shall contain:

(i) Identification of the project area to be reviewed, program areas to be reviewed, the dates the review will be conducted, and the period of time that the review will cover;

(ii) Information secured from the project area regarding its caseload and organization;

(iii) Identification of the certification offices, issuance offices, bulk storage points, reporting points, and data management units selected for review and the techniques used to select them;

(iv) Identification of whether the State is using the ME review to monitor coupon issuers and bulk storage points as discussed § 275.7(b) of this part; and

(v) A description of the review method(s) the State agency plans to use for each program area being reviewed.

(2) ME review plans shall be maintained in an orderly fashion and be made available to FNS upon request.

(c) *Review methods.* (1) State agencies shall determine the method of reviewing the program requirements associated with each program area. For some areas of program operation it may be necessary to use more than one method of review to determine if the project area is in compliance with program requirements. The procedures used shall be adequate to identify any problems and the cause of those problems. The Regional Office shall assess the adequacy of the procedures during its review of the State's Management Evaluation System.

(2) State agencies shall ensure that the method used to review a program requirement does not bias the review findings. Bias can be introduced through leading questions, incomplete reviews, incorrect sampling techniques, etc.

The new paragraph (ii) reads as follows:

* * * * *

(d)–(f) [Removed]

12. In § 275.11 paragraph (f)(2) is amended by redesignating paragraphs (ii) and (iii) as (iii) and (iv), respectively and by adding a new paragraph (ii).

§ 275.11 Sampling.

* * * * *

(f) *Sample Universe.* * * *

(2) *Negative Cases.* * * *

(ii) A household denied food stamps under a disaster certification authorized by FNS;

* * * * *

§ 275.15 [Amended]

13. In § 275.15, paragraph (a)(1) is redesignated as (a), paragraphs (a)(2) and (a)(3) are removed, paragraph (d) is removed, and paragraphs (e), (f), and (g) are redesignated as (d), (e), and (f) respectively.

14. In § 275.16, paragraphs (b) and (d) are revised to read as follows:

§ 275.16 Corrective action planning.

* * * * *

(b) The State agency and project area(s)/management unit(s), as appropriate, shall implement corrective action on all identified deficiencies. There are two kinds of corrective action: Remedial, by which past errors in individual cases are rectified through issuance of retroactive benefits, sending claim determinations, etc., and preventive, by which patterns of deficiencies are corrected in such a way that they do not recur. Most planning will involve the latter kind. In planning corrective action, the State agency shall determine if correction of the deficiency requires action by the State agency, the project area/management unit, or the combined efforts of both. Deficiencies requiring action by the State agency or the combined efforts of the State agency and the project area(s)/management unit(s) in the planning, development, and implementation of corrective action are those which:

(1) Result from State agency causal factors;

(2) Constitute a Statewide trend (States shall review all data sources at least semiannually to identify any patterns of deficiencies which might constitute a Statewide trend. When the State determines that during the period being reviewed a deficiency has been occurring in significant number (usually 25 percent) of the State's total project areas/management units or of the local certification or issuance offices if the State has only one FNS designated project area, the State shall determine whether some action by the State is needed to correct the deficiency. If the deficiency meets the criteria, the State agency shall include consolidated corrective action at the State level in the State corrective action plan. The deficiency shall remain in the State corrective action plan until such time as the consolidated corrective action has been completed and the deficiency has been eliminated.);

(3) Are the causes for combined payment and underissuance error rates of five percent or more for any reporting period (actions to correct errors in individual cases, however, shall not be submitted as part of the State corrective action plan);

(4) Are the causes of other errors/deficiencies detected through quality control, including error rates of 1 percent or more in negative cases (actions to correct errors in individual cases, however, shall not be submitted as part of the State corrective action plan);

(5) Are identified by FNS reviews or USDA audits or investigations at the State agency or project area level (except deficiencies in isolated cases as indicated by FNS);

(6) Are patterns of errors identified in large project area/management units (isolated occurrences of errors as determined by the State shall be excluded); or

(7) Result from 5 percent or more of the State's QC sample being coded "not complete" as defined in § 275.12(g)(1) of this part. This standard shall apply separately to both active and negative samples.

* * * * *

(d) In planning corrective action, the State shall coordinate actions in the areas of data analysis, policy development, quality control, program evaluation, operations, administrative cost management, civil rights, and training to develop appropriate and effective corrective action measures.

15. In § 275.17, paragraph (a) is revised and new paragraphs (c) and (d) are added to read as follows:

§ 275.17 State corrective action plan.

(a) State agencies shall prepare a corrective action plan addressing those deficiencies specified in § 275.16(d) of this part requiring action by the State agency or the combined efforts of the State agency and the project area(s)/management unit(s). This corrective action plan is an open-ended plan and shall remain in effect until all deficiencies in program operations have been reduced substantially or eliminated. The State agency shall provide periodic updates which contain:

(1) Any additional deficiencies identified which require incorporation into the State corrective action plan;

(2) Documentation that a deficiency has been corrected and is therefore being removed from the plan; and

(3) Any changes to planned corrective actions for previously reported deficiencies.

* * * * *

(c) FNS will provide technical assistance in developing corrective action plans when requested by State agencies.

(d) State agencies will be held accountable for the efficient and effective operation of all areas of the program. FNS is not precluded from issuing a warning as specified in Part 276 because a deficiency is included in the State corrective action plan.

16. Section 275.20 is revised in its entirety to read to follows:

§ 275.20 ME review reports.

(a) Each State agency shall submit to the appropriate FNS Regional Office

review schedules for performance of ME reviews, which shall reflect review activity beginning October 1, 1986. Each schedule shall identify the project areas/management units in each classification and list each project area to be reviewed by month or by quarter.

(b) Each State agency shall submit its initial review schedule to the appropriate FNS Regional Office, and the schedule must be received by the Regional Office no later than August 1, 1986. Subsequent schedules must be received by the Regional Office 60 days prior to the date a current schedule becomes obsolete. These schedules must ensure that all project areas/management units will be reviewed within the required time limits. A State agency may submit an alternate review schedule at any time. The alternate schedule shall not be effective until approved by FNS in accordance with § 275.5(b)(2).

(c) States shall notify the appropriate FNS Regional Office of all changes in review schedules.

§ 275.21 [Amended]

17. In § 275.21 paragraphs (c) and (d) are amended by replacing "95" with "105".

18. Section 272.22 is revised to read as follows:

§ 275.22 State corrective action plans.

The first State corrective action plan prepared in accordance with the new regulations shall be submitted to FNS so that it is received within 90 days of publication of these regulations as final Rules. Periodic updates shall be submitted as required by FNS. The State corrective action plan and all subsequent amendments shall be signed by either the State Welfare Commissioner or a designated official who has the authority to effect corrective action.

§ 275.25 [Amended]

19. In § 275.25, the words "FNS-approved State manuals" are removed from paragraph (a)(1). The words "active case error rate," are removed from paragraph (d)(1)(i). Finally, in paragraph (d)(2), the words "five percent or less" are replaced with the words "less than five percent" and the words "applicable to the period of enhanced funding" are replaced with the words "for the prior fiscal year".

PART 276—[AMENDED]

§ 276.4 [Amended]

20. In § 276.4, the third sentence in the introductory paragraph of (d) and the second sentence in (d)(2) are amended by replacing the words "an FNS-approved" with the word "a".

Dated: August 22, 1985.

Robert E. Leard,

Administrator, Food and Nutrition Service.

[FR Doc. 85-20636 Filed 8-28-85; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Extension of comment period for notice of proposed rulemaking.

SUMMARY: The Service has extended from September 3, 1985 to October 3, 1985 the deadline for submitting comments on the amendments the Service proposed on July 2, 1985 at 50 FR 27289. The proposed amendment to § 103.2(b)(2) would incorporate a provision allowing the withholding of information relating to a pending civil or criminal investigation or if disclosure would compromise a confidential informant. The Service has extended the deadline to allow the public additional opportunity to comment.

DATE: Comments are now due on or before October 3, 1985.

ADDRESS: Please submit written comments in duplicate, to the Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., room 2011, Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, N.W., Washington, DC 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: The Service has extended the deadline for submitting comments from September 3, 1985 to October 3, 1985 to allow the public additional opportunity to comment on proposed amendments published on July 2, 1985 (50 FR 27289). This proposed revision to § 103.2(b)(2) would allow the Service to withhold disclosure of records of proceedings when disclosure would damage pending civil or criminal investigations or betray confidential informants. Additionally, this amendment would require consent of classifying authority prior to release of classified information.

Dated: August 26, 1985.

Maurice C. Iaman,

General Counsel, Immigration and Naturalization Service.

[FR Doc. 85-20673 Filed 8-28-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 309 and 310

[Docket No. 84-014E]

Sulfonamide Residues in Swine

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of intent to institute proposed rulemaking; extension of comment period.

SUMMARY: On May 20, 1985, the Food Safety and Inspection Service (FSIS) published a notice of intent to institute proposed rulemaking to implement inplant analytical procedures for the detection of sulfonamide residues in swine. FSIS has been rquested to extend the comment period to allow more time for reviewing the notice. FSIS is hereby extending the comment period for 60 days.

DATE: Comments must be received on or before October 29, 1985.

ADDRESS: Written comments to: Policy Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 3803, South Agriculture building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. John E. Spaulding, Director, Residue Evaluation and Planning Division, Science Program, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2807.

SUPPLEMENTARY INFORMATION: On May 20, 1985, FSIS published in the Federal Register (50 FR 20798) a notice of intent to institute proposed rulemaking to implement a stringent control program employing inplant analytical procedures to reduce the incidence of violative sulfonamide residues in swine. Interested persons were given until August 30, 1985, to comment on this notice. FSIS has been requested to extend the comment period to allow time for additional study of the notice by affected persons In view of the importance of this notice, FSIS is interested in receiving additional data

and has decided to extend the comment period until October 29, 1985.

Done at Washington, DC, on: August 23, 1985.

L.L. Gast,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 85-20693 Filed 8-28-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-74-AD]

Airworthiness Directives: Avions Marcel Dassault-Breguet Aviation Falcon 10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require the installation of brackets on the left-hand and right-hand rudder servo actuator pressure reducer on certain Falcon 10 airplanes to prevent improper installation of the hydraulic lines. This action also proposes to add identification marks to the hydraulic lines to prevent improper installation. Improper installation of hydraulic lines in one system and a failure of the other hydraulic system could result in a hazardous condition if an engine failed during takeoff.

DATES: Comments must be received by October 21, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-74-AD, 17900 Pacific Highway South, C-68966, Seattle, WA 98168. The applicable service information may be obtained from the AMD-BA Representative, c/o F.J.C., Teterboro Airport, New Jersey 07608. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Mr. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-74-AD, 17900 Pacific Highway South, C-68966, Seattle, WA 98168.

Discussion

The French Direction Generale de l'Aviation Civile (DGAC) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition which may exist on certain Avions Marcel Dassault-Breguet (AMD) Falcon 10 airplanes. One case of improper installation of hydraulic lines on the rudder servo actuator has been reported. The pressure reducer had been installed upside down and the Number 2 system pressure and return lines were switched. This blocked pressure to the corresponding barrel of the rudder servo actuator, resulting in a hidden failure of the rudder system. Loss of the other hydraulic system, in conjunction with loss of an engine during takeoff, could result in a hazardous condition. To ensure the system is properly installed, the DGAC, on June 24, 1983, required that the system be modified in accordance with AMD-BA Service Bulletin F10-27-028 (0237).

This airplane model is manufactured in France and type certified in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require compliance with the previously mentioned service bulletin.

It is estimated that 158 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $18,960.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, AMD Model Falcon 10 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Avions Marcel Dassault-Breguet Aviation: Applies to AMD Falcon 10 series airplanes, serial numbers 1 thru 196 inclusive, and 198 thru 201 inclusive, certificated in any category. Compliance is required within 60 days after the effective date of this AD. To ensure the proper installation of the rudder servo actuator hydraulic lines, accomplish the following, unless already accomplished:

A. Modify the rudder servo actuator system in accordance with AMD-BA Service Bulletin F10-27-028 (0237) dated June 24, 1983.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager,

Standardization Branch, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposed directive who have not already received these documents from the manufacturer may obtain copies upon request to AMD-BA Representative, c/o F.J.C., Teterboro Airport, New Jersey 07608. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, WA, or 9010 East Marginal Way South, Seattle, WA.

Issued in Seattle, Washington, on August 22, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-20607 Filed 8-28-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 85-ANM-27]

Proposed Alteration of Helena Control Zone, Helena, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change the status of the Helena Control Zone from full-time to part-time. The National Weather Service in Helena has modified its hours of operation and weather observations are not available from 0000 to 0400. Consequently, the control zone no longer qualifies to be operated on a full-time basis.

DATES: Comments must be received on or before October 28, 1985.

ADDRESSES: Send comment on the proposal to: Manager, Airspace & Procedures, Branch, ANM-530, Federal Aviation Administration, Docket No. 85-ANM-27, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel's office at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Katherine Paul, Airspace Technical Specialist, ANM-530, Federal Aviation Administration, Docket No. 85-ANM-27, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The telephone number is (206) 431-2530.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in ths proposed rulemaking by submitting such written data, views, or arguments at they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to achnowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on whch the following statement is made: "Comments to Airspace Docket No. 85-ANM-27". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking any action on the proposed rule.

The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace & Procedures Branch, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to change the status of the Helena Control Zone from full-time to part-time. The National Weather Service in Helena has modified its hours of operation and weather observations are not available from 0000 to 0400.

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

List of Subjects in CFR Part 71

Control zones/aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration (FAA) proposes to amend § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); (14 CFR 11.69).

2. By amending § 71.171 as follows:

Helena, Montana, Control Zone—(Amended)

Add the following statement to the present description:

This control zone is effective during the specified dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on August 8, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-20608 Filed 8-28-85; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[OW-FRL-2889-9]

Water Quality Standards for Surface Waters of the State of Idaho; Corrections

AGENCY: Environmental Protection Agency.

ACTION: Correction of proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) published a proposed rule on August 20, 1985 (50 FR 33672) to establish certain water quality standards for the State of Idaho. That proposed rulemaking contained several errors which are corrected herein.

DATES: Comments on the proposed rule must be submitted on or before November 18, 1985.

ADDRESSES: Written comments should be sent to: David K. Sabock, Criteria and Standards Division (WH-585), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: David K. Sabock, (202) 245-3042.

SUPPLEMENTARY INFORMATION: EPA's proposed rulemaking of certain water quality standards for the State of Idaho contained several errors which are corrected herein. All of the page numbers cited in the corrections are for the notice of proposed rulemaking beginning at 50 FR 33672.

(1) *Page 33673.* The 26th line under Section C. Proposed Actions, in the middle column, should read, ". . . explained in § C.2."

(2) *Page 33674.* Under "d. Basis for Proposed Rule" in the 29th line in the 3rd column, the citation to the Idaho water quality standards should be "§ 1-2100.03."

(3) *Page 33676.* The eighth line in the 3rd column under Section 3.a. State Adopted Criterion, the correct paragraph in the Idaho regulation is .01.

(4) *Page 33677.* The second and third lines under c. Contents of Proposed Rule, in the first column, should refer to Idaho's regulation as "§ 1-2300.01."

(5) *Page 33678.* In the first column under Section F. Public Hearings, delete last sentence which reads, "Moreover, the hearing record will be kept open at least 45 days after a Notice of Availability of the final ammonia criteria guidance is published in the Federal Register." (The Notice has already appeared as noted on Page 33676.)

(6) *Page 33678.* Under Section G. Availability of the Record, it is noted that certain materials will be made available at certain public libraries in the State of Idaho. The Public Library at Twin Falls, Idaho, should have been included in the list.

(7) *Page 33678.* The signs in the equations for un-ionized ammonia in § 131.34(b)(1) (i) and (ii) are printed in such small print that they may be incorrectly interpreted. For example, in the exponent of each equation, the sign immediately in front of TCAL, T, and pH, in each case is a minus sign (−). Other omissions also occurred. Therefore, the correct equations are as follows:

§ 131.34 [Corrected]

In section 131.34(b)(1)(i), the one-hour average concentration of un-ionized ammonia (in mg/l NH_3) does not exceed the numerical value given by 0.52/FT/FPH/2, where:

$$FT = 10^{0.03(20-TCAP)}; \quad TCAP \leq T \leq 30°C$$

$$FT = 10^{0.03(20-T)}; \quad 0°C \leq T \leq TCAP$$

$$FPH = 1 \quad ; \quad 8 \leq pH \leq 9$$

$$FPH = \frac{1 + 10^{7.4-pH}}{1.25} \quad ; \quad 6.5 \leq pH \leq 8$$

TCAP = 20°C; Salmonids or other sensitive coldwater species present

TCAP = 25°C; Salmonids and other sensitive coldwater species absent

In section 131.34(b)(1)(ii), the 4-day average concentration of un-ionized ammonia (in mg/l NH_3) does not exceed the numerical value given by 0.80/FT/FPH/RATIO, where FT and FPH are as above and:

$$Ratio = 16 \; ; \; 7.7 \leq pH \leq 9$$

$$Ratio = 24 \times \frac{10^{7.7-pH}}{1 + 10^{7.4-pH}} \; ; \; 6.5 \leq pH \leq 7.7$$

TCAP = 15°C; Salmonids or other sensitive coldwater species present

TCAP = 20°C; Salmonids and other sensitive coldwater species absent

(8) *Page 33680.* Under § 131.34(c), paragraphs (1), (2), and (3) should not have been included. The correct language is that preceding paragraphs (1), (2), and (3) which reads as follows:

"(c) The exemption of dams and hydroelectric generating facilities from the Idaho antidegradation requirements is suspended. Therefore, the following from § 1-2300.01 of the Idaho Water Quality Standards adopted by the State on January 8, 1980, is null and void: 'Except as noted in Manual § 1-2300.07 and for dams and hydroelectric generating facilities,'."

Dated: August 26, 1985.

Henry L. Longest, II,

Acting Assistant Administrator for Water.

[FR Doc. 85-20805 Filed 8-28-85; 8:45 am]

BILLING CODE 6560-50-M

LEGAL SERVICES CORPORATION

45 CFR Part 1630

Procedures for Resolving Questioned Costs

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: On August 1, 1985, the Operations and Regulations Committee of the Board of Directors of the Legal Services Corporation began considering a proposed new rule setting forth revised procedures for resolving questioned costs. At the conclusion of the meeting the Committee voted that the proposed regulation be published for comment in the Federal Register with certain changes that had been dictated into the record during the Committee's discussion.

The resolution of questioned costs is currently governed by LSC Instruction 83–8, which became effective on November 23, 1983. The procedure set forth in Instruction 83–8 takes roughly nine months but the actual time that elapses in following through the procedure is frequently much longer because of some of the more cumbersome cases and because of the requirement that the Grants and Budget Unit (GBU) consult with the other offices at the Corporation headquarters before making its determinations.

The proposed Part 1630 is intended to streamline the procedure with regard to questioned costs and to set forth the criteria the Corporation will use in determining whether or not costs are ineligible. The process set forth in the regulation is designed to take a maximum of 210 days or about 7 months. The core of Part 1630 is § 1630.2, the definition section, which includes a definition of an "ineligible cost." The rest of the proposed regulation set forth the four stages at which the Corporation would take action on costs: (1) Determining whether a cost should be questioned (§ 1630.3); (2) determining whether a cost should be disallowed (§ 1630.4); (3) determining how to resolve the disallowed cost (§ 1630.5); and (4) deciding appeals of the resolution of the cost (§ 1630.6). After each but the fourth stage, a recipient would have 30 days to appeal the Corporation's decision. The Corporation would in turn have 45 days to respond to the recipient's appeal. The President would decide an appeal at the fourth stage within 30 days (§ 1630.6).

Currently the staff of the Corporation is working to refine the language in the proposed regulations, and drafts of the proposal will be considered at the September 6, 1985 and October 3, 1985 meetings of the Committee on Operations and Regulations.

DATE: Comments must be received on or before September 30, 1985.

ADDRESS: Comments may be submitted to Office of General Counsel, Legal Services Corporation, 733 Fifteenth Street NW., Room 601, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Richard N. Bagenstos, Acting General Counsel, (202) 272–4010.

SUPPLEMENTARY INFORMATION: On August 1, 1985 the Operations and Regulations Committee of the Board of Directors of the Legal Services Corporation began considering a proposed new rule setting forth revised procedures for resolving questioned costs. At the conclusion of the meeting the Committee voted that the proposed regulation be published for comment in the Federal Register with certain changes that had been dictated into the record during the Committee's discussion.

Resolving questioned costs incurred by recipients falls squarely within the mandate given the Legal Services Corporation to provide economical and effective legal assistance to eligible clients, and to insure compliance with the Legal Services Corporation Act, and the regulations, rules and guidelines promulgated by the Corporation.

The resolution of questioned costs is currently governed by LSC Instruction 83–8, which became effective on November 23, 1983. At present monitoring offices submit recommendations on questioned costs to the Grants and Budget Unit (GBU) of the Office of Field Services (OFS). The manager of GBU then makes a determination on whether or not to disallow the cost. If GBU disallows a cost, the monitoring office must then submit to GBU a recommendation on whether to recover funds from the recipient. GBU makes a decision on this recommendation after consultation with the Director of OFS, with the Audit Division, with the Office of the Comptroller, and with the Office of the General Counsel. The procedure set forth in Instruction 83–8 takes roughly nine months but the actual elapsed time is frequently much longer because of some of the more cumbersome cases and because of the requirement that GBU consult with the other offices at the Corporation headquarters before making its determinations.

The proposed Part 1630 is intended to streamline the procedure with regard to questioned costs and to set forth the criteria the Corporation will use in determining whether or not costs are ineligible. the process set out in the regulation is designed to take a maximum of 210 days or about 7 months. The core of Part 1630 is § 1630.2, the definition section, which includes a definition of an "ineligible cost." The rest of the proposed regulation sets forth the four stages at which the Corporation would take action on costs: (1) Determining whether a cost should be questioned (§ 1630.3); (2) determining whether a cost should be disallowed (§ 1630.4); (3) determining how to resolve the disallowed cost (§ 1630.5); and (4) deciding appeals of the resolution of the cost (§ 1630.6). After each but the fourth stage, a recipient would have 30 days to appeal the Corporation's decision. The Corporation would in turn have 45 days to respond to the recipient's appeal. The President would decided an appeal at the fourth stage within 30 days (§ 1630.6).

Section 1630.1 states that the purpose of the regulation is to provide a full, fair, impartial, timely and flexible process for reviewing questioned costs. It also distinguishes recovery of questioned costs by the Corporation from termination of financial assistance.

Section 1630.2, the definition section, is the substantive provision of the regulation. It defines four kinds of costs: "questioned costs" (§ 1630.2(a)); "ineligible costs" (§ 1630.2(b)); "allowed costs" (§ 1630.2(c)); and "disallowed costs" (§ 1630.2(d)). "Ineligible costs" are essentially charges to a recipient's funds that the recipient should not have incurred. When the Corporation has reason to believe that a charge may be ineligible, it can be declared a "questioned cost". In resolving questioned costs, the Corporation either allows or disallows the charges to the recipients funds. The operative provision of §1630.2 is the definition of ineligible costs in paragraph (b). Ineligible costs include charges to recipient's funds that violate the LSC Act or other provision of the law, LSC rules, regulations, or guidelines, or the terms of a recipient's grant or contract agreement; charges that are not adequately supported by documentation or other satisfactory evidence; charges that are unnecessary or unreasonable; consultant contracts in excess of certain amounts; certain large expenditures incurred without the prior written approval of the Corporation; and costs incurred pursuant to subgrants that have not been approved by the Corporation.

Section 1630.3 sets forth the procedure for notifying a recipient that a cost is questioned. The Corporation must notify the recipient in writing stating the dollar amount of the cost and the reasons for

questioning it, the recipient must respond, if it desires to do so, within 30 days and the response must be in writing. Should it fail to respond, the cost will be automatically disallowed. Section 1630.3 also provides that, to obtain relevant information while investigating a questioned cost, the Corporation may contact any party it deems necessary.

Section 1630.4 provides that the Corporation in turn has 45 days to respond after it receives a written response to its notice of questioned costs. It may either allow or disallow the cost or it may inform the recipient that additional time is needed before a decision can be made.

Section 1630.5 sets out the options available to the Corporation once it has disallowed a cost. The usual remedy is for the Corporation to recover the funds in the form either of a cash reimbursement or a reduction in future grant checks. Recovery of funds in these ways may not always be appropriate, however. Therefore the regulation gives a recipient thirty days from the time the Corporation sends it a notice that a cost has been disallowed to respond and show why the Corporation should not use the normal methods of recovering disallowed costs. If the recipient can make the necessary showing, two other options are available: The Corporation may recover less than the total amount of the disallowed cost or it may accept the recipient's demonstration that it has reimbursed its LSC fund from a funding source from which the original expenditure could have been made without violation of section 1010(c) of the Act. The Corporation has 45 days from the time of the recipient's response to determine how to resolve a disallowed cost under this section. Paragraph (c) provides that whenever the Corporation disallows a cost it shall also take steps to prevent the recurrence of such costs. As provided in paragraph (d), recipients will be held responsible for the actions of subrecipients when a disallowed cost arises from expenditures incurred under a subgrant of LSC funds.

Section 1630.6 sets out the process for appealing the resolution of a disallowed cost. Again the recipient has 30 days from the time it receives notice of the Corporation's decision in which to appeal. The President of the Corporation, in turn, has 30 days to issue a decision adopting, modifying or reversing the resolution of the disallowed questioned cost.

Section 1630.7 provides that, if warranted, the Corporation may extend any period of time provided in the regulation.

Section 1630.8 establishes that notice to a recipient means notice to the chairperson of its governing body and to its director.

Currently the staff of the Corporation is working to refine the language in the proposed regulation, and drafts of the proposal will be considered at the September 6, 1985, and October 3, 1985, meetings of the Committee on Operations and Regulations. The Committee has already directed that the staff consider making certain changes. Section 1630.2(b)(5)(i) of the proposal, for instance, requires written approval from the Corporation before a recipient may purchase equipment or non-expendable personal property having a single-item or combined purchase price in excess of $5,000. At the August 1, 1985 meeting of the Committee, it was suggested that $5,000 is too low of a ceiling and that staff should determine whether the bulk of the costs that Regional Offices are now questioning fall in the low dollar range, for example between $5,000 and $10,000. Should that prove to be the case, the Committee plans to raise the ceiling in order to avoid having a large number of reasonable investments questioned. It was also suggested that staff should delineate the criteria to be used under § 1630.5 in determining how to resolve disallowed costs.

List of Subjects in 45 CFR Part 1630

Legal services, Questioned costs.

For the reasons stated in the preamble, notice is given of consideration by the Committee on Operations and Regulations to propose to add 45 CFR Part 1630 as follows:

PART 1630—PROCEDURES FOR RESOLVING QUESTIONED COSTS

Sec.

Authority: Secs. 1006(b) (1), (2), (3), and (5), 1007(a)(1), 1007(a)(3), 1007(a)(9), 1007(d), 1008(e), 1010(c), 1011 Legal Services Corporation Act of 1974, as amended (42 U.S.C. 2996e(b) (1), (2), (3), and (5), 2996f(a) (1), (3), and (9), 996f(d), 2996g(e), 2996i(c), 2996j).

§ 1630.1 Purpose.

This part is intended to provide a full, fair, impartial, timely and flexibile process for the review of questioned costs incurred by recipients of Legal Services Corporation (LSC) grant or contract funds and to delineate options for the resolution of any costs that may be disallowed as a result of the review. Recovery of questioned costs under this section is not to be construed as a termination of financial assistance under Part 1606 of these regulations or a denial of refunding under Part 1625 of these regulations.

§ 1630.2 Definitions.

(a) A "questioned cost" is a charge to a recipient's funds which has been identified by the Corporation as requiring further inspection and, which after an investigation, could be determined to be ineligible.

(b) An "ineligible cost" is any of the following:

(1) A cost specifically prohibited by the Act or other provision of law, by LSC rules, regulations, or guidelines, or by the terms of a recipient's grant or contract agreement;

(2) A cost which is not adequately supported by vendor's invoices, payroll records, or other documents and for the propriety of which the Corporation finds no other satisfactory evidence;

(3) A cost that is unnecessary for the effective operation of a recipient's program or that is unreasonable in that it does not reflect the actions of a prudent person after considering the circumstances at the time the cost was incurred.

(4) A consultant contract in excess of $2,500.00 or consultant fee in excess of $261.00 per eight-hour day or $35.00 per hour.

(5) The following costs if incurred without the prior written approval of the Corporation:

(i) A purchase of equipment or non-expendable personal property having a single-item or combined purchase price in excess of $5,000.00 "Combined purchase price" means the total cost of all the components of a system, such as a computer or telephone system, in which each component is an integral part;

(ii) A purchase of real property;

(iii) A lease of equipment or non-expendable personal property in cases where the single-item or combined purchase price would exceed $5,000.00;

(6) Costs charged to funds covered by provisions of the LSC Act or other acts of Congress and incurred pursuant to a subgrant that has not been approved by the Corporation in accordance with Part 1627 of these regulations.

(c) An "allowed cost" is a questioned cost that, after investigation, the Corporation has determined to be an eligible charge to a recipient's funds.

(d) A "disallowed cost" is a questioned cost that the Corporation has determined to be ineligible.

§ 1630.3 Investigation of questioned costs.

(a) When it questions a cost incurred by a recipient, the Corporation shall notify the recipient in writing stating the dollar amount of the cost and the reasons for questioning it.

(b) Within thirty days (30) after a recipient has received notice from the Corporation that a cost has been questioned, it may respond in writing to show why the cost should be allowed. If the recipient fails to respond within the time prescribed by this section, the cost shall be disallowed.

(c) To obtain relevant information while investigating a questioned cost, the Corproation may contact any party it deems necessary.

§ 1630.4 Decision process.

Within forty five (45) days of receiving the recipient's written response to the notice of questioned costs, the Corporation shall issue a determination that the cost has been allowed or disallowed or inform the recipient that additional time is needed before a decision can be made.

§ 1630.5 Resolution of disallowed questioned costs.

(a) Within thirty (30) days after receipt of notice from the Corporation that a questioned cost has been disallowed, the recipient may respond in writing to show why the Corporation should not recover, in the form of either a cash reimbursement to the Corporation or a reduction in future grant checks, the amount of the disallowed cost, including additional income derived from activities supported or assets purchased by means of the disallowed cost such as interest income, attorneys fees, and proceeds from the sale of property. If the recipient fails to respond within the time prescribed by this section, the Corporation shall recover an amount not to exceed the total disallowed cost and any additional income in one of the forms described above.

(b) In the event that the recipient has demonstrated pursuant to paragraph (a) of this section that resolution in the form of cash reimbursement or reduction in future grant checks is inappropriate, the Corporation, within forty five (45) days after it receives the recipient's written response, may resolve the disallowed cost by—

(1) Recovering less than the total amount of the disallowed cost through cash reiburement or reduction of the amount of monthly grant checks; or

(2) Accepting the recipient's demonstration that it has reimbursed its LSC fund from a funding source from which the original expenditure could have been made without a violation of sec. 1010(c) of the Act (42 U.S.C. 2996i(c)).

(c) In all cases in which a cost has been disallowed by the Corporation, the Corporation shall require that the recipient take the action needed to prevent the recurrence of ineligible costs including, if necessary, the implementation of organizational or personnel changes or the development and implementation of a plan, approved by the recipient's governing body, to prevent a recurrence of the activity that gave rise to such disallowed costs. In cases of serious financial mismanagement, fraud, or defalcation of funds, the Corporation shall take action to terminate financial assistance under Part 1606 of these regulations or to deny refunding under Part 1625 of these regulations.

(d) When a disallowed cost arises from expenditures incurred under a subgrant of LSC funds, the recipient will be held responsible for the actions of the subrecipient and be subject to all remedies available under this Part.

§ 1630.6 Appeal process.

(a) Within thirty (30) days after it receives notice that the Corporation has determined to resolve the disallowed cost as described under § 1630.5, a recipient may file a written notice of appeal with the President of the Corporation stating in detail the reasons for which it requests review.

(b) Within thirty (30) after receipt of the written notice of appeal, the President shall either adopt, modify, or reverse the resolution of the disallowed questioned cost.

(c) The decision of the President with respect to the disallowed questioned cost shall become final upon receipt by the recipient of written notice of the decision.

§ 1630.7 Time extension.

Any period of time provided in this Part may be extented by the Corporation if warranted.

§ 1630.8 Notice.

A notice required to be sent to a recipient under this Part shall be sent to the chairperson of its governing body and to its director.

Dated: August 26, 1985.

Richard N. Bagenstos,

Acting General Counsel.

[FR Doc. 85-20709 Filed 8-28-85; 8:45 am]

BILLING CODE 6820-35-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

[Ex Parte No. 274 (Sub-15)]

Revision of Abandonment Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Under 49 U.S.C. 10904(c)(3), an initial decision in an investigated railroad abandonment proceeding becomes the final decision of the Commission 30 days after it is issued unless, during the interim, the Commission decides to hear appeals. Under current regulations, any appeal from an initial decision in an investigated proceeding must be filed no later than 20 days after the date the initial decision is served. This gives the Commission at least 10 days to decide whether to exercise its discretion and hear the appeal.

On its own motion, the Commission proposes to amend its rules to require that parties exhaust their administrative remedies in investigated abandonment proceedings by filing appeals to initial decisions within the specified time before taking the decision to court. This requirement would allow the agency to correct any errors prior to the initial decision becoming final by operation of law.

DATES: Comments are due by September 30, 1985.

FOR FURTHER INFORMATION CONTACT:

Wayne A. Michel, 202-275-7657;

or

Louis E. Gitomer, 202-275-7245.

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10904(c)(3), an initial decision in an investigated abandonment proceeding becomes the final decision of the Commission 30 days after it is issued unless, during the interim, the Commission decides to hear appeals. Under the Commission's regulations at 49 CFR. 1152.25(e)(3)(i), any appeal from an initial decision in an investigated proceeding must be filed no later than 20 days after the date the initial decision is served. This gives the Commission at least 10 days to decide whether to exercise its discretion and hear the appeal. *See* 49 CFR 1152.25(e)(3)(ii).

We propose to amend our rules to require that parties exhaust their administrative remedies in investigated abandonment proceedings by filing appeals to initial decisions within the specified time before taking the decision to court. This requirement satisfies one of the fundamental reasons for the exhaustion doctrine—to allow the agency to correct its own mistakes. A similar requirement already applies in non-abandonment cases. 49 CFR 1115.6. The Commission's discretion whether to hear an appeal remains; the proposed rule merely allows the Commission an opportunity to correct any errors prior to the initial decision becoming final by operation of law.

We invite public comment on our proposed revision to the abandonment regulations. After considering all the comments, we shall issue a final decision.

List of Subjects in 49 CFR Part 1152

Administrative Practice and Procedure, Railroads.

Decided: By the Commission, chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Chairman Taylor was absent and did not participate in the disposition of this proceeding.

James H. Baine,

Secretary.

Appendix

We propose to amend Title 49 of the Code of Federal Regulations as follows:

PART 1152—[AMENDED]

1. The individual authority citations following §§ 1152.1, .2, .10, .12, .13, .20, .21, .22, .23, .24, .25, .26, .27, .28, .30, .32, .33, .34, .35, .36, and .50 and following the Appendix to Part 1152 are removed and the authority for Part 1152 is revised to read as follows:

Authority: 5 U.S.C. 553, 559, and 704; 31 U.S.C. 9701; 45 U.S.C. 904 and 915; and 49 U.S.C. 10321, 10362, 10505, and 10903 *et seq.*

2. Section 1152.25 would be amended by adding a new paragraph (e)(3)(iii) to read as follows:

§ 1152.25 [Amended]

* * * * *

(e) * * *

(iii) In order to exhaust its administrative remedies, a party must file an appeal under paragraph (e)(3)(i) of this section before going to court.

* * * * *

[FR Doc. 85-20704 Filed 8-28-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Ch. VI

Fishery Management Plan For The Striped Bass Fishery; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Mid-Atlantic, New England, and South Atlantic Fishery Management Councils will hold public hearings to allow for input on the Fishery Management Plan for the Striped Bass Fishery (FMP).

DATES: See **"SUPPLEMENTARY INFORMATION"** for dates and locations of the hearings. All hearings will begin at 7:00 p.m. local time and will be taped recorded with the tapes filed as the official transcript of the hearing. Written comments will be accepted until October 4, 1985.

ADDRESS: Send comments to John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901. See **"SUPPLEMENTARY INFORMATION"** for location of the hearings.

FOR FURTHER INFORMATION CONTACT: John C. Bryson (Executive Director), 302-674-2331.

SUPPLEMENTARY INFORMATION: The management unit of this FMP is coastal migratory Atlantic striped bass throughout their range on the Atlantic coast from Maine through North Carolina, including the fishery conservation zone (FCZ), territorial sea, and internal waters.

The objectives of the FMP are: (1) Assure that the FCZ fishery, at a minimum, is consistent with the complements the Atlantic States Marine Fisheries Commission (ASMFC) plan for striped bass; (2) insure that the FCZ fishery contributes proportionately to: (a) Achieving and maintaining a spawning stock sufficient to prevent the possibility of recruitment failure, and (b) reducing variation in annual abundance available for harvest; and (3) induce the affected ASMFC member states to implement the ASMFC Striped Bass Plan to the fullest extent possible.

The recommended management measures are:

1. A minimum size limit of either 26" total length (TL) (24" fork length (FL)), or 24" TL (22" FL) for striped bass which may be changed by the Regional Director to conform with such minimum size limit as may be adopted by the ASMFC as an amendment to the ASMFC Striped Bass Management Plan and implemented by a majority of the states in the management unit of this FMP. The reason for the two minimum size alternatives is to allow the FMP to proceed through hearings while the ASMFC has an opportunity to consider the question of total length versus fork length measurements. The ASMFC plan currently contains a 24" TL minimum size limit recomendation. Some of the states have 24" TL minimum size limits and others have 24" FL minimum size limits.

2. A maximum size limit of 40" TL (38" FL), with an exception of one fish per person per day. This measure will expire when the Maryland striped bass young of the year index reaches a three-year moving average of 8.0 unless a majority of the states have adopted the measure prior to that time.

3. A prohibition of taking (catching and retaining) striped bass in the FCZ between October 1 and May 31. This measure will expire when the Maryland striped bass young of the year index reaches a three-year moving average of 8.0 unless a majority of the states have adopted the measure prior to that time.

4. The Regional Director, in consultation with the Councils, may cooperate in Federal and State striped bass research by waiving the seasonal closure and size limit provisions of the FMP as appropriate.

5. No foreign fishing vessel will conduct a fishery for or retain any striped bass.

The dates and locations of the public hearings are scheduled as follows:

September 9, 1985—
- North Carolina Marine Resources Center, P.O. Box 699, Manteo, NC
- Holiday Inn, Exit 72, LI Expressway and Rt. 25, Riverhead, NY

September 10, 1985—
- Quality Inn Lake Wright, 6280 Northampton Blvd., Norford, VA
- Holiday Inn, 173 Sunrise Hwy., Rockville Center, NY

September 11, 1985—
- Sheraton Salisbury Inn, 300 S. Salisbury Blvd., Salisbury, MD

September 23, 1985—
- Dutch Inn, Great Island Rd., Galilee, RI
- Cape May County Extension Office, Dennisville Rd., Cape May Court House, NJ

September 24, 1985—
- Town Hall, 28 Federal St., Burnswick, ME
- Holiday Inn, Rt. 36, West Long Branch, NJ

September 25, 1985—
The Other Side Restaurant, 421 Bridge Rd., Salisbury, MA
September 26, 1985—
Sheraton Regal, Rt. 132 and Bearse's Way, Hyannis, MA
September 27, 1985—
Howard Johnson's Motor Lodge Exit 90 off I-95, Mystic, CT

Dated: August 23, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-20717 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 50, No. 168
Thursday, August 29, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of International Cooperation and Development; Meeting

Notice is hereby given that the USDA Agribusiness Promotion Council, advisory committee to the Secretary of Agriculture on matters pertaining to the Caribbean Basin, will meet September 16, 1985 from 2:00 p.m. to 5:00 p.m. in the Board Room of the Executive Offices of the International Trade Mart, Suite 2900, 2 Canal Street, New Orleans, Louisiana. The agenda will consist of background briefings, exchange of ideas and planning committee activities. The meeting will be open to the public. From 8:45 to 10:00 p.m. The Promotion Council will attend a dinner with the Secretary. Written statements may be submitted to Joan S. Wallace, Administrator, USDA/OICD, Room 3047–South Building, Washington, D.C. 20250–4300 until September 12, 1985.

Joan S. Wallace,
Administrator.

[FR Doc. 85–20700 Filed 8–28–85; 8:45 am]
BILLING CODE 3410–DP–M

Food and Nutrition Service

National Advisory Council on Maternal, Infant and Fetal Nutrition; Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Council meeting:

Name: National Advisory Council on Maternal, Infant and Fetal Nutrition.

Date, time and place:

Orientation for New Members: September 24, 1985; 1:00 p.m., Food and Nutrition Service, 3101 Park Center Drive, 4th Floor, Alexandria, Virginia 22302

Council Meeting: September 25–27, 1985; 9:00 a.m., Ramada Inn-Seminary Road, 4641 Kenmore Avenue, Alexandria, Virginia 22304

Purpose of Meeting: The Council will continue its study of the Special Supplemental Food Program for Women, Infants and Children (WIC) and the Commodity Supplemental Food Program (CSFP).

Agenda: The orientation for new members (and other Council members wishing to attend) on September 24, 1985 will consist of briefings on the operation of WIC and CSFP. No recommendations or Council business will be conducted at this session. At the Council meeting on September 25–27, 1985 the members will discuss a wide range of matters concerning these two programs.

The orientation for new members and the meeting of the Council are open to the public. Members of the public may participate, as time permits.

Persons wishing additional information about this meeting should contact Lynn Jordan, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302. Telephone: (703) 756–3730.

Dated: August 15, 1985.

Robert E. Leard,
Administrator, Food and Nutrition Service.

[FR Doc. 85–20694 Filed 8–28–85; 8:45 am]
BILLING CODE 3410–30–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–791–005]

Deformed Steel Bars for Concrete Reinforcement From South Africa; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order.

SUMMARY: On July 3, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on deformed steel bars for concrete reinforcement from South Africa and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment. We received no comments. We therefore determine that domestic interested parties are no longer interested in continuation of the order, and we are revoking the order. In accordance with the Department's notification, the revocation will apply to all rebars entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Barbara Williams or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 27476) the preliminary results of its changed circumstances administrative review of the countervailing duty order on deformed steel bars for concrete reinforcement ("rebars") from South Africa (47 FR 47900, October 28, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of South African rebars. Such merchandise is currently classifiable under items 606.7900 and 606.8100 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Final Results of the Review and Revocation

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received no comments.

As a result of our review, we determine that the domestic interested parties are not longer interested in continuation of the countervailing duty order on rebars from South Africa and that the order should be revoked on this basis.

Therefore, we are revoking the order on rebars from South Africa effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn

from warehouse, for consumption on or after October 1, 1984 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries.

This notice does not cover unliquidated entries of rebars from South Africa which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption before October 1, 1984 in a separate review, if one is requested.

This administrative review, revocation, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 23, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-20624 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-DS-M

Technical Regulations Subcommittee of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Technical Regulations Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held September 25, 1985, at 9:30 a.m., the Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, D.C. The Technical Regulations Subcommittee was formed to recommend proposed changes in the level of export controls for various commodities and technologies in the computer peripheral area.

This will be the first meeting of the CPTAC since the enactment of the Export Administration Amendments Act of 1985. The Act provides for annual review of the list and prompt revisions as may be necessary after each review. Before beginning each annual review, notice shall be made in the **Federal Register**, with opportunity during the review for comment and the submission of data by interested parties. This data is to include the availability from sources outside the United States of goods and technology comparable to those subject to export controls. This meeting will receive such comments, especially with a view to developing an annual plan by October, 1985. The controls affected will be for multilateral, unilateral, and for special (bulk) licensing.

General Session

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Additional proposals for decontrol from the public.
4. Discussion of January 1985 computer peripheral control limits.
5. Discussion of Committee recommendations for both East/West (Part 399.1) multilateral controls and West/West (Part 373) unilateral controls.
6. DOC guidance on desired role of PTAC in software issues.
7. ECCN 1565 advisory notes.
8. Action items underway.
9. Action items due at next meeting.

Executive Session

10. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10 (d) of the Federal Advisory Committee Act, as amended by section 5 (c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department to Commerce, Telephone: 202-377-4217. For further information or copies of the minutes call (202) 377-2583.

Dated: August 26, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85-20703 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-DT-M

[C-580-504]

Extension of the Deadline for Final Countervailing Duty Determination; Offshore Platform Jackets and Piles From Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, the Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Ironship Builders, Blacksmiths, Forgers and Helpers, the Department of Commerce is extending the deadline for its final determination in the countervailing duty investigation of offshore platform jackets and piles from Korea to correspond to the date of the final determinations in the antidumping investigations of the same product from Korea and Japan, pursuant to section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984 (Pub. L. 98-573). In keeping with Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (the Subsidies Code), the Department will terminate the suspension of liquidation in the countervailing duty investigation 120 days after the date of publication of the preliminary determination in this case.

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Marty Martin or Rick Herring, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230; telephone (202) 377-3464 or 377-0187.

SUPPLEMENTARY INFORMATION:

Case Histories

On April 19, 1985, we received antidumping and countervailing duty petitions filed by the Kaiser Steel Corporation and the International Brotherhood of Boilermakers, Ironship Builders, Blacksmiths, Forgers and Helpers against offshore platform jackets and piles from Korea. We also

received an antidumping petition against the same product from Japan.

In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the antidumping petitions alleged that imports of offshore platform jackets and piles from Korea and Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure or threaten material injury to a U.S. industry.

In compliance with the filing requirements of section 355.26 of our regulations (19 CFR 355.26), the countervailing duty petition alleged that manufacturers, producers, or exporters in Korea of offshore platform jackets and piles directly or indirectly receive benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure or threaten material injury to a U.S. industry.

We found that the petitons contained sufficient grounds on which to initiate antidumping investigations, and on May 9, 1985, we initiated such and countervailing duty investigations (50 FR 20254, 50 FR 20252, and 50 FR 20253). On July 15, 1985, we issued an affirmative preliminary determination in the countervailing duty investigation (50 FR 29461). Preliminary determinations in the antidumping investigations will be made on or before September 26, 1985.

On July 25, 1985, the petitioners filed a request for an extension of the deadline date for the final determination in the countervailing duty investigation of offshore platform jackets and piles from Korea to correspond with the date of the final determination in the antidumping investigations of the same products.

Section 705(a)(1) of the Tariff Act of 1930, as amended by section 606 of the Trade and Tariff Act of 1984, provides that when a countervailing duty investigation is "initiated simultaneously with an [antidumping] investigation . . . which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination [in the countervailing duty investigation] to the date of the final determination" in the antidumping investigation (19 U.S.C. 1671(a)(1)). Pursuant to this provision, the Department is granting an extension of the deadline for the final determination in the countervailing duty investigation of offshore platform jackets and piles from Korea to December 10, 1985, the current deadline for the final determinations in the antidumping investigations. To comply with the requirements of Article 5, paragraph 3 of the Subsidies Code, the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty investigation on November 16, 1985, which is 120 days from the date of publication of the preliminary determination in this case. No cash deposits or bonds for potential countervailing duties will be required for merchandise which enters after November 16, 1985. The suspension of liquidation will not be resumed unless and until a final affirmative ITC determination is published in this case. We will also direct the U.S. Customs Service to hold any entries suspended prior to November 16, 1985, until the conclusion of this investigation.

The public hearing in the countervailing duty investigation, which we announced would be held on September 4, 1985, is postponed and will now be held at 10:00 a.m. on November 6, 1985, at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, NW., Washington D.C. 20230.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 22, 1985.

[FR Doc. 85-20625 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-DS-M

Foreign Availability Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Foreign Availability Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held September 25, 1985, 1:00 p.m., the Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, D.C. The Foreign Availability Subcommittee was formed to ascertain if certain kinds of equipment are available in non-COCOM and Communist countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

Agenda

1. Opening remarks by the sub-committee chairman.

2. Presentation of papers or comments by the public.

3. OEA review of progress on our proposal for decontrol of floppy disk media.

4. OEA summary of all items proposed for decontrol.

5. Discussion on additional items for decontrol by all members.

6. Report on claims of Winchester disks.

7. Action items underway.

8. Action items due at next meeting.

Executive Session

9. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for pubic inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202-377-4217. For further information or copies of the minutes contact Margaret A. Cornejo 202-377-2583.

Dated: August 26, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 20702 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-DT-M

[A-351-409 and A-351-410]

Hydrogenated Castor Oil and 12-Hydroxystearic Acid From Brazil; Postponement of Final Antidumping Determinations

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The final antidumping determinations involving hydrogenated castor oil and 12-hydroxystearic acid from Brazil are being postponed until not later than December 14, 1985.

EFFECTIVE DATE: August 29, 1985.

FOR FURTHER INFORMATION CONTACT: William Kane, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230: telephone (202) 377-1766.

SUPPLEMENTARY INFORMATION: On January 17, 1985, we announced the initiation of antidumping investigations to determine whether hydrogenated castor oil and 12-hydroxystearic acid from Brazil were being, or were likely to be, sold in the United States at less than fair value.

At the request of the petitioner our preliminary determinations in those cases were postponed from June 5, 1985, until July 25, 1985. On August 1, 1985, we published affirmative preliminary determinations in those cases.

Both respondents in these investigations, Sanbra S.A. and Braswey S.A., who account for a significant volume of the exports of the products to the United States, have requested that final determinations be postponed until 135 days after the preliminary determinations in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act). Pursuant to section 735(a)(2)(A) of the Tariff Act of 1930, as amended, if exporters who account for a significant portion of the merchandise which is the subject of the investigation properly request an extension of the final determination following a preliminary affirmative determination, we are required, absent compelling reasons to the contrary, to grant the request.

Accordingly, the Department will issue final determinations in these cases not later than December 14, 1985. The date of the public hearing has also been changed to October 25, 1985, at 10:00 a.m. in room 3708 of the Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230. Pre-hearing briefs must be received by October 18, 1985.

This notice is published pursuant to section 735(d) of the Act.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

August 23, 1985.

[FR Doc. 85-20710 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-791-009]

Steel Pipes and Tubes From South Africa; Intention To Review and Preliminary Results of Changed Circumstances Administrative Review and Tentative Determination To Terminate Suspended Countervailing Duty Investigation

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of intention to review and preliminary results of changed circumstances administrative review and tentative determination to terminate suspended countervailing duty investigation.

SUMMARY: The Department of Commerce has received information which shows changed circumstances sufficient to warrant an administrative review, under section 751(b)(1) of the Tariff Act, of the countervailing duty case on steel pipes and tubes from South Africa. The review covers the period from October 1, 1983.

The petitioner in this proceeding has notified the Department that it is no longer interested in the countervailing duty case. This affirmative statement of no interest provides a reasonable basis for the Department to terminate the suspended investigation. Therefore, we intend to terminate the suspended investigation. The termination will apply to all steel pipes and tubes entered, or withdrawn from warehouse, for consumption on or after October 1, 1983. Interested parties are invited to comment on these preliminary results and tentative determination to terminate.

EFFECTIVE DATE: October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Philip Otterness, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1983, the Department of Commerce, ("the Department") published in the **Federal Register** (48 FR 24407) a notice of suspension of countervailing duty investigation on steel pipes and tubes from South Africa.

In a letter dated July 19, 1985, the Committee on Pipe and Tube Imports, the petitioner in this proceeding, informed the Department that it was no longer interested in the case and stated its support of termination of the suspended investigation. Under section 751 of the Tariff Act of 1930 ("the Tariff Act"), the Department may terminate a suspended countervailing duty investigation that is no longer of interest to domestic interested parties.

Scope of Review

Imports covered by the review are shipments of South African steel pipes and tubes. Such merchandise is currently classificable under items 610.3000, 610.3100, 610.3205, 610.3208, 610.3209, 610.3212, 610.3213, 610.3216, 610.3219, 610.3221, 610.3227, 610.3231, 610.3233, 610.3234, 610.3241, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3500, 610.3600, 610.3925, 610.3935, 610.3945, 610.3955, 610.4025, 610.4035, 610.4045, 610.4055, 610.4225, 610.4235, 610.4245, 610.4255, 610.4325, 610.4335, 610.4345, 610.4355, 610.4500, 610.4600, 610.4800, 610.4920, 610.4925, 610.4928, 610.4931, 610.4933, 610.4936, 610.4942, 610.4944, 610.4946, 610.4948, 610.4951, 610.4953, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.4976, 610.5130, 610.5160, 610.5202, 610.5204, 610.5206, 610.5209, 610.5211, 610.5214, 610.5216, 610.5221, 610.5222, 610.5226, 610.5229, 610.5230, 610.5231, 610.5234, 610.5236, 610.5240, 610.5242, 610.5243, and 610.5244 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1983.

Preliminary Results of the Review and Tentative Determation

As a result of our review, we preliminarily determine that the domestic interested party's affirmative statement of no interest in continuation of the countervailing duty case on steel pipes and tubes from South Africa provides a reasonable basis for termination of the suspended investigation.

Therefore, we tentatively determine to terminate the suspended investigation on this product effective October 1, 1983. The current requirements of the agreement suspending the investigation will continue until publication of the final results of this review.

Interested parties may submit written comments on these preliminary results and tentative determination to terminate within 30 days of publication and may

request disclosure and/or a hearing within five days of the date of publication. Any hearing, if requested, will be held 45 days after the date of publication or the first workday thereafter. The Department will publish the final results of the review and its decision on termination, including its analysis of issues raised in any such written comments or at a hearing.

This intention to review, administrative review, tentative determination to terminate, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 23, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-20716 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Permits; Foreign fishing

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*)

Send comments on applications to: Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 300 South New Street, Dover, DE 19910, 302/674-2331

David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-1366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00818, 809/753-6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, 411 W. Fourth Avenue, Suite 2D, Anchorage, AK 99510, 907/271-4060

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368

For further information contact John D. Kelly (Fees, Permits and Regulations Division, 202-634-7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the **Federal Register**. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1985 have been received between July 17, 1985 and August 21, 1985, from the Government(s), shown below.

Dated: August 23, 1985.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional fishery management councils
ABS	Atlantic Billfishes and Sharks.	New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic Ocean	New England, Mid-Atlantic.
SMT	Seamount Groundfish	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Pacific Groundfish (Washington, Oregon and California).	Pacific.
PBS	Pacific Billfishes and Sharks.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1	Catching, processing and other support.
2	Processing and other support only.
3	Other support only.
4	"Joint venture" in support of U.S. vessels.

Nation, vessel name, and vessel type	Application No.	Fishery	Activity
Government of the People's Republic of China			
Geng Hai, Factory Trawler.	CH-85-0001	GOA	1(4)
Yan Yuan I, Factory Trawler.	CH-85-0002	GOA	1(4)
Kai Chuang, Factory Trawler.	CH-85-0003	GOA	1(4)
The Government of Japan			
Asama Maru, Cargo Transport.	JA-85-0126	BSA, GOA, NWA, SNA	3
East Wind, Cargo Transport.	JA-85-0131	BSA, GOA, NWA, SNA	3
Hamanasu, Cargo Transport.	JA-85-0133	BSA, GOA, NWA, SNA	3
Ikoma Maru, Cargo Transport.	JA-85-0127	BSA, GOA, NWA, SNA	3
North Wind, Cargo Transport.	JA-85-0125	BSA, GOA, NWA, SNA	3
Punente, Cargo Transport.	JA-85-0132	BSA, GOA, NWA, SNA	3
Sun Beauty, Cargo Transport.	JA-85-0129	BSA, GOA, NWA, SNA	3
Sun Field, Cargo Transport.	JA-85-0130	BSA, GOA, NWA, SNA	3
Suzuran, Cargo Transport.	JA-85-0128	BSA, GOA, NWA, SNA	3

Joint Venture: The People's Republic of China—The Government of the People's Republic China has submitted applications for three (3) vessels to engage in joint venture activities in the GOA fisheries. They have requested 8100 mt pollock, 600 mt yellowfin sole, 300 mt Pacific cod. The American partner is Pacific Rim Ventures, Ltd., 717 K Street, Suite 201, Anchorage, Alaska 99501. The operation is proposed to be conducted from October-December 1985.

[FR Doc. 85-20633 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration Peformance Review Boards

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

ACTION: Notice of Membership of NOAA Performance Review Boards.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), NOAA announces the appointment of persons to serve as members of NOAA Performance Review Boards (PRB's). The NOAA PRB's are responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the

appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonsues and amounts, and initial recommendations for potential rank awards. The appointment of these members to the NOAA PRB's will be for periods of 12 months service beginning August 31, 1985.

DATE: The effective date of service of appointees to the NOAA Performance Review Board is August 31, 1985.

FOR FURTHER INFORMATION CONTACT: Susan Johnson, Chief, Personnel Division, National Capital Administrative Support Center, NOAA, 11400 Rockville Pike, Rockville, Maryland 20852, (301) 443–6667.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the NOAA PRB's (NOAA officials unless otherwise identified) are set forth below:

Richard M. Hadsell, Director, Regional Administrative Support Center Operations Office
Curtis T. Hill, Director, Mountain Administrative Support Center
Leo E. Palensky, Director, National Capital Administrative Support Center
Kelly C. Sandy, Director, Western Administrative Support Center
Robert S. Smith, Director, Eastern Administrative Support Center
Byron K. Burton, Director, Office of Congressional Affairs
John J. Carey, Director, Office of Budget and Finance
Kathleen J. Charles, Deputy Director, Office of Budget and Finance
Timothy R. Keeney, Deputy General Counsel for Policy, Research, Services and Coastal Zone
Augustine J. LaCovey, Director, Office of Public Affairs
Robert J. McManus, General Counsel
Izadore Barrett, Director, Southwest Fisheries Center, National Marine Fisheries Service
Carmen J. Blondin, Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service
Samuel McKeen, Chief, Management and Budget Staff, National Marine Fisheries Service
Richard B. Roe, Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service
Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service
Bernard H. Chovitz, Chief Geodesist, Office of Charting and Geodetic Services, National Ocean Service
Bruce C. Douglas, Chief, Geodetic Research and Development Laboratory, Office of Charting and Geodetic Services, National Ocean Service
Charles N. Ehler, Chief, Ocean Resources Assessment Division, National Ocean Service
Andrew Robertson, Director, National Marine Pollutions Program Office, National Ocean Service
Peter L. Tweedt, Director, Ocean and Coastal Resource Management Office, Natonal Ocean Service
Paul M. Wolff, Assistant Administrator for Ocean Services and Coastal Zone Management
William P. Bishop, Deputy Assistant Administrator for Satellites, National Environmental Satellite, Data, and Information Service
Michael A. Chinnery, Director, National Geophysical Data Center, National Environmental Satellite, Data, and Information Service
Kenneth D. Hadeen Director, National Climatic Data Center, National Environmental Satellite, Data, and Information Service
Russell Koffler, Director, Office of Satellite Data Processing and Distribution, National Environmental Satellite, Data, and Information Service
Richard P. Augulis, Director, Eastern Region, National Weather Service
Louis J. Boezi, Chief, Advanced Systems Laboratory, National Weather Service
Robert A. Clark, Director, Office of Hydrology, National Weather Service
Anthony F. Durham, Director, NEXRAD Joint Systems Program, National Weather Service
Neil L. Frank, Director, National Hurricane Center, National Weather Service
Elbert W. Friday, Deputy Director, National Weather Service
Richard E. Hallgren, Assistant Administrator for Weather Services
Ray E. Jensen, Director, Southern Region, National Weather Service
Frederick P. Ostby, Director, National Severe Storms Forecast Center, National Weather Service
Robert B. Wassall, Director, Central Region, National Weather Service
Eugene J. Aubert, Director, Great Lakes Environmental Research Laboratory, Office of Oceanic and Atmospheric Research
Eddie Bernard, Director, Pacific Marine Environmental Laboratory, Office of Oceanic and Atmospheric Research
Hugo F. Bezdek, Director, Atlantic Oceanographic and Meteorological Laboratories, Office of Oceanic and Atmospheric Research
Kirk Bryan, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratory, Office of Oceanic and Atmospheric Research
Eldon E. Ferguson, Director, Aeronomy Laboratory, Office of Oceanic and Atmospheric Research
Alan R. Thomas, Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research
David R. Alexander, Director, SES and Executive Resources, Office of Human Resources Management, Environmental Protection Agency
Peter A. Bracken, Director, Mission Operations and Data Systems, NASA, Goddard Space Flight Center
Claude C. Gravatt, Jr., Deputy Director, Programs, National Measurement Laboratory, National Bureau of Standards
Harriett G. Jenkins, Assistant Administrator for Equal Opportunity Programs, National Aeronautics & Space Administration
Franklin Martin, Director of Space and Earth Sciences Directorate, NASA, Goddard Space Flight Center
Joe Mass, Associate Administrator, Small Business Administration
Joe D. Simmons, Deputy Director, Center for Basic Standards, National Bureau of Standards
Rupert B. Southard, Chief, National Mapping Division, United States Geological Survey

Dated: August 22, 1985.

Anthony J. Calio,

Deputy Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 85–20629 Filed 8–28–85; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishing an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

August 26, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 30, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

In June 17, 1985, a notice was published in the **Federal Register** (50 FR 25114), which established an import restraint limit of 403,109 dozen for man-

made fiber underwear in Category 652, produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on May 30, 1985 and extends through August 27, 1985. The notice also stated that the Government of the People's Republic of China is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, if no mutually satisfactory solution is reached on a level for this category during consultations, to limit its exports during the twelve-month period immediately following the ninety-day consultation period to 1,235,609 dozen.

No solution has been reached in consultations on a mutually satisfactory limit. The United States Government has decided, therefore, to control imports in category 652, exported during the twelve-month period beginning on August 28, 1985 at the level described above. The United States remains committeed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

In the event the limit established for the ninety-day period has been exceeded, such excess amount, if allowed to enter, will be charged to the level established for the designated twelve-month period.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709),as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 16, 1984 (49 FR 28754),November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

August 26, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 30, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 652, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on August 28, 1985 and extending through August 27, 1986, in excess of 1,235,609 dozen.[1]

Textile products in Category 652 which are in excess of the ninety-day limit previously established shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 28622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

In carrying out the above directions, the Commission of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-20701 Filed 8-28-85; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Financial Products Advisory Committee; Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, 10(a) and 41 CFR 101-6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee will conduct a public meeting in the Second Floor Large Meeting Room at the Offices of Goldman, Sachs & Co. located at 85 Broad Street, New York, New York 10004, on Friday, September 20, 1985, beginning at 9:30 a.m. and lasting until 3:30 p.m. The agenda will consist of:

1. Discussions concerning off-exchange trading of derivative financial products, including comments from exchanges and large financial institutions.

2. Discussion concerning the purpose and nature of the Commission's hedging definition and its applicability to financial futures and options, if time permits.

3. Other Committee business:

a. Discussion of agenda items and scheduling for future Committee meetings.

b. Any other business which may properly come before the Committee.

The purpose of this meeting is to solicit the views of the Committee on the above listed agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of receiving advice and recommendations on financial products issues. The purposes and objectives of the Advisory Committee are more fully set forth at 50 FR 21332 (May 23, 1985).

The meeting is open to the public. The Chairman of the Advisory Committee, Commissioner Robert R. Davis, is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: The Commodity Futures Trading Commission Financial Products Advisory Committee c/o Robert T. Bernat or Becky J. Baker, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, to be received prior to the date of the meeting. Members of the public who wish to make oral statements should also inform Mr. Bernat or Ms. Baker in writing at the above address at least three days prior to the meeting. Provision will be made, if time permits, for an oral presentation of reasonable duration.

Issued in Washington, D.C. the 26th day of August, 1985 by the Commission.

Lynn K. Gilbert.

Deputy Secretary of the Commission.

[FR Doc. 85-20676 Filed 8-28-85; 8:45 am]

BILLING CODE 6351-01-M

[1] The restraint limit has not been adjusted to account for any imports exported after May 29, 1985.

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 22, 1985.

The USAF Scientific Advisory Board Ad Hoc Committee on Enhanced Non-Nuclear Munition Storage will meet September 25–26, 1985, from 9:00 a.m. to 5:00 p.m. each day, at The Pentagon, Room 5D982, Washington, DC.

The purpose of this meeting is to review information previously presented to the Committee and to draft a final report.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85–20623 Filed 8–28–85; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent to Prepare a Draft Environmental Impact Statement (DEIS); Construction of a Confined Disposal Facility (CDF) for Dredge Material at Toledo, OH

AGENCY: U.S. Army Engineer District, Buffalo, DOD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

1. *Description of Action.* The proposed action would involve the construction of a Confined Disposal Facility (CDF) about 200 acres in size. The CDF would be constructed by enclosing an area of Maumee Bay with a stone protected dike. The purpose of the action is create additional confined dredged material capacity for polluted sediments which are dredged annually from the Federal Navigation Channel in the Maumee River and Bay at Toledo, OH. It is anticipated that the existing CDF will be filled in 3 to 6 years. The purpose of the Draft Environmental Impact Statement is to address the environmental impacts associated with the construction, siting and operation of the facility.

2. *Alternatives.* A wide range of alternatives will be addressed in the Draft EIS. The alternatives presently being considered include the construction of a facility adjacent to the existing facility, construction of a new facility in various locations within the bay; the construction of a facility which will provide additional benefits such as shore protection; upland disposal; reuse of existing facilities and the "no action" alternative.

3. *Scoping Process.* Considerable agency and public coordination has been performed prior to the preparation of the Draft EIS. Additional coordination will be accomplished during preparation of the Draft and Final EIS. The participation of concerned Federal, State, and local agencies, and other interested private organizations and parties is invited. Significant issues to be analyzed in the Draft EIS include the environmental impacts associated with the siting of a Confined Disposal Facility and the feasibility of reuse of the material.

4. *Scoping Meeting.* No scoping meeting is currently scheduled.

5. *Availability.* The Draft EIS is scheduled to be available for review in December, 1985.

ADDRESS: Questions about the proposed action and Draft EIS can be addressed to the District Commander, Attn: Mr. William F. MacDonald, U.S. Army Engineer District, Buffalo, 1776 Niagara Street, Buffalo, New York 14207, telephone (716) 876–5454, extension 2175, or FTS 473–2175.

Dated: August 21, 1985.

Daniel R. Clark,

Colonel, Corps of Engineers, District Commander.

[FR Doc. 85–20721 Filed 8–28–85; 8:45 am]

BILLING CODE 3710-GP-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Proposed Consent Order With Marathon Petroleum Co.; Correction

AGENCY: Department of Energy.

ACTION: Proposed Consent Order Correction.

SUMMARY: This document corrects an inadvertent omission in the Notice of Proposed Consent Order with Marathon Petroleum Company, which appeared at pages 34901 in the **Federal Register** of Wednesday, August 28, 1985, (50 FR 34901).

FOR FURTHER INFORMATION CONTACT: Meyer Magence, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–4945.

The following correction is made at page 34903, column 3, of the Notice of Proposed Consent Order appearing in the **Federal Register** on August 28, 1985 (50 FR 34901):

Under section IV "Terms and Conditions of the Consent Order," following subparagraph (b), the following subparagraph is added:

(c) the issues or claims pending or arising out of the subject matter now before the courts in *Marathon Oil Company* v. *DOE*, Civil Action No. 81–634 (N.D. Ohio, Western Div.), and in *Texaco* v. *DOE.*, Civil Action No. 84–391 (D. Del.), *American Petrofina* v. *DOE*, Civil Action No. 84–410 (D. Del.) and *Pennszoil* v. *DOE*, Civil Action No. 84–456 (D. Del.);

Issued in Washington, D.C. on August 28, 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 85–20912 Filed 8–28–85; 11:57 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. SA85–41–000]

Mid-America Gas Line Corp.; Petition for Adjustment

August 23, 1985.

Take notice that on June 18, 1985, Mid-America Gas Line Corporation filed a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy Act of 1978, requesting an extension of time within which to make Btu refunds required pursuant to Commission Order Nos. 399, 399-A and 399-B.

Mid-America states that it will agree to have the purchaser, Northwest Central Pipeline Corporation, deduct 25 percent from Mid-America's monthly revenue check derived from its sales of gas at Meter Station No. 13283 until its Btu refund obligation, including accrued interest, is fully satisfied. Mid-America states that the payback period will be approximately seven months and will be completed by January 31, 1986. Mid-America indicates that the proposed schedule of payments will prevent it from suffering financial hardship.

The procedures applicable to the conduct of this proceeding are set forth in Rules 1101–1117 (Subpart K) of the Commission's rules of practice and procedure. Any person desiring to participate in this proceeding must file a motion to intervene in accordance with Rule 1105. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20643 Filed 8–28–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–2–15–002]

Mid Louisiana Gas Co.; Compliance Filing

August 22, 1985.

Take notice that on August 14, 1985, Mid Louisiana Gas Company (Mid Louisiana) tendered for filing as a part of First Revised Volume No. 1 of its FERC Gas Tariff, Revised Fifty-Second Revised Sheet No. 3a and Fifth Revised Sheet No. 26a to become effective August 1, 1985. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until August 16, 1985.

Mid Louisiana states that the purpose of Revised Fifty-Second Revised Sheet No. 3a is to reflect the removal of concurrent exchange imbalances from the sales volumes utilized in computing Mid Louisiana's monthly Account No. 191 balances. This revision results in an increase of 4.47¢ per Mcf to Mid Louisiana's rates under Rate Schedules G–1, SG–1 and I–1. The purpose of Fifth Revised Sheet No. 26a is to reflect a change to the PGA clause of Mid Louisiana's FERC Gas Tariff to clarify that concurrent exchange imbalances are not to be included in the monthly computation of Account No. 191 balances.

Copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 30, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20644 Filed 8–28–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85–185–000]

MIGC, Inc.; Initial Rate Schedule Filing

August 23, 1985.

Take notice that MIGC, Inc., on August 16, 1985, tendered for filing initial Rate Schedule T–1 to its FERC Gas Tariff, Original Volume No. 1.

Rate Schedule T–1 is proposed as a generally applicable transportation tariff stating the rate to be charged for transportation provided by MIGC under 18 CFR 157.209 and 18 CFR Part 284 of the Commission's regulations. The proposed effective date for Rate Schedule T–1 is February 8, 1985.

Rate Schedule T–1 contains an initial rate of 63.42 cents per MMBtu which is applicant's system-wide transportation rate as filed in Docket No. RP84–15–000, and is subject to refund pending the outcome of that docket. Applicant's rate may change from time to time to reflect changes in applicant's cost of service or in the methodology used in the computation of its rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385–211). All such motions or protests should be filed on or before September 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20645 Filed 8–28–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA86–1–37–000, 001]

Northwest Pipeline Corp.; Change in Rates Pursuant to Purchased Gas Cost Adjustment

August 23, 1985.

Take notice that on August 15, 1985, Northwest Pipeline Corporation ("Northwest") submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff, First Revised Volume No. 1. Such change in rates is for the purpose of: (1) reflecting changes in Northwest's estimated cost of purchased gas and (2) projecting incremental surcharges to be assessed Northwest's affected direct and sales for resale customers pursuant to Order 49.

The current PGA adjustment, for which notice is given herein, aggregates to an increase of .071¢ per therm in the commodity rate for all rate schedules affected by and subject to the PGA as set forth on Twenty-First Revised Sheet No. 10 (Consenting Parties) and Third Amended Substitute Nineteenth Revised Sheet No. 10 (Nonconsenting Parties). There is no change in the demand rates. The annual change in Northwest's rates is an increase of approximately $1,760,656. Northwest has requested an effective date of October 1, 1985.

Northwest also tendered for filing and acceptance Eleventh Revised Sheet No. 10–B setting forth revised projected incremental pricing surcharges to become effective October 1, 1985, as part of the instant filing.

A copy of this filing has been mailed to all parties of record in Docket No. RP72–154–000, upon all jurisdictional customers, and affected state regulatory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before Sept. 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20646 Filed 8–28–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP85-184-000]

Southern Natural Gas Co.; Petition

August 23, 1985.

Take notice that on August 14, 1985, Southern Natural Gas Company (Southern) filed a petition requesting authorization to implement a direct billing procedure for retroactive Order No. 94 costs in lieu of recovering such costs through its PGA mechanism.

Under the proposed procedure, Southern would direct bill each of its customers for its proportionate share of the Order No. 94 costs incurred by Southern during the period from July 25, 1980 through March 31, 1985, plus interest, based on the ratio of that customer's annual purchases from Southern to the total of all purchases from Southern during the same period. Customers would have the option of paying such amounts in a lump sum or in twelve equal monthly installments. Southern states that the special billing procedure in necessary to avoid undesirable market distortions and inequitable allocation of costs among Southern's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such motions or protests must be filed on or before September 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20647 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-39-000]

Natural Gas Policy Act; Petition to Reopen and Vacate Final Well Category Determinations and Request to Withdraw; Appalachian Energy, Inc.

August 23, 1985.

Commonwealth of Pennsylvania, Department of Environmental Resources, Section 102 Determinations, Appalachian Energy, Inc., Adrian Sorenson No. 1 Well, FERC JD No. 80-32779, Richard C. Farver No. 1 Well, FERC JD No. 80-45787, R. Marsh No. 1 Well, FERC JD No. 81-2011, R.K. Farver No. 1 Well, FERC JD No. 81-2012, A. Bishop No. 1 Well, FERC JD No. 81-2013, B. Wilson No. 1 Well, FERC JD No. 81-9664, W. Wilson No. 1 Well, FERC JD No. 81-10302, L. Meerdink No. 1 Well, FERC JD No. 81-19066, B. Warner No. 1 Well, FERC JD No. 81-21756, R. Warner, No. 1 Well, FERC JD No. 81-47187.

Take notice that on June 14, 1985, Appalachian Energy, Inc. (Appalachian) filed with the Commission pursuant to § 275.205 of the Commission's regulations a petition to reopen and vacate final well category determinations under section 102 of the Natural Gas Policy Act of 1978 (NGPA) for the wells listed in the caption of this notice, each of which is located in Erie County, Pennsylvania.[1] Appalachian also requests authorization to withdraw its applications for the determinations.

Appalachian filed its application to withdraw the NGPA section 102 determination for the subject wells in response to an audit by the Commission staff, indicating that each of the wells is located less than 2.5 miles from the nearest marker well.

The question of whether, refunds, plus interest calculated under § 154.102(c) of the regulations, will be required is a matter which will be considered by the Commission in ruling on the subject petition.

Any person desiring to be heard or protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, not later than 30 days following publication of this notice in the **Federal Register**. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of this petition are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20648 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[1] Notices of Pennsylvania's determinations were received for the Adrian Sorenson well on May 6, 1980; for the Richard C. Farver well on July 11, 1980; for the R. Marsh well on October 16, 1980; for the R.K. Farver well on October 16, 1980; for the A. Bishop well on October 16, 1980; for the B. Wilson well on December 22, 1980; for the W. Wilson well on December 29, 1980; for the L. Meerdink well on February 26, 1981; for the B. Warner well on March 12, 1981; and for the R. Warner well on August 27, 1981. No action was taken by the Commission with regard to these determinations and the determinations became final 45 days following notification pursuant to § 275.202(a) of the Commission's regulations.

[Docket No. RP85-183-000]

Algonquin Gas Transmission Co.; Petition for Authority to Flow Through Direct Billed Order No. 94 Costs

August 23, 1985.

Take notice that on August 14, 1985, Algonquin Gas Transmission Company ("Algonquin Gas") petitioned the Federal Energy Regulatory Commission ("Commission") for authority to flow through to its customers any direct billed charges that Algonquin Gas may be required to pay to its pipeline suppliers as a result of retroactive payments for production-related costs incurred by such suppliers. Algonquin Gas notes that its petition is made in light of the July 3, 1985 filing, in Docket No. RP85-170-000, by Texas Eastern Transmission Corporation ("Texas Eastern") of a petition for authority to direct bill Algonquin Gas (and others) certain Order No. 94 costs.

All as is more fully set forth in its petition, Algonquin Gas proposes to flow through charges from Texas Eastern based on its customers' actual purchases during the retroactive period under rate schedules where the gas supply comes from Texas Eastern. Algonquin Gas also proposes to permit its customers to elect a lump sum payment or twelve monthly installment payments, thus mirroring the options made available by Texas Eastern. Algonquin Gas requests any necessary waivers of the Commission's Regulations to effect the proposed flow through direct billing.

Algonquin Gas submits that its proposal will avoid raising current rates by inclusion of extraordinary costs in its purchased gas adjustments, and that the use of actual past purchases will more closely match cost incurrence with cost responsibility.

Algonquin Gas states that it has served copies of its petition upon all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All such motions or protests should be filed on or before September 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20637 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-15-20-003]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

August 22, 1985.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on August 15, 1985 tendered for filing the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Sixth Revised Sheet No. 211
Sixteenth Revised Sheet No. 213

Algonquin Gas states that such tariff sheets are being filed to reflect in Algonquin Gas' Rate Schedules STB and S-IS the effect of changes in Texas Eastern Transmission Corporation's ("Texas Eastern") underlying Rate Scheduls SS-II and ISS-III.

Algonquin Gas requests that the Commission accept the revised tariff sheets filed herein to be effective August 1, 1985, to coincide with the proposed effective date of Texas Eastern's changes.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules or Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 30, 1985. 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 party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20638 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-46-000]

Aubrey C. Black; Petition for Adjustment

August 22, 1985.

Take notice that on July 29, 1985, Aubrey C. Black filed with the Federal Energy Regulatory Commission a petition for relief under section 502(c) of the Natural Gas Policy Act of 1978. Mr. Black seeks relief from the refund requirements resulting from the Btu measurement adjustments established by Commission Order Nos. 399 and 399-A for gas sold to Trunkline Gas Company from the Lloyd Well No. 1 and the Carlisle Well No. 1, Ben Bolt Field, Jim Well County, Texas.

Mr. Black states that production from Carlisle Well No. 1 commenced May 1979 and was plugged and abandoned on December 23, 1981. Production from the Lloyd Well No. 1 commenced July 1980 and last production from the well was in February 1983. Since both wells are no longer producing, Mr. Black states that it will be impossible to obtain from the royalty interest owners and working interest owners their portion of the Btu refund from the wells. Mr. Black asserts that denial of relief would cause irreparable financial injury and hardship.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure (18 CFR 385.1101 *et seq.* (1984)). Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the Federal Register.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20639 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-5-32-000, 001]

Colorado Interstate Gas Co.; Proposed Change in Rates Under Purchased Gas Adjustment Clause Provision

August 23, 1985.

Take notice that Colorado Interstate Gas Company (CIG), on August 15, 1985, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, to be effective September 28, 1985. The date of September 28, 1985, is requested to allow the rates proposed herein to become effective coincident with those in Docket No. RP85-122-000, CIG's general rate filing. CIG requests waiver of its applicable tariff provisions to implement the September 28, 1985, effective date. The decreased jurisdictional cost to CIG of purchased gas proposed by the filing amounts to approximately $75.1 million below the rates which are proposed to become effective on September 28, 1985, in Docket No. RP85-122. Due to the absence of any projected maximum surcharge absorption capability on CIG's system, no reduction in CIG's Estimated Actual Cost of Purchased Gas for incremental pricing purposes is reflected in the filing.

Copies of this filing have been served upon the Company's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20640 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-5-51-000, 001]

Great Lakes Gas Transmission Co.; Proposed Changes in F.E.R.C. Gas Tariff Under Purchased Gas Adjustment Clause Provisions

August 23, 1985.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes"), on August 19, 1985, tendered for filing Fifty-Third Revised Sheet No. 57 to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that the filing provides for a reduction, estimated at $2,138,000 on an annual basis, in the cost of gas resold by Great Lakes to Michigan Consolidated Gas Company (Mich Con) resulting from recent negotiations between Great Lakes and TransCanada PipeLines Limited ("TransCanada"), the sole supplier of natural gas to Great Lakes. The reduced

pricing applies to natural gas sold to Mich Con by Great Lakes in four small communities in Northern Michigan which are fully dependent on the Great Lakes' system for their natural gas requirements. All deliveries of gas to Mich Con, including those for which the price is being reduced herein, will continue to be made under Rate Schedule CQ–1 and, except for the reduced price for certain volumes, all other provisions of CQ–1 Rate Schedule would continue to apply with full force and effect to all volumes sold by Great Lakes to Mich Con. This reduction in the border price of Canadian gas has been negotiated to meet the competitive requirements of the respective markets being served.

Great Lakes has requested various waivers of the Commission's Regulations so as to permit the out-of-period PGA filing to become effective August 14, 1985.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20641 Filed 8–28–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ES85–55–000]

Iowa Southern Utilities Co.; Application

August 22, 1985.

Take notice that on August 15, 1985, Iowa Southern Utilities Company filed an application, pursuant to section 204 of the Federal Power Act, seeking authorization, to negotiate the issuance of not more than $20 million of long-term notes.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 13, 1985. Protests will be considered by the Commission 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 must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20642 Filed 8–28–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA85–2–21–002]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 26, 1985.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 20, 1985, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective as follows:

August 1, 1985

One hundredth Revised Sheet No. 16
Thirty-seventh Revised Sheet No. 64

September 1, 1985

One hundred and first Revised Sheet No. 16
Thirty-eighth Revised Sheet No. 64

Columbia states that the tariff sheets designated as One hundredth Revised Sheet No. 16 and Thirty-seventh Revised Sheet No. 64, proposed to be effective August 1, 1985, are being filed to comply with Article II of the Stipulation and Agreement (Stipulation) in Docket Nos. TA82–1–21–001, *et al.* Such Article provides that Columbia shall reflect during the Settlement Period the demand and commodity rate impact resulting from changes in its pipeline suppliers' rate designs as of the date the change is made effective by the supplier.

On July 31, 1985, Texas Eastern Transmission Corporation (Texas Eastern) filed revised rates effective August 1, 1985 in compliance with the Commission's Order on Rehearing issued July 12, 1985 in Docket Nos. RP85–35, *et al.* Such filing reflects Texas Eastern's implementation of a modified fixed variable rate design. Columbia states that it is making this filing to reflect Texas Eastern's change in rate design.

Columbia further states that the tariff sheets designated as One hundred and first Revised Sheet No. 16 and Thirty-eighth Revised Sheet No. 64, proposed to be effective September 1, 1985, are being filed to adjust its July 31, 1985 PGA filing in Docket No. TA85–2–21–000 to appropriately reflect the above-referenced rate impacts resulting from Texas Eastern's change in rate design.

Copies of the filing were served upon the Company's jurisdictional customers, interested state commissions and all parties in Docket Nos. TA82–1–21–001, *et al.*

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capital Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 3 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–20680 Filed 8–28–85; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP79–23–025 and RP79–24–017]

Distrigas of Massachusetts Corp.; Filing

August 26, 1985.

Take notice that on August 20, 1985, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing Fourth Substitute Fifth Revised Sheet No. 17 to its FERC Gas Tariff, First Revised Volume No. 1. This tariff sheet is submitted pursuant to the mandate of the First Circuit Court of Appeals in *Distrigas of Massachusetts Corp.* v. *FERC*, 751 F.2d 20 (1984), and the Commission's "Order On Remand" issued July 23, 1985 in Docket Nos. RP79–23–023 and RP79–24–015 which effectuated the court's mandate.

Domac requests that the Commission order the following:

(1) Upon 30 days notice the tendered tariff sheet be made effective for the period July 5, 1979 through August 1, 1981.

(2) Due to the Commission's earlier refund orders in this instance, DOMAC overrefunded to its customers $1,468,769.58 plus interest. DOMAC requests the

Commission to direct each of its customers to make reimbursement to DOMAC on a lump sum basis, with interest as accrued to the date of reimbursement.

DOMAC states that a copy of its filing was mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 4, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20681 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7965-001]

Hydrowaltham; Surrender of Preliminary Permit

August 27, 1985.

Take notice that Hydrowaltham, Permittee for the Moody Street Project No. 7965 located on the Charles River in Middlesex and Norfolk Counties, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 7, 1984, and would have expired on November 30, 1985. The Permittee states that analysis of the Moody Street Project did not indicate feasibility for development.

The Permittee filed the request on June 20, 1985, and the preliminary permit for Project No. 7965 shall remain in effect through the thirtieth day after issuance of this notice unless that that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20682 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-189-000]

Midwestern Gas Transmission Co.; Tariff Filing

August 26, 1985.

Take notice that on August 21, 1985, Midwestern Gas Transmission Company (Midwestern) tendered for filing Second Revised Sheet Nos. 32 through 34 to Original Volume No. 1 of its FERC Gas Tariff to be effective on September 20, 1985.

Midwestern states that the purpose of these tariff sheets is to carry forward to Midwestern's customers the benefits of Tennessee Gas Pipeline Company's (Tennessee) transportation program in Article III of the Settlement Agreement (February 5, 1985) approved by the Commission in Docket Nos. RP83-8, *et al.* Specifically, the volume charge under Rate schedule IT-1 will be the commodity rate set forth on Midwestern's effective Tariff Sheet No. 5 applicable to the delivery point of the transported volumes provided the transported volumes are delivered to Midwestern by Tennessee on behalf of any Midwestern CD or SR customer pursuant to Tennessee's transportation program. The commodity rate is applicable to volumes transported by Midwestern which are within a customer's maximum contract quantity. Additionally, volumes transported at the commodity rate shall count in fulfilling that customer's minimum bill obligation under its CD Rate Schedule.

Midwestern further states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before September 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20684 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-188-000]

National Fuel Gas Supply Corp.; Petition for Authority to Institute Direct Billing Procedure for Retroactive Order No. 94 Payments

August 26, 1985.

Take notice that on August 21, 1985, National Fuel Gas Supply Corporation (National) filed a Petition for Authority To Institute Direct Billing Procedure for Retroactive Order No. 94 Payments. National states that it seeks authorization to bill customers directly for retroactive Order No. 94 costs because of what it states are inequities and undesirable market distortions inherent in recovering such costs through purchased gas adjustment (PGA) filings. As is more fully explained in the filing, National proposes to allocate retroactive Order No. 94 costs based upon each customer's share of National's total sales for the production period over which the Order No. 94 obligation arose and to directly bill the resulting amounts, including paid and accrued interest. National states that its direct billing proposal will most closely approximate the cost assignment that would have occurred had the payments been made at the same time as the gas purchases to which they relate.

National requests waiver of the Commission's regulations and of its tariff, to the extent necessary, to permit the direct billing procedure.

National states that it has served a copy of the Petition on its customers, interested state commissions and others.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 4, 1985. 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 muat file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 85-20685 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-187-000]

Northwest Pipeline Corp.; Change in Gathering Rates

August 26, 1985.

Take notice that on August 20, 1985, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be a part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheet.

Eighth Revised Sheet No. 2-B

Such tariff change is for the purpose of reflecting a reduction in Area Gathering Rates applicable to gathering services performed in the Big Piney, San Juan, and Piceance Basin gathering systems.

Northwest has requested an effective date of September 1, 1985 for the above referenced tariff sheet.

A copy of this filing has been mailed to all jurisdictional and affected gathering customers and all affected state regualtory commissions.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 3, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20686 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP76-492-036 and CP85-282-000]

Penn-York Energy Corp. and National Fuel Gas Supply Corp.; On-site Inspection

August 22, 1985.

Take notice that on September 11, 1985, members of the Commission's Environmental Evaluation Branch (staff) will conduct an on-site inspection of Penn-York Energy Corporation's (Penn-York) East Independence, West Independence and Beech Hill storage fields, located within the townships of Andover, Independence and Willing, and southeast of Wellsville, Allegany County, New York. In addition, staff will inspect Penn-York's brine storage facilities and the sites for new storage-related facilities proposed by Penn-York in Docket No. CP85-282-000.

Interested individuals, and state and local agencies are invited to attend the inspection; however, such attendance will not confer party status. Any individual seeking to be a party to the proceeding must file a motion to intervene under Rule 214(d) of the Commission's Rules of Practice and Procedure (18 CFR 385.214(d)).

For further information contact John Leiss, Office of Pipeline and Producer Regulation, Environmental Evaluation Branch, RC-853, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-9041.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20687 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 6702-006]

Superior Oil Co.; Surrender of Preliminary Permit

August 27, 1985.

Take notice that Superior Oil Company, Permittee for the East Fork of South Fork Salmon River Project, FERC No. 6702, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 6702 was issued on October 24, 1983, and would have expired September 30, 1986. The project would have been located on the East Fork of South Fork Salmon River in Valley County, Idaho, within the Payette National Forest.

The Permittee filed the request on July 12, 1985, and the preliminary permit for Project No. 6702 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20688 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP74-41-037, et al.]

Texas Eastern Transmission Corp., et al.; Filing of Pipeline Refund Reports and Refund Plans

August 26, 1985.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before September 4, 1985. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
7/8/85	Texas Eastern Transmission Corp.	RP74-41-037	Report.
7/22/85	Gas Gathering Corp.	TA85-1-13-000	Do
7/29/85	Natural Gas Pipeline Co. of America.	RP85-182-001	Btu [1].
7/30/85	Texas Gas Transmission Corp.	RP85-84-002	Btu [1].
7/30/85	Algonquin Gas Transmission Co.	RP72-110-039	Report.
8/1/85	Stingray Pipeline Co.	RP85-16-002	Do.
8/2/85	Locust Ridge Gas Gathering Co.	RP85-86-007	Do.
8/2/85	East Tennessee Natural Gas Co.	RP85-148-004	Do.
8/5/85	ANR Pipeline Co.	RP85-36-003	Do.
8/5/85	Alabama-Tennessee Natural Gas Co.	RP85-117-001	Btu [1].
8/6/85	Granite State Gas Transmission, Inc.	RP85-118-001	Btu [1].
8/8/85	Texas Eastern Transmission Corp.	RP85-143-002	Btu [1].
8/12/85	South Georgia Natural Gas Co.	RP84-18-003	Report.
8/14/85	Raton Natural Gas Co.	RP85-158-002	Do.

[1] Indicates Btu Measurement Refund.

[FR Doc. 85-20689 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01

[Docket Nos. QF85-11-001, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; AES Shady Point, et al.

Comment date: Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. AES Shady Point

[Docket No. QF85-11-001]

August 23, 1985.

On August 2, 1985, AES Shady Point (Applicant) of 1925 North Lynn Street, Suite 1200, Arlington, Virginia 22209 submitted for filing an application for certification of a facility as a qualifying congeneration facility pursuant to § 292.207 of the Commission's regulations. Supplement information was filed on August 7, 1985 to complete application.

The topping-cycle cogeneration facility will be located in Panama, Oklahoma. The primary energy source will be coal. The net electric power production capacity will be 295.3 megawatts. The facility will consist of coal fired fluidized bed boilers and a steam turbine generator. A portion of the steam will be extracted for process use. Installation of the facility will begin in January 1990.

2. Milstar Manufacturing Corporation

[Docket No. QF84-38-001]

August 22, 1985.

On August 12, 1985, Milstar Manufacturing Corporation (Applicant) of 1045 Sixth Avenue, New York, New York 10018, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The hydroelectric facility is located on the Kennebec River near the Town of Waterville in Kennebec County, Maine. The Applicant propose to increase the power production capacity of the facility to 6,550 kW from 4,800 kW with the addition of a 1,750 kW generator. Additionally, the Applicant proposess to modify the ownership by selling an undivided one-half interest in the facility to Kennebec Hydro Resources, Inc., a wholly-owned subsidiary of Central Maine Power Company. All other information provided in the original application remains unchanged.

3. Native Sun/Carew

[Docket No. QF85-631-000]

August 23, 1985.

On August 2, 1985, Native Sun/Carew (Applicant), of 110 Escondido Avenue, Suite 103, Vista, California 92083 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located in Carlsbad, California. The primary energy source is solar light. The potential electric power production capacity is 224 kilowatts.

4. Continental Energy Associates

[Docket No. QF83-413-001 [1]]

August 22, 1985.

On July 31, 1985, Continental Energy Associates (Applicant), submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the coal gasification plant in the Humboldt Industrial Park, Hazleton, Pennsylvania. The facility will consist, in part, of up to four engine/generator units and a waste heat recovery boiler. The primary source of energy is synthetic coal gas. The electric power production capacity is 28 MW. The thermal energy output of the facility, in the form of steam and hot water will be available for sale to industry and for process and heating use in the coal gasification plant.

5. Energy Capital Corporation

[Docket No. QF85-642-000]

August 23, 1985.

On August 5, 1985, Energy Capital Corporation (Applicant), of 280 Newport Center Drive, Suite 210, Newport Beach, California 92660 submitted for filing an application for certification of facility as a qualifying small power production a facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located in Kern County, California in the Tehachapi Mountains. The primary energy source is wind. The facility will have a potential installation of 70 wind turbines rated 200 kilowatts each with a total capacity of 14 megawatts.

6. Santa Maria Associates, Utah

[Docket No. QF85-644-000]

August 23, 1985.

On August 12, 1985, Santa Maria Associates, Utah (Applicant) of 200 East South Temple, Suite 300, Salt Lake City, Utah 84111, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility is located at 732 South Hanson Way, Santa Maria, California. The facility consists, in part, of a General Electric Allison Model 571 K gas turbine/generator, a back pressure steam turbine/generator, a condensing steam turbine/generator, a heat recovery steam generator, a gas fired duct burner, and a cooling tower. The electric power production capacity of the facility is 7483 kW. The useful thermal energy will be used for food processing and the operation of an ammonia absorbtion refrigeration system. The primary source of energy is natural gas.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20690 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8998-000]

Donald K. Lee; Availability of Environmental Assessment and Finding of No Significant Impact

August 27, 1985.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the application for exemption from licensing listed below and has assessed the environmental impacts of the proposed development.

[1] The Federal Energy Regulatory Commission issued an order on February 6, 1985 certifying this facility as a cogeneration facility with an electric power production capacity of 8.8 MW. The order was issued to the owner of record on this date (2/6/85), Hitec Gasification Company of 87 Elm Street, Cohasset, Massachusetts 02025.

EXEMPTIONS

Project No.	Project name	State	Water body	Nearest town	Applicant
8998-000	Bluff Springs	CA	Bluff Springs Creek	Manton	Donald K. Lee.

An environmental assessment (EA) was prepared for the above proposed project. Based on an independent analysis of the above action as set forth in the EA, the Commission's staff concludes that this project would not have significant effects on the quality of the human environment. Therefore, an environmental impact statement will not be prepared.

Copies of the EA are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20683 Filed 8-28-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OMS-FRL-2888-9]

Final Agency Actions Regarding the Motor Vehicle Provisions of the Clean Air Act.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Mobile Source Final Agency Actions.

SUMMARY: This notice announces final EPA actions taken in conjunction with its mobile source program. With the exception of the final actions taken with respect to Albert Mardikian Engineering Inc. (AME) of Costa Mesa, California and to Mardikian Automotive Research and Development, (MARD), of Houston, Texas, persons disagreeing with these final actions may petition the United States Court of Appeals for the District of Columbia Circuit for review of these actions. Persons disagreeing with the final actions taken with respect to AME in its petition for reconsideration, may petition the United States Court of Appeals for the Ninth Circuit. Persons disagreeing with the final action taken with regard to MARD and its test results may petition the United States Court of Appeals for the Fifth Circuit for review of this decision. Failure to petition for review of these actions on or before October 28, 1985 will preclude a challenge later in an EPA enforcement action.

FOR FURTHER INFORMATION CONTACT: Cynthia Garrett McKnight, Manufacturers Operations Division, (EN-340F), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2521.

SUPPLEMENTARY INFORMATION: EPA has determined that all of the actions summarized below are final. Where possible, the specific date on which the action became final is specified.

Under section 307(b)(1) of the Clean Air Act (Act), EPA has determined that except for the AME and the MARD decisions, these actions are of nationwide scope and effect. Accordingly, judicial review of these actions is available *only* by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit on or before October 28, 1985. EPA has determined that both the AME and the MARD decisions are locally or regionally applicable. Accordingly, judicial review of the AME decision is available only by filing a petition for review in the United States Court of Appeals for the Ninth Circuit and judicial review of the MARD decision is available only by filing a petition for review in the United States Court of Appeals for the Fifth Circuit. The petition for review should be filed on or before October 28, 1985. Under section 307 (b)(2) of the Act, these final actions and the bases for them which are the subject of today's notice, may not be challenged later in civil or criminal proceedings brought by EPA to enforce these actions.

The following EPA actions regarding motor vehicles have become final:

1. On June 13, 1984, the Administrator notified General Motors Corporation (GM) that he had found that 1980 GM vehicles of engine family 04E2A (3.8 liter engine only) failed to comply with the applicable federal emission standard for NO_x. Under 40 CFR 85.1807, a manufacturer who disagrees with the administrator's finding of nonconformity may file a request for a public hearing with the Administrator within 45 days after receipt of the Administrator's notification of nonconformity. GM has not made a request for a public hearing within the allotted 45 days and, therefore, the Administrator's finding of nonconformity became final on July 28, 1984.

2. On May 21, 1985, the Administrator denied the petition of Mercedes-Benz of North America, Inc. (MBNA) to suspend the imports regulations found at 40 CFR 85.1501 *et seq.* MBNA contended that the current imports regulatory program is inconsistent with the act because MBNA believes that many vehicles brought into the United States under this program are improperly modified and do not comply with emission standards.

The Administrator, however, decided that immediate suspension of the imports regulations would not be an appropriate action at this time. Therefore, the Administrator's decision denying MBNA's petition for suspension of the imports regulations became final on May 21, 1985.

3. On March 13, 1985, the Administrator denied the petition of Mercedes-Benz of North America Inc. (MBNA), to reconsider a previous decision granting Revere Classics a waiver of the oxides of nitrogen standard. Section 202(b)(6)(B) of the Act provides that, on petition of a manufacturer, the Administrator may waive the 1.0 g/mi NO_x standard to a level not to exceed 1.5 g/mi for any class or category of diesel-powered light-duty vehicles and engines manufactured during the four model-year period beginning with model year 1981. The Administrator's decision became final on March 13, 1985.

4. On September 28, 1984, the Director of the Manufacturers Operations Division, Office of Mobile Sources, decided that certain test packets submitted by Mardikian Automotive Research and Development (MARD) of Houston, Texas contained photographic discrepancies or duplicative photographs were unreliable and would be rejected. These test packets were submitted in support of the admission of imported nonconforming vehicles. Further, it was decided that all other MARD test packets held pending this decision would be processed by the Agency and, where appropriate, the Agency woud issue release recommendations to U.S. Customs for those vehicles. This decision became final on September 28, 1984.

5. On January 29, 1985, the Assistant Administrator for Air and Radiation denied the petition of Albert Mardikian Engineering Inc. (AME) of Costa Mesa, California, for reconsideration of his March 15, 1984 decision. That decision concerned the finding that test results from AME's Costa Mesa laboratory were generally unreliable and lacked integrity and would not be accepted to support the admission of imported nonconforming vehicles. (*See* 49 CFR

22707 (May 31, 1984.)) The Assistant Administrator's decision denying AME's request for reconsideration became final on January 29, 1985.

6. On July 1, 1985, the Assistant Administrator for Air and Radiation decided that the California Air Resources Board (CARB) does not require a waiver of federal preemption pursuant to section 209(b) of the Act to enforce sections 43150 through 43155 of the California Health and Safety Code. The Assistant Administrator found that since California has received waivers of federal preemption for its motor vehicle emission standards and certification procedures, it is therefore free to set conditions precedent to registration, titling and sale of motor vehicles without the necessity of a separate waiver determination. The Assistant Administrator found that these particular sections of California's statute are conditions precedent since they impose conditions upon which the sale, titling or registration of new motor vehicles in California is contingent (i.e. new motor vehicles must be certified to meet California's standards before they are used or sold in the state.)

Moreover, the Assistant Administrator found that section 43156 of the California Health and Safety Code, defining the term "new motor vehicle," does not require a waiver of federal preemption. Section 209(b) only requires a waiver determination for California's new standards and enforcement procedures but not for the definition of terms used in its statute.

Finally, the Assistant Administrator decided that by waiving federal preemption under section 209(b) for California's new motor vehicle certification program, EPA has waived federal preemption for California's determination that importers for resale are precluded from certifying new motor vehicles under California law. The Assistant Administrator's decision became final on July 1, 1985.

7. On June 28, 1985, the Assistant Administrator for Air and Radiation denied a request for a public hearing and comment period pursuant to section 209(b) of the Act submitted by the Automobile Importers Compliance Association (AICA). AICA requested EPA to hold a hearing and to provide an opportunity for public comment to consider what AICA termed as California's request for a waiver of Federal preemption to enforce sections 43150 through 43156 of the California Health and Safety Code. Since the Assistant Administrator decided that California did not require a waiver to enforce these sections of its statute (*see* Item 6 above), he decided that AICA's characterization of California's request was inaccurate and therefore, no section 209(b) hearing was found to be necessary. The Assistant Administrator's decision became final on June 28, 1985.

Dated: August 23, 1985.

Richard D. Wilson,

Director, Office of Mobile Sources.

[FR Doc. 85-20672 Filed 8-28-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No: 85-757]

Finance Subsidiaries of Federal Associations

August 26, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a new information collection request, "Finance Subsidiaries of Federal Associations", to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register.** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below:

Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Joseph Longino, Office of the General Counsel. Phone: 202-377-6446.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-20659 Filed 8-28-85; 8:45 am]

BILLING CODE 6720-01-M

[No: 85-756]

Industry Conflict of Interest Regulations

August 26, 1985.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board has submitted a new information collection request, "Industry Conflict of Interest Regulations", to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the Federal Register. Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, D.C. 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Requests for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below:

Director, Information Services Section, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: Rosemary Stewart, Office of the General Counsel. Phone: 202-377-6437.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 85-20658 Filed 8-28-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal

Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010485–011.

Title: United States Atlantic & Gulf Ports/Italy, France and Spain Freight Conference.

Parties:

Compania Trasatlantica Espanola, S.A.
Costa Line
Farrell Lines, Inc.
"Italia" Societa di Navigazione, S.p.A.
Lykes Bros. Steamship Corp.
Sea-Land Service, Inc.
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment would permit any member to withdraw from the conference, without penalty, on one day's notice, until September 17, 1985. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: August 26, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–20691 Filed 8–28–85; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Society Expeditions Cruises, Inc.,
Adventurer Cruises, Inc. and
Discoverer Reederei GmbH & Co. KG
c/o Society Expeditions Cruises, Inc.,
723 Broadway East, Seattle,
Washington 98102.

Dated: August 26, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–20696 Filed 8–28–85; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Society Expeditions Cruises, Inc.,
Adventurer Cruises, Inc. and
Discoverer Reederei GmbH & Co. KG
c/o Society Expeditions Cruises, Inc.,
723 Broadway East, Seattle,
Washington 98102.

Dated: August 26, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–20697 Filed 8–28–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Brunswick Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 20, 1985.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Brunswick Bancorp,* New Brunswick, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Brunswick Bank & Trust Company, Manalapan Township, New Jersey. Comments on this application must be received not later than September 19, 1985.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Irwin Union Corporation,* Columbus, Indiana; to acquire 100 percent of the voting shares of IUC Holding, Inc., Columbus, Indiana, thereby indirectly acquiring Midwest National Bank, Indianapolis, Indiana.

2. *IUC Holding, Inc.,* Columbus, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Midwest National Bank, Indianapolis, Indiana.

Board of Governors of the Federal Reserve System, August 23, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–20620 Filed 8–28–85; 8:45 am]

BILLING CODE 6210–01–M

MCorp and MCorp Financial, Inc.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such

as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 20, 1985.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCorp*, Dallas, Texas and *MCorp Financial, Inc.*, Wilmington, Delaware; to acquire Ohio Valley Data Control, Inc., Belpre, Ohio, and thereby engage in providing to others financially related data processing and data transmission services, facilities, and data bases, or access to them pursuant to § 225.25(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, August 23, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20621 Filed 8-28-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics Subcommittee on Policy and Direction; Meeting

Pursuant to the Federal Advisory Act (Pub L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Policy and Directon established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, will convene on Friday, September 27, 1985 from 9:00 a.m. to 5:00 p.m. in Room 303-305-A of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The Subcommittee will meet to discuss possible alternative agendas for the National Committee on Vital and Health Statistics and to consider different operational structures to address those agendas.

Further information regarding this meeting of the Subcommittee may be obtained by contacting Jack Anderson, National Center for Health Statistics, Room 2-28, Center Buildings, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7122.

Dated: August 12, 1985.

Manning Feinleib,

Director, National Center for Health Statistics.

[FR Doc. 85-20668 Filed 8-28-85; 8:45 am]

BILLING CODE 4160-17-M

Public Health Service

Delegation of Authority; Alcohol, Drug Abuse, and Mental Health Administration

Notice is hereby given that in furtherance of the delegation by the Secretary of Health and Human Services on July 5, 1985, to the Assistant Secretary for Health, the Acting Assistant Secretary for Health has delegated to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, with authority to redelegate, the authorities delegated to the Assistant Secretary for Health under Title V of the Public Health Service Act (42 U.S.C. 290aa et seq.), as amended, concerning the administration and coordination of the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse.

The above delegation became effective on August 7, 1985.

Dated: August 7, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85-20669 Filed 8-28-85; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Minerals Management; Coal Leases Held for Ten Years; Guidelines

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final guidelines.

SUMMARY: This Notice sets forth guidelines for the Department of the Interior's administration of section 2(a)(2)(A) of the Act of February 25, 1920 (otherwise known as the Mineral Leasing Act (MLA)), as amended (30 U.S.C. 201(a)(2)(A)). Section 2(a)(2)(A) provides that no onshore Federal lease may be issued under MLA to any entity that holds, and has held for 10 years, a Federal coal lease that is not producing in commercial quantities. These guidelines will be used by Bureau of Land Management personnel in order to determine whether a Federal coal lessee, or any affiliate, is in compliance with the requirements of section 2(a)(2)(A) of MLA, when such Federal coal lessee or affiliate seeks to qualify for any onshore Federal lease to be issued pursuant to MLA on or after August 4, 1986. The guidelines address the several instances where the holder of a Federal coal lease can qualify for any onshore Federal lease to be issued pursuant to MLA by satisfying the section 2(a)(2)(A) of MLA requirements for Federal coal leases.

EFFECTIVE DATE: August 29, 1985.

ADDRESS: Department of the Interior, Bureau of Land Management (660), 18th and C Streets NW., Room 3411, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Paul W. Politzer or Allen B. Agnew, (202) 343-7722.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management published draft guidelines on February 15, 1985 (50 FR 6398). Comments were invited for 60 days, ending April 16, 1985. In response to requests from the public for a 30 day extension, the comment period was extended on April 12, 1985 (50 FR 14460), to May 13, 1985. 21 comments were received. The comments are addressed below; the text of the guidelines has been changed as appropriate.

In general, comments addressed ten specific areas: applicability of section 2(a)(2)(A); minerals prohibited from issuance; Federal coal leases required to be held after being mined out; failure of logical mining units; definition of commercial quantities; *force majeure* suspensions; relinquishments; assignments; affiliates; and guidelines vs. regulations. Following general discussion of the guidelines below, the general and specific comments received on the ten specific areas are addressed.

General Discussion

Section 3 of the Federal Coal Leasing Amendments Act of 1976, as amended (FCLAA), added paragraph 2(a)(2)(A) to MLA. This amendment states that any entity that holds and has held a Federal coal lease for 10 years, when such entity is not, except as provided in section 7(b) of MLA, producing coal from the lease deposits in commercial quantities, cannot be issued a Federal lease pursuant to MLA on or after August 4, 1986. Section 7(b) provides that each Federal coal lease must satisfy the requirements of diligent development and continued operation. The following discussion addresses the reason for

publication of guidelines and the major issues concerning section 2(a)(2)(A).

1. One primary reason for the publication of these guidelines is to ensure uniform and consistent implementation of the producing in "commercial quantities" requirement of section 2(a)(2)(A). The determination of compliance with producing in commercial quantities requires a timeframe during which that production must occur. These guidelines set out a framework for the Bureau of Land Management (BLM) Field Offices to implement the current regulatory definition of commercial quantities (1 percent of the recoverable coal reserves) for section 2(a)(2)(A) purposes.

2. Section 2(a)(2)(A) applies, for all practical purposes, only to the holders of Federal coal leases issued prior to enactment of FCLAA (August 4, 1976). "New" Federal coal leases, those issued (or otherwise made subject to amended MLA) after FCLAA's enactment, terminate after 10 years if they are not in production, so the prohibition of section 2(a)(2)(A) on holding a Federal coal lease for 10 years and not producing cannot occur.

3. Section 2(a)(2)(A) is a "qualification" provision, affecting an entity's ability to acquire new Federal leases, rather than a "diligence" provision. It is not to be equated with amended section 7(a) of MLA, which provides for producing at the end of 10 years, nor with amended section 7(b) of MLA, which provides for diligent development and continued operation. Diligence relates to the obligation to develop a specific Federal coal lease or lose the Federal coal lease. The diligence clock is tied to the date that the Federal coal lease is readjusted (20 years after issuance), or otherwise made subject to amended MLA. The diligence production clock is independent of the section 2(a)(2)(A) 10-year Federal coal lease-holding clock. If a Federal coal lessee does not seek to qualify for new Federal leases (but decides rather to hold those Federal coal leases it currently holds), section 2(a)(2)(A) does not compel that Federal coal lessee to do anything. Production from "old" Federal coal leases is required only at or prior to the time that that entity seeks to qualify to be issued another Federal lease on or after August 4, 1986.

4. The guidelines state that *production is required* at the time that qualifications for a Federal lease issuance are being determined. The production requirement is intended to ensure that no Federal coal lease that "meets" section 2(a)(2)(A) is being held for speculative purposes.

5. The section 2(a)(2)(A) leasing prohibition is not limited only to Federal coal leasing. Where a Federal coal lessee is in violation of section 2(a)(2)(A), the Secretary may not issue that Federal coal lessee, or any affiliate, *any* new Federal leases under MLA for coal or other minerals, such as onshore oil and gas. See Solicitor's Opinion M-36951 interpreting section 3 (February 12, 1985) at pp. 11-13. The Department of the Interior's (DOI's) position regarding the scope of section 2(a)(2)(A) is currently in litigation in the case of *Conoco, Inc.* v. *Hodel*, Civil No. 85-277 (D. Del. filed May 10, 1985). Plaintiffs in this case have moved for summary judgment, arguing that the section 2(a)(2)(A) leasing prohibition affects only a violating Federal coal lessee's qualifications to obtain new Federal *coal* leases, not other MLA Federal leases such as for onshore oil and gas. Pending resolution of this lawsuit, DOI will stand by its original interpretation.

General Comments

Two comments received on the draft guidelines stated that the publication of guidelines is a major Federal action and requires publication of an environmental impact statement. The DOI has taken the position that preparation of guidelines is subject to a categorical exclusion (46 FR 7485) from environmental impact statement requirements. One comment further stated that the guidelines changes the existing regulatory definitions of commercial quantities (43 CFR 3480.0-5(a)(6)), continued operation year (43 CFR 3480.0-5(a)(9)), diligent development (43 CFR 3480.0-5(a)(12)), and diligent development period (43 CFR 3480.0-5(a)(13)(i)(B), as well as the requirement at 43 CFR 3483.1(a)(2) that once a Federal coal lease has achieved diligent development it is thereafter subject to continued operation.

The guidelines do not alter or redefine any existing rule (see *General Discussion* items 1 and 3 above). The BLM is however considering revising the existing 43 CFR Group 3400 rules. These guidelines provide criteria to BLM Field Offices to aid them in determining compliance by a Federal coal lessee, or any affiliate, with section 2(a)(2)(A) as well as the implementing rules. Such rules: (1) Bar issuance of a Federal lease or transfer of a Federal coal lease to a party not producing in commercial quantities in 10 years unless advance royalty payments are being made as authorized; and (2) define commercial quantities as 1 percent of recoverable coal reserves (see 43 CFR 3472.1-2(e) and 43 CFR 3480.0-5(a)(6)). The criteria that the guidelines set out for BLM Field Officials to determine compliance with these rules is developed below.

These comments also stated that the guidelines alter the application or definition of diligence as applied to Federal coal leases subject to amended MLA by issuance, readjustment or other action after August 4, 1976. This is not the case. Accordingly, these comments were rejected.

One comment stated that reserves should be defined by U.S. Geological Survey/Bureau of Mines criteria (i.e., measured, indicated, and inferred reserves/resources). These guidelines implement the existing rules, and therefore cannot redefine the terms currently used in the rules: "coal reserve base;" "minable reserves;" and "recoverable coal reserves" (see 43 CFR 3480.0-5).

As stated in the preamble to the July 30, 1982, coal operating rules, then codified at 30 CFR Part 211 (47 FR 33154, 33156): "[t]he terms 'measured, indicated, and inferred' . . . were considered to be confusing and overly inclusive." Therefore, BLM "has deleted these terms from the definitions . . . ." Please note that 30 CFR Part 211 was recodified at 43 CFR Part 3480. Accordingly, this comment was not accepted.

One comment stated that in at least three areas the draft guidelines were in direct conflict with either the statute or the existing rules, as well as the discussion of the statute and existing rules contained in Solicitor's Opinion M-36951. First, the comment stated that diligent development and continued operation (section 7(b) of MLA) apply to all Federal coal leases due to the express exception in section 2(a)(2)(A). Second, the comment stated that the regulatory diligent development period for Federal coal leases issued prior to August 4, 1976, is equivalent to the section 2(a)(2)(A) 10-year holding period. Third, the comment stated that the use of floating 10-year brackets for determining compliance with the section 2(a)(2)(A) continuing production obligation is not allowed, based on the first two statements.

The arguments did not persuade DOI to reconsider the analysis and conclusions in Solicitor's Opinion M-36951. Section 2(a)(2)(A)'s relevant part states:

> when such entity *is not*, except as provided in section 7(b) of this Act, *producing coal* from the lease deposits in commercial quantities . . . . 30 U.S.C. 201(a)(2)(A) (1982) (Emphasis added.)

The express exception reference to "section 7(b)" can only be inferred to

state that if a Federal coal lease is subject to amended MLA "diligence," the section 2(a)(2)(A) production requirement is relieved simultaneously with the relief of the amended section 7(b) production requirement, when such relief is granted in accordance with the amended section 7(b) conditions for relief. The section 7(b) production requirement can be relieved by *force majeure* suspension or by payment of advance royalty *in lieu* of continued operation, consistent with amended section 7(*b*)'s limitations (i.e., not less than the production royalty that would have been paid and not for more than 10 years). The section 7(b) of MLA conditions of diligent development and continued operation attach to a Federal coal lease only after it becomes subject to amended MLA "diligence" provisions (see Solicitor's Opinion M-36939, September 17, 1981).

This does *not* mean that unreadjusted Pre-FCLAA Federal coal leases are *not* subject to conditions of diligent development and continued operation. The original section 7 of MLA, which had no subsection (b), did require Federal coal lease-specific diligence requirements, and pre-FCLAA Federal coal leases were issued subject to those conditions, as implemented in the minimum production or comparable Federal coal lease clause. It means only that the amended section 7(*b*) is not applicable to these pre-FCLAA Federal coal leases.

The DOI is not persuaded by this comment that Congress intended amended section 7(a) to be prospective (in its produce-in-10-years and royalty provisions) but that amended section 7(b) be retroactive. Congress never distinguished among the subsections of amended section 7 in discussing its prospective application. Congress recognized the dual production obligations of section 2(a)(2)(A) and section 7(b) by including the express exception-of-production language to state that a Federal coal lease, whose continued operation production obligation under section 7(b) was suspended, would also have its production obligation for section 2(a)(2)(A) suspended. Until a Federal coal lease becomes subject to amended MLA "diligence," its only production obligations, if any, are those established in the pre-FCLAA Federal coal lease terms. After a Federal coal lease becomes subject to amended MLA "diligence," section 7(b) applies. In either case section 2(a)(2)(A) also applies to lease qualifications.

The diligent development period for pre-FCLAA Federal coal leases is not equivalent to the section 2(a)(2)(A) 10-year holding period. Congress did not impose the 10-year Federal coal lease-termination date (section 7(a)) on Federal coal leases until they become subject to amended MLA "diligence." Until so subject, the preconditions are "holds . . . and has held" and when . . . not . . . producing . . . in commercial quantities." The only time-element guidance provided by Congress that could limit either precondition was the combined (holds and has held) "period of ten years." In addition, "periods of time prior to August 4, 1976, shall not be counted." 30 U.S.C. 201(a)(2)(A) (1982).

Regarding Federal coal leases that are *not yet subject to amended MLA*, BLM has adopted 10 years as an appropriate *maximum* time over which production can be credited toward the producing-in-commercial-quantities obligation. The Federal coal lease holding period for the section 2(a)(2)(A) prohibition, however, is independent of the timeframe over which production will be measured. The period over which commercial quantities will be measured is not tied to August 4, 1976. Neither the law nor the rules prescribe such a timeframe. The beginning of the production bracket may begin as late as the date that coal is first produced on or after August 4, 1976. (See the *General Discussion* preceding this section regarding the results of failure to commence producing-in-commercial-quantities.) BLM has concluded, after examining the comments and considering alternative ways of determining commercial quantities, that a 10-year period for determining commercial quantities should be a *maximum* and may not be used in all cases. The Authorized Officer's examination includes review of the approved mine plan or production scenarios based on existing contracts and such things as the phase of the operation (e.g., start-up vs. ongoing), to determine what is a commercial level or rate of production, and to determine the appropriate time period during which a Federal coal lease must be producing in commercial quantities (1 percent). The time period will then be set at less than 10 years in cases where that more closely approximates what is "commercial" given the reality of the operation. For example, the timeframe might more appropriately range from 3 years (similar to the regulatory 3-year timeframe for production to satisfy continued operation) to 5 years (reflecting the duration of permits approved pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA)). After determining the appropriate timeframe over which to measure *producing in commercial quantities*, the Authorized Officer will assign that timeframe to each individual operating Federal coal lease that is not yet subject to amended MLA. This timeframe may be adjusted, at the discretion of the Authorized Officer, to reflect changing conditions. As an example, for an operation that moves from its initial start-up phase into an ongoing operation phase, the Authorized Officer may determine that the assigned timeframe should be of a shorter duration.

Once the Federal coal lease becomes *subject to amended MLA*, the governing timeframe is the 10-year diligent development period or the continued operation year; although, regardless of timeframe, the Federal coal lessee is qualified only *as long as production is occurring* or the amended MLA production requirements are relieved pursuant to section 7(b). This is because, for pre-FCLAA Federal coal leases that have been readjusted (or otherwise made subject to amended MLA), nonproduction during the 10-year diligent development period would also be nonproduction for section 2(a)(2)(A) purposes. This applies regardless of the section 2(a)(2)(A) commercial quantities timeframe that the Authorized Officer had assigned to the Federal coal lease prior to its becoming subject to amended MLA. Therefore, the Federal coal lessee, or any affiliate, would be disqualified under section 2(a)(2)(A) from being issued a Federal lease on or after August 4, 1986, if its Federal coal leases are *not producing in commercial quantities*.

In all cases, the operative *quantity* to use in determining whether a Federal coal lease is producing in commercial quantities is 1 percent, as that is currently prescribed by rule. The draft guidelines proposed a 10-year "floating" bracket as a time period for producing in commercial quantities for section 2(a)(2)(A) purposes; however, the time period in the guidelines is to be determined at the Authorized Officer's discretion with the facts of the operation in mind. This change from the draft guidelines has several beneficial effects. First, it responds to the general criticism that 10 years is too long—too lenient—a period for measuring production, given that the period does not begin on August 4, 1976. Second, it allows operations to be judged more case-by-case to arrive at time periods relevant to what is a "commercial" operation in a given situation. In this respect, this change also responds to the criticism that the proposal was itself a rule—binding the

Federal coal lessees and the discretion of BLM Field Officials under a 1 percent rule that left the BLM Field Officials with some discretion in adjudicating Federal coal lessees' status—adopted without proper procedures. Third, the initial actions of BLM Field Officials in determining time periods for measuring 1 percent production will give BLM the proper information necessary to determine whether the 1 percent rule should be changed, or whether a fixed time period should be established by rule to go along with any fixed-percent amount.

Specific Comments

1. *Applicability of section 2(a)(2)(A).* Two comments stated that because FCLAA was prospective, section 2(a)(2)(A) could not apply to pre-FCLAA Federal coal leases until their first readjustment after FCLAA was enacted. The BLM agrees that FCLAA diligence (amended Section 7 of MLA) is prospective and only applies to pre-FCLAA Federal coal leases at the time they are readjusted (or otherwise made subject to amended MLA) after FCLAA. However, section 2(a)(2)(A) is a lessee-qualification, not a Federal coal lease-diligence, provision. The legislative history clearly shows that section 2(a)(2)(A) was designed specifically to apply pressure on the holders of pre-FCLAA Federal coal leases to develop. Consistent with that purpose, Congress started the clock on the holding prohibition with the date of FCLAA enactment (August 4, 1976). These comments were rejected.

Two comments stated that since readjustment constitutes issuance of a new Federal coal lease, the section 2(a)(2)(A) 10-year holding clock started over at the time of each post-FCLAA readjustment. Section 2(a)(2)(A) states "holds . . . *and* has held." (Emphasis added.) Further, section 2(a)(2)(A) states that "periods of time prior to August 4, 1976, shall not be counted." (See 30 U.S.C. 201 (a)(2)(A) (1982).) It does not continue the statement with "and periods of time on or after August 4, 1976, and prior to the subsequent readjustment after that date shall not be counted." The requirement is to hold and have held during any period after August 4, 1976. The "holding" clock began on August 4, 1976, and is not interrupted by readjustment. Finally, readjustment is not *issuance* of a new Federal coal lease. A brief comparison of lease "renewals" under MLA (as with sodium—see 30 U.S.C. 262, construed in Solicitor's Opinion M-36943, 89 I.D. 173 (1982)), and lease "readjustments" under MLA (as with coal and potash—see 30 U.S.C. 207, 283, construed in Solicitor's Opinion M-36939, 88 I.D. 1003 (1981)), clarifies why readjustments are unlike, and do not constitute, a new Federal lease issuance. These comments were rejected.

2. *Minerals prohibited from issuance.* One comment stated that the prohibition should apply to all minerals, not only onshore but also offshore. The Act in question, MLA, is limited by its own terms, even with its amendments, to the following onshore Federal mineral commodities: coal; gilsonite, including all vein-type, solid hydrocarbons; oil and gas, including tar sands; oil shale; phosphate; potash; sodium; and sulphur. See 30 U.S.C. 181. This comment was rejected.

One comment stated that section 2(a)(2)(A) prohibition should only apply to the issuance of Federal coal leases. As discussed in Solicitor's Opinion M-36951, had section 2(a)(2)(A) only prohibited the issuance of Federal coal leases, it would not have stated: "The Secretary shall not issue a lease or leases under the terms of this Act . . .." (90 Stat. 1083, codified by substituting "chapter" for "Act" at 30 U.S.C. 201 (a)(2)(A) (1976)). Even as codified, the entire MLA is embraced in the prohibition. This conclusion of the Solicitor's Opinion has been challenged in *Conoco, Inc.* v. *Hodel,* Civil No. 85-277 (D. Del. filed May 10, 1985). Briefing is nearly completed in that case.

One comment questioned whether section 2(a)(2)(A) would prohibit the issuance of Federal coal leases, which are issued pursuant to pending Federal coal preference right lease applications (PRLA's), to an entity in violation of section 2(a)(2)(A) provisions. The DOI is studying the issue of whether Federal leases prohibited from being issued includes Federal coal PRLA's pending on the date of enactment of FCLAA, Federal coal PRLA's submitted on the basis of findings as the result of prospecting permits that were reinstated after enactment of FCLAA, and PRLA's for other minerals under MLA. This subject is not addressed in the guidelines, pending DOI resolution of the issue.

3. *Federal coal leases required to be held after being mined out.* Three comments stated that where Federal coal leases are required to be held (for reclamation purposes) for either 5 or 10 years after the Federal coal lease is mined out, they should not subject the Federal coal lessee to the section 2(a)(2)(A) prohibition against acquiring Federal leases. With respect to Federal coal leases that *are subject to amended MLA "diligence,"* this is one of several sections of the existing 43 CFR Group 3400 rules that may be revised (however, see the last paragraph of the section "3." discussion regarding section 7(a)). The current regulatory definition of continued operation and the regulatory language regarding payment of advance royalty *in lieu* of the continued operation production obligation will also be examined. The regulatory review effort is currently scheduled to commence during the latter part of FY 1985, with completion during FY 1986. However, as the rules are currently written, Federal coal leases that *are subject to amended MLA "diligence"* and that are held for any reason after being mined out *may* prohibit the Federal coal lessee from Federal lease issuance. Until the promulgation of corrective rules, such situations will be assessed on a case-by-case basis. These comments will be considered in the forthcoming regulatory review effort.

For Federal coal leases *not yet subject to amended MLA "diligence"* that have been mined out and are being held for any reason (e.g., reclamation), such a problem does not exist in the current regulatory language. Under the current regulatory language, Federal coal leases *not yet subject to amended MLA "diligence"* that have been mined out have no remaining recoverable coal reserves; therefore, the requirement to produce "commercial quantities" (1 percent of the recoverable coal reserves) is not applicable. If the Authorized Officer determines that such a Federal coal lease has zero recoverable reserves remaining, the Federal coal lease would not jeopardize the Federal coal lessee, or any affiliate, regarding his qualifications under section 2(a)(2)(A). The guidelines have been revised to incorporate this policy regarding Federal coal leases not yet subject to amended MLA "diligence."

Two comments stated that where a Federal coal lease was mined out but the Federal coal lessee was required to retain it (e.g., for reclamation), formation of a logical mining unit (LMU) was not feasible because the mined-out reserves would automatically be included in the LMU recoverable coal reserves for LMU diligence. This section of the existing 43 CFR Group 3400 rules is being reviewed for possible revision. Such situations will be assessed on a case-by-case basis at this time. These comments will be considered in the forthcoming regulatory review effort.

Because of the 1982 regulatory diligence system that retained the concept of defining continued operation in terms of commercial quantities, if a Federal coal lease has been mined out but is required to be held for such

purposes as reclamation, the Federal coal lessee must pay an advance royalty which could never be recouped by production. Under the 1982 regulatory diligence system, the Federal coal lessee would have no relief from an advance royalty payment obligation. The forthcoming regulatory review effort will examine this issue further. Although this problem might be capable of being resolved by LMU formation, if LMU formation is not possible, one specific aspect can only be cured by legislative change. Amended section 7(a) states that a Federal coal lease lasts as long after 20 years as coal is *produced annually in commercial quantities.* As currently written, if a Federal coal lease were mined out and had been subject to amended MLA for at least 20 years, the Federal coal lease could no longer *last,* regardless for whatever purpose the Federal coal lessee may wish to hold the Federal coal lease past that time. The DOI cannot amend this legislative requirement by rulemaking.

4. *Failure of LMU's.* Two comments stated that failure of an LMU should not retrigger the section 2(a)(2)(A), 10-year holding period from the point at which it was suspended by inclusion in a producing LMU. The comments continued that, otherwise, this could jeopardize Federal leases acquired during the existence of the LMU. One comment stated that the section 2(a)(2)(A) prohibition should begin anew upon LMU failure. As stated in the draft guidelines, and retained in these guidelines: Any *previous* or any *subsequent* failure to comply with section 2(a)(2)(A) does *not* negate a Federal coal lessee, or any affiliate, from qualifying for another Federal lease issuance. *However,* at the time that qualifications for a Federal lease issuance on or after August 4, 1986, are being determined, the Federal coal lessee, or any affiliate, must be in full compliance with section 2(a)(2)(A). Any Federal coal lessee, or any affiliate, must satisfy section 2(a)(2)(A) *at the time* that qualifications are being determined. There is no provision in section 2(a)(2)(A) that mandates retroactive or future punishment because that Federal coal lessee, or any affiliate, failed to satisfy section 2(a)(2)(A) at another time. Therefore, any such Federal leases acquired in compliance with applicable Federal statutes and rules or regulations during the existence of the LMU would not be jeopardized by subsequent failure of the LMU.

Section 2(a)(2)(A) is retriggered by failure of an LMU. It is also retriggered by an LMU that stops producing, *provided that* the LMU is in its LMU-specific diligent development period. The section 2(a)(2)(A) a 10-year *holding period* is not suspended by LMU formation or superseded by LMU production. Rather, producition from any where within the LMU satisfies the section 2(a)(2)(A) requirement of producing in commercial quantities for each Federal coal lease contained in the LMU. This comment was rejected in part and accepted in part.

5. *Definition of commercial quantities.* This section of the existing 43 CFR Group 3400 rules has been identified by BLM as requiring additional study and consideration for revision, especially as it relates to amended section 7 diligence and to section 2(a)(2)(A). Comments were specifically requested on the concept of the definition of producing in commercial quantities. In the 1982 regulatory diligence system, BLM defined both diligent development and continued operation in terms of commercial quantities, with separate, specified timeframes (roughly equating the amended section 7(*b*) obligations with the amended section 7(*a*) obligations), and defined commercial quantities to be 1 percent of the recoverable coal reserves. The preamble to the 1982 rulemaking states that this definition applies for both section 2(a)(2)(A) purposes, although without any specified timeframe, as well as for Federal coal lease diligence on post-FCLAA Federal coal leases (amended section 7 of MLA).

Three comments stated that producing in commercial quantities should be defined as a bona fide sales contract plus sufficient production to show existence of a vialble operation. Three other comments would extend this proposed alternative to include also investment in facilities without requiring production. One comment stated that producing in commercial quantities should be defined as acquisition of a bona fide sales contract *and* 1 percent over a 10-year bracket. Acquisition of a bona fide sales contract and investment in facilities could be indicative of commercial production; these concepts will be considered in the forthcoming regulatory review effort.

Three comments stated that producing in commercial quantities should require production of 1 percent by August 4, 1986, and 1 percent annually thereafter, regardless of who holds the Federal coal lease. These comments ignore the operation of the statutory language in instances when an entity acquired a pre-FCLAA Federal coal lease after August 4, 1976 (e.g., by arm's-length assignment), as late as 1984 for example. Such an entity should not be required to produce 1 percent of the recoverable coal reserves within 2 years from the date of acquisition. This would be an onerous burden on the entity that was acquiring the Federal coal lease.

As stated previously, section 2(a)(2)(A) is a lessee-qualification, not a Federal coal lease-diligence, provision. Even for Federal coal lessees who have held their Federal coal leases for 10 years, DOI declines to implement the system suggested (i.e., 1 percent by August 4, 1986, and 1 percent annually thereafter, regardless of who holds the Federal coal lease). Those Federal coal lessees who do not seek Federal oil and gas or other Federal coal leases are under no compulsion to develop or relinquish by August 4, 1986, and presumably have been planning and seeking to develop, consistent with their specific Federal coal lease development obligations. Those Federal coal lessees may have appropriately planned not to begin producing until after August 4, 1986, knowing the consequences. That entity's only compulsion to develop comes from the amended section 7 "diligence" obligations of the Federal coal leases it holds, which may not require production until after 1986—most likely whenever 10 years after the first, post-August 4, 1976, Federal coal lease readjustment occurs. The DOI does not find it appropriate to state in 1985 that these Federal coal lessees should be obligated to produce 1 percent by August 4, 1986, to satisfy section 2(a)(2)(A), nor does DOI believe that section 2(a)(2)(A)compels this result. While this is one way readers of the 1982 rules' preamble may have interpreted the statement that 1 percent was the definition of commercial quantities for section 2(a)(2)(A) purposes, it was not then DOI's intent and is not now, in examining the comments on the draft guidelines, the appropriate response in implementing section 2(a)(2)(A). This suggested interpretation was rejected.

Two comments stated that producing in commercial quantities should only be 1 percent over 10 years (i.e., the "floating" 10-year bracket approach proposed in the draft guidelines). The BLM agrees with this interpretation, except that 10 years will serve as a maximum, not a fixed, timeframe, allowing for the Authorized Officer's discretion as discussed in the last two paragraphs in the *General Comments* above.

One comment stated that the 10-year bracket must be the 10-year holding period, not the date that production first commences after August 4, 1976. Again,

section 2(a)(2)(A) is a lessee-qualification, not Federal coal lease-diligence, provision. Section 2(a)(2)(A) states that when an entity is not producing coal in commercial quantities, the Federal coal lessee, or any affiliate, must be disqualified, if the Federal coal lessee has held the Federal coal lease for 10 years. The intent of Congress in enacting section 2(a)(2)(A) was to discourage speculation in the coal industry. As stated previously, if an entity does not seek to qualify for new Federal leases (but decides rather to hold those Federal coal leases it currently holds), section 2(a)(2)(A) does not compel that entity to do anything. Production from such Federal coal leases that the Federal coal lessee desires to retgain is required only at or prior to the time that that entity seeks to qualify for another Federal lease issuance. This suggested interpretation was rejected.

One comment stated that producing in commercial quantities should be defined as payment of any production royalty, thus showing commercial production. Another comment stated that the definition should be based on the commercial nature of the coal operation. These comments will be considered in the forthcoming regulatory review effort.

Two comments stated that compliance with all Federal coal lease terms and conditions should be sufficient to show producing in commercial quantities. The inherent problem in this position is that such compliance can exist without production, or even without an installed mine, until the running of the post-FCLAA readjustment diligence clock or enforcement of unreadjusted Federal coal leases' minimum production clauses would require production. See Solicitor's Opinion M-36951, pp. 14-18, entitled: "A. *What is the status of pre-FCLAA leases where the lessee is not in violation of its 'diligence' requirements?*" These comments were rejected.

6. *Force majeure* suspensions. Three comments stated that the lack of a market should constitute *force majeure* suspension. The preamble to the July 30, 1982, rules stated that this would be contrary to MLA. DOI's response to public comments discussed in that preamble agreed that normal business risks are not justification for suspensions or extensions. With respect to extensions, section 7(b) states, in part, that Federal coal leases are subject to the conditions of diligent development and continued operation except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee. Section 7(b) states further that the "Secretary * * *, upon determining that the public interest will be served thereby, may suspend the condition of continued operation." In the 1982 preamble, "lack of market" was not considered to constitute *force majeure* under section 7(b). As stated earlier in this preamble, section 2(a)(2)(A) may be relieved by the *force majeure* provision of section 7(b) *only after* the Federal coal lease becomes subject to amended MLA "diligence."

DOI's current interpretation of the section 7(b) *force majeure* provision is fully consistent with numerous court decisions construing *force majeure* provisions in private coal leases. See 4 *American Law of Mining* § 132.061, n. 13 (2nd ed. 1984) (citing numerous cases). For example, in *Bennett v. Howard*, 195 S.W. 117 (Ky. 1917), the Court rejected an argument that market conditions were encompassed by a *force majeure* provision allowing a lessee certain relief in cases of "strikes or other unavoidable casualties." The Court said: "It is a matter of common knowledge that the coal market may be good at one time and bad at another. Such changes in the market are but ordinary incidents of business, and may be expected to occur at any time. * * * The word 'casualty' . . . in ordinary usage is applied to accidents which happen suddenly and unexpectedly, and not in the usual course of events. * * * [A] bad market is in no sense an unavoidable casualty . . ." 195 S.W. at 119.

A Federal coal lease may receive a *force majeure* suspension for such conditions as a "lack of market" *only if* such a term is included as an express Federal coal lease term, as is the case for several pre-FCLAA Federal coal leases that are not yet subject to amended MLA "diligence." However, such a *force majeure* suspension does *not* toll the running of the section 2(a)(2)(A) clock. These comments were rejected.

7. *Relinquishment.* Three comments stated that Federal coal lessees should have the right to relinquish Federal coal leases. In an April 13, 1984, letter to the Senate, DOI states:

> We are not aware of any case where a lessee had a problem with relinquishment. The provision of the MLA authorizing the relinquishment of Federal coal leases (30 U.S.C. 187) gives the Secretary discretion in accepting them. The coal regulations implementing this discretion provide that the relinquishment will not be accepted if it would "impair the public interest" (43 CFR 3452.1-3). Under this rule, if DOI verifies that no surface disturbance has occurred on the Federal coal lease, and the rental account is in good standing, BLM accepts the relinquishment. This is true whether or not an operation and reclamation plan has been submitted. * * * [W]e only need to ensure that DOI can verify that coal production or significant surface disturbance has not occurred.

If no significant surface disturbance has occurred and the royalty management account and rental account are in good standing, then BLM would accept relinquishment of Federal coal leases.

Three comments stated that BLM must set fixed Federal coal lease relinquishment processing deadlines by rule so that section 2(a)(2)(A) is not triggered. The comments stated further that if there is an outstanding reclamation obligation or if a royalty account is not in good standing, BLM should accept the relinquishment if the Federal coal lessee establishes an escrow account, posts a bond, or by other means. One comment stated further that the rules should place a 90-day time limit on BLM for processing relinquishments and one comment carried the proposed suggestion further by stating that the rule must define "in the public interest" for processing relinquishments. As stated in the draft guidelines, and retained in these guidelines, rules will be developed to protect the priority of noncompetitive oil and gas lease-applicants and to prevent adverse action on other mineral lease and LMU applications, and assignment and relinquishment approval requests, where BLM is unable to act upon nonproducing Federal coal lease assignments, relinquishments, or LMU's within a specific period of time that will be established in the rules. This will include mineral lease and LMU applications, and assignment and relinquishment approval requests, pending on August 4, 1986. The guidelines are not intended to amend or replace existing rules, and do not. These comments will be considered in the forthcoming regulatory review effort.

8. *Assignments.* In considering questions related to Federal coal lease assignments, DOI has clarified several matters about holding a Federal coal lease and the 10-year period. First, any holder of record title, even if less than 50 percent or not in control of the Federal coal *lease*, "holds" for section 2(a)(2)(A) purposes. Lack of control is relevant in defining affiliates of the Federal coal lessees, but not in identifying who holds the Federal coal lease itself. An assignment of a 50 percent, undivided interest in a Federal coal lease may start a new clock for the new 50-percent holder, but the holder of the other 50 percent continues under his pre-existing clock. Second, where a Federal coal

lease is assigned by a parent corporation to a subsidiary after August 4, 1976, if the Federal coal lease is not producing in commercial quantities, that new Federal coal lessee cannot qualify on or after August 4, 1986, *as long as the parent corporation remains in control.* This is because Federal lease issuance to the subsidiary would be barred by the parent corporation's 10-year clock and ensuing prohibition. Similarly, a new parent corporation, upon acquiring control of a Federal coal lessee corporation, would be governed by the Federal coal lessee's original 10-year clock. Thus, that new parent corporation cannot qualify on or after August 4, 1986, as long as the subsidiary it controls remains in violation of section 2(a)(2)(A).

One comment stated that BLM should reject assignments of all Federal minerals, onshore and offshore, regardless of the mineral involved. DOI does not believe it is appropriate to extend the section 2(a)(2)A) sanction beyond MLA. Further, DOI does not believe it is appropriate to extend the section 2(a)(2)(A) sanction on assignments beyond Federal coal. This comment was rejected. Two comments stated that Federal coal lease assignments are not Federal coal lease issuances and therefore shoild not be prohibited because that would hinder development and lessen competition. These comments were rejected because such a change would require a rule change; however, the comments will be considered in the forthcoming regulatory review effort. It should be noted that the rule prohibiting approval of Fedeal coal lease assignments after August 4, 1986, to section 2(a)(2)(A) disqualified-entities was adopted in July 1982.

One comment stated that only assignments of Federal noncoal leases should be allowed. However, the comment also carried the qualification that, if assignments of Federal coal leases are allowed, upon reassignment of a Federal coal lease to a previous assignor, the previous assignor should be charged with his previous holding period of the reassigned Federal coal lease. BLM agrees with the latter part of this suggestion. The wording of section 2(a)(2)(A) states that a Federal coal lessee must hold *and have held* a nonproducing Federal coal lease for 10 years before the Federal coal lessee, or any affiliate, is prohibited from being issued Federal leases under section 2(a)(2)(A). The legislative history shows that when Congress added that language to MLA, it was specifically inserted as an antispeculation-in-the-coal-market provision. Were BLM to allow arm's-length assignments from one entity to another and back again without adding the previous and subsequent holding periods for section 2(a)(2)(A) purposes, the intent of Congress would be compromised. The guidelines state that, if a Federal coal lease is once again held by a subsequent reassignment, any prior holding period of that Federal coal lease is additive for the Federal coal lessee. However, if a Federal coal lease has been assigned arm's-length, the original Federal coal lease has no control over that Federal coal lease unless it is again held by reassignment. Therefore, the assigning Federal coal lessee cannot be charged with a holding period during a time when that Federal coal lessee has no control over (i.e., is not holding) the Federal coal lease.

By way of explanation, Entity A and Entity B (not related by legal or actual control) each hold a 50 percent interest in Federal coal lease "A–123," issued to them jointly prior to August 4, 1976. In 1982, the two entities make a partial assignment (50 percent of the acreage of Federal coal lease "A–123" to Entity C (not related to either Entity A or Entity B by legal or actual control). The partial assignment interest of the Federal coal lease acreage results in a new serial number "A–456" for that portion of Federal coal lease "A–123" that Entity C now holds (43 CFR 3453.2–5) (1984). Entities A and B each now hold a 50 percent interest in the remaining Federal coal lease "A–123;" Entity C now holds a 100 percent interest in Federal coal lease "A–456."

In 1985, Entity B assigns all of its interest in Federal coal lease "A–123" to Entity A. Entity A now holds a 100 percent interest in Federal coal lease "A–123;" Entity B does not hold any interest in either Federal coal lease; Entity C still holds a 100 percent interest in Federal coal lease "A–456." In 1987, Entity C assigns 100 percent of Federal coal lease "A–456" to Entity B. Entity A still holds 100 percent of Federal coal lease "A–123;" Entity B now holds 100 percent of Federal coal lease "A–456;" and Entity C does not hold any interest in either Federal coal lease.

In 1989, what is the status of each entity's section 2(a)(2)(A) 10-year holding period? Entity A has held an interest in Federal coal lease "A–123" for 13 years (1976–1989); Entity C *held,* but does not currently *hold,* and interest in "A–456" for 5 years (1982–1987); Entity B holds and has held an interest in Federal coal lease "A–123" (and split-off "A–456") for a total of 11 years (1976–1985 as "A–123," and 1987–1989 as "A–456"). The creation of a new serial number ("A–456") in 1982 did not constitute creation of a new Fedeal coal lease for purposes of the section 2(a)(2)(A) 10-year holding period. The only time after August 4, 1976, that Entity B did not hold any interest was between 1985 and 1987.

It should be noted that Entity C could buy the remaining Federal coal lease "A–123" without any additive holding period because Entity C had never held any portion of Federal coal lease "A–123" prior to creation of Federal coal lease "A–456." *For Entity C only* in this example, Federal coal leases "A–123" and "A–456" are separate and distinct for the purposes of the section 2(a)(2)(A) holding period.

The situation is different for a Federal coal lease that is included in an LMU that subsequently fails. This is because, even though the Federal coal lease is included in an LMU, the Federal coal lessee still has control of the Federal coal lease. Therefore, the Federal coal lease-holding clock continues while the Federal coal lease is included in an LMU. The LMU's failure simply has the Federal coal lease's status considered by itself again, but is in no way comparable to a partial assignment.

Three comments stated that only bona fide, arm's-length assignments of Federal coal leases should be allowed (i.e., that BLM should never approve assignments of Federal coal leases from one entity to another entity where the two entities are related by legal or actual control). BLM disagrees with this position. If there is not a bona fide, arm's-length assignment (e.g., assignment of a partial interest or assignment to an affiliate), then the assignor is likely still in jeopardy of the Federal coal lease-holder's noncompliance with section 2(a)(2)(A). The assignor is still subject to the section 2(a)(2)(A) prohibition if the assignee is an affiliated company under section 2(a)(2)(A), which is the classic non-arm's-length assignment, or if the assignor still "holds" the Federal coal lease under a right-of-repurchase option or similar method of indirect holding. While BLM cannot allow such assignments to favorably adjust the calculation of section 2(a)(2)(A) provisions, BLM does not believe that all factors that may be a part of an assignment decision should actually be prejudged and therefore preclude such assignments.

Conversely, a "right-of-first-refusal" to repurchase by the seller does *not* constitute a method of direct or indirect holding of a Federal coal lease. For example, a "right-of-first-refusal" allows an entity to exercise an option to reacquire an asset, but leaves the

original buyer fully in control regarding whether the property will be resold. If Entity A assigns a Federal coal lease arm's-length to Entity B and if Entity C wishes to "buy" that Federal coal lease by assignment, Entity A's "right-of-first-refusal" would only allow it to reacquire the Federal coal lease if Entity B chose to sell and if Entity A could match Entity C's offer.

Whether an assignment is bona fide, arm's-length, or of a partial interest to an entity not controlled by or under common control with the assignor, a new 10-year holding period attaches to the assignee. These comments were rejected.

9. *Affiliates.* One comment stated that fixed-percentage ownership for joint ventures, mergers, corporate takeovers, minority shareholdings, and others should not be used as criteria for determining the identity of affiliates. One comment stated that BLM should implement an "element of control," not numerical restraint (i.e., stock ownership) using "established legal principles." BLM agrees with these comments.

One comment questioned: If Entity A holds a controlling interest in both Company B and Company C, and if both Company B and Company C are "totally unrelated," does Company B noncompliance prevent Company C from obtaining another Federal lease? The answer is yes. Section 2(a)(2)(A) applies to an entity, or any affiliate. Therefore, since both Companies are under common control by Entity A, Company B noncompliance will prevent not only Company C, but also Entity A, from obtaining another Federal lease. Companies B and C are simply not "totally unrelated" for purposes of section 2(a)(2)(A).

As an example of "totally unrelated," Entity A is issued Federal coal lease "B–123" in 1972. The Federal coal lease "B–123" has never produced. Entity B is not related to Entity A by legal or actual control. Entity C is a wholly owned subsidiary of Entity B. Entity C is issued Federal coal lease "B–456" in 1984. As of August 4, 1986, Entity A is prohibited under section 1(a)(2)(A) from being issued another Federal lease because Federal coal lease "B–123" (that Entity A holds and has held for at least 10 years since August 4, 1976) has never produced and is not producing in commercial quantities. However, Entity C and, by corporate relationship, Entity B are not yet subject to such a prohibition because they have only held Federal coal lease "B–456" for 1 year. In 1988, Entity A acquires Entity C from Entity B in a corporate takeover (Federal coal lease "B–123" has never produced and is still not producing in commercial quantities). Section 2(a)(2)(A) does not prohibit *acquisition* of Federal leases by corporate takeover of the Federal coal lessee. Therefore, although Entity A is prohibited from being *issued* a new Federal lease at this time, Entity A is not prohibited under section 2(a)(2)(A) from *acquiring* Entity C's Federal coal lease "B–456" because the corporate takeover involves "totally unrelated" entities. Such a corporate takeover acquisition of a Federal coal lease does not constitute an *assignment;* it is only a change in corporate stock ownership of the continuing same Federal coal lease. The same logic would apply to *any* Federal lease to be issued under MLA on or after August 4, 1986. And Entity C is not also disqualified due to its affiliation with Entity A.

One comment questioned: How can a second corporation prove the first corporation's compliance if the second has no access/legal right to the first company's books? BLM believes that a parent corporation would compel separate corporations it *controls* to share information necessary for each to determine its own compliance with Federal law. And, in fact, this could be one of the principal determinants of "control."

One comment stated that BLM should require lessee certification of compliance with section 2(a)(2)(A) at the time the entity wishes to qualify for a Federal lease on or after August 4, 1986. One comment questioned: If a Federal coal lessee is determined to be ineligible by BLM, what must he do to confirm that he is once again eligible? Will there be a list? If not, how can a Federal coal lessee, or any affiliate, determine whether to pursue Federal lease issuance if there is a question regarding his eligibility? Other comments stated that such qualifications should be determined on a case-by-case basis: (a) Using no established formula (three comments); (b) using something similar to the 10 percent stock-ownership rule (one comment); or (c) using the following definition (two comments):

(1) A corporation is a subsidiary of another corporation when more than 50 percent of its voting securities is held directly or indirectly by such other corporation;

(2) A corporation is an affiliate of another corporation when more than 50 percent of the voting securities of each such corporation is held directly or indirectly by another person, corporation, or entity; or

(3) The Secretary may determine that in the absence of legal control through stock ownership a person, association, or corporation is under the actual control of another person, association, or corporation.

The DOI believes this is useful and summarizes relevant, well-accepted principles that the Secretary will apply in making determinations of section 2(a)(2)(A) applicability to related corporate entities; therefore, BLM has included a slightly modified version of it in the guidelines. BLM has determined that it is appropriate to supplement the guidelines by briefly discussing how section 2(a)(2)(A) applies to corporate mergers and acquisitions. This supplemental information is contained in Appendix C of the guidelines.

In response to these comments, BLM agrees that, unless the express wording of section 2(a)(2)(A) is repealed and replaced with other provisions, on or after August 4, 1986, qualifications will have to be known or determined at the time of each Federal lease issuance under MLA. This would require a change in regulations for existing lessee-certification statements (e.g., 43 CFR 3472.2–2(f) for coal, 43 CFR 3102.5 for oil and gas) and necessitate the development of procedures and standards for BLM to apply generically. Further, BLM will establish a method by which a company which is uncertain about its status can certify that it is or is not "controlled by [or] under common control with" another entity. However, BLM believes that the guidelines for implementing section 2(a)(2)(A) should not be delayed pending the establishment of such a monitoring system.

10. *Guidelines* vs. *regulations.* Seven comments stated that the guidelines must be published as rules. One comment stated that after the guidelines have been published in final form, they should be formalized in rulemaking. BLM believes it necessary to publish guidelines now that will aid BLM Field Offices in determining compliance with section 2(a)(2)(A) and the interrelationships with other MLA provisions for Federal coal leases, as currently codified at 43 CFR Group 3400. In addition, BLM believes it necessary to consider revisions to the existing rules as discussed in this SUPPLEMENTARY INFORMATION. During the forthcoming regulatory review effort, interpretations of the phrase "producing in commercial quantities," as set forth in these guidelines (as well as public comments received on the draft guidelines), will be re-examined.

One comment stated that if guidelines are published, they must contain a justification statement as to why they are not being published as rules. The guidelines are meant to serve solely as

an aid to BLM Field Offices in determining compliance with section 2(a)(2)(A) on or after August 4, 1986, and do not amend, or redefine, any of the existing rules at 43 CFR Group 3400. In many respects, the guidelines simply state BLM's position on legal and interpretive questions under the statute. In other respects, they preserve BLM Field Office discretion under existing rules (e.g., to make factual determinations on what is a reasonable period for producing 1 percent of the recoverable coal reserves for a specific operation, consistent with BLM's policy statements contained in the guidelines). Even if these guidelines still appear to be rules to these commenters, BLM points out that they were adopted only after notice and comment, and are published in the **Federal Register** thus complying with these provisions of the Administrative Procedure Act. The guidelines advise BLM Field Offices how to implement the existing rules, and various parts of the section of law not treated in those rules.

One final comment stated that BLM should ignore guidelines and support section 2(a)(2)(A) repeal, because the 1982 rules are still the subject of a civil suit. The publication of the guidelines in no way compromises BLM's 1982 Federal coal rules. The 1982 rules that relate to section 2(a)(2)(A) discussed above are not at issue in the pending civil suit, although that suit does challenge aspects of the rules governing "diligence" for pre-FCLAA Federal coal leases. The guidelines are not inconsistent with that 1982 rulemaking. This comment was rejected.

These guidelines were formulated in light of comments received on the draft guidelines and informal advice rendered by Solicitor's Office staff, and are consistent with the conclusions in Solicitor's Opinion M-36951 (February 12, 1985).

The primary author of these guidelines is Allen B. Agnew, Branch of Technical Support, Solid Mineral Operations Division, Bureau of Land Management (BLM), assisted by other BLM field and headquarters personnel and the Office of the Solicitor, Department of the Interior. The guidelines are set forth below.

Dated: August 22, 1985.

James M. Parker,

Acting Director, Bureau of Land Management.

COMMERCIAL QUANTITIES FOR SECTION 2(a)(2)(A) OF THE MINERAL LEASING ACT (MLA) (SECTION 3 OF THE FEDERAL COAL LEASING AMENDMENTS ACT) GUIDELINES FOR IMPLEMENTATION

Introduction

ON OR AFTER AUGUST 4, 1986, IF A FEDERAL COAL LEASE, THAT HAS BEEN HELD BY THE CURRENT FEDERAL COAL LESSEE FOR AT LEAST 10 YEARS, IS *NOT PRODUCING IN COMMERCIAL QUANTITIES* OR *NOT UNDER A SUSPENSION*, THE *FEDERAL COAL LESSEE, OR ANY AFFILIATE, CANNOT QUALIFY* UNDER SECTION 2(a)(2)(A) FOR A NEW ONSHORE FEDERAL LEASE ISSUED PURSUANT TO MLA.

Section 2(a)(2)(A) of MLA, as amended, can be satisfied by *producing coal in commercial quantities* on the date that qualifications are being determined for a new Federal lease issuance for the three major classes of Federal coal leases: (1) Subject to the 1982 regulatory diligence system, and producing; (2) not subject to the 1982 regulatory diligence system, and producing; and (3) included in a logical mining unit (LMU) which is producing. In order to take into account the differences in the first two types of Federal coal leases, the guidelines treat them somewhat differently, as is developed below.

Section 2(a)(2)(A)'s prohibition is also avoided by certain other circumstances, such as: (1) Approved arm's-length transfer (e.g., assignment) of Federal coal lease(s), thus the assignor no longer "holds . . . and has held"; (2) approved relinquishment, thus the Federal coal lessee no longer "holds . . . and has held"; (3) approved *force majeure* suspension (strikes, the elements, or casualties not attributable to the Federal coal lessee), thus the production obligation is suspended; (4) amended section 7 advance royalty [1] paid *in lieu* of continued operation, thus satisfying the production obligation; and (5) Section 39 (30 U.S.C. 209) suspension (in the interest of conservation, as determined by the Secretary), thus the production obligation is suspended.

A detailed discussion of these concepts follows.

Background

Section 3 of the Federal Coal Leasing Amendments Act (FCLAA) added section 2(a)(2)(A), among others, to MLA. Section 2(a)(2)(A) states, in part, that "[t]he *Secretary shall not issue a lease* or leases . . . *to any person*, association, corporation . . . *where* any *such entity holds a lease* or leases issued by the United States *to coal deposits and has held such lease* or leases *for* a period of *ten years when such entity is not*, except as provided for in section 7(b) of this Act, *producing coal from the lease* deposits *in commercial quantities.*" (Emphasis added.) Departmental analysis of section 2(a)(2)(A) resulted in the following distinct questions about the "producing in commercial quantities" obligation: What is the commercial quantities amount; over what time period must that production have occurred; what are the recoverable coal reserves for the purposes of this section of MLA; what can a Federal coal lessee do to satisfy this requirement; what constitutes an affiliate for purposes of section 2(a)(2)(A); and for which mineral commodities can a Federal coal lessee, or any affiliate, be prohibited from obtaining a Federal lease for his failure to satisfy section 2(a)(2)(A)?

Producing in Commercial Quantities: Section 2(a)(2)(A) vs. Section 7 of MLA

The term "commercial quantities" is used in three places in the Federal coal leasing statutes—twice in Section 7(a) regarding individual Federal coal lease diligence and once in section 2(a)(2)(A). In implementing FCLAA, the Department of the Interior (DOI) has, since 1976, defined by rule diligent development (required by Section 7(b) of MLA) to conform with the producing-in-commercial-quantities-at-the-end-of-10-years obligation in section 7(a), and has related continued operation (also required by section 7(b)) to the lease-lasts-as-long-as-coal-is-produced-annually-in-commercial-quantities obligation of section 7(a).[2] Thus, the definitions of diligent development and continued operation use the term "commercial quantities." The Secretary of the Interior stated that the 1982

[1] Amended section 7 advance royalty vs. pre-August 4, 1976, Federal coal lease-stipulated advance royalty is discussed under the section of these guidelines entitled "Payment of Advance Royalty *in lieu* of Continued Operation."

[2] With respect to a Federal coal lease that achieves diligent development in five years, for example, and then proceeds to continued operation status, the continued operation definition conforms with the section 7(a) at-the-end-of-10-years obligation as well.

regulatory diligence system definition of commercial quantities—being 1 percent of the recoverable coal reserves—applies for both section 2(a)(2)(A) and section 7, in the preamble to the July 30, 1982, 30 CFR Part 211 (recodified at 43 CFR Part 3480) rules, which because effective on August 30, 1982. The 43 CFR Part 3480 rules then defined, differently for each, the time period in which the 1 percent is measured for both diligent development and continued operation purposes, but failed to define the commercial quantities time period for section 2(a)(2)(A) purposes. Lack of guidance on the time period in which the producing in commercial quantities requirement is measured for section 2(a)(2)(A) has caused Federal coal lessees great uncertainty, especially as they examined their 1982–1983 election possibility under the 1982 rules and as they contemplate their ability to obtain Federal leases on or after August 4, 1986.

See Appendix A for definitions of advance royalty, commercial quantities, continued operation, diligent development, Federal lease issuance, producing, and 1982 regulatory diligence system. See Appendix B for a listing of Federal onshore mineral commodities that are prohibited from being issued to any entity, or any affiliate, that cannot satisfy the obligations of section 2(a)(2)(A) at the time that qualifications are being determined for a Federal lease issuance on or after August 4, 1986. See Appendix C for a generic discussion of affiliates.

Section 2(a)(2)(A) Requirements

The word "producing" implies a continuing obligation on the part of the Federal coal lessee. The Bureau of Land Management (BLM) has determined that the continuing obligation means that if a Federal lease is to be issued at a given time, in order to determine whether a potential bidder is qualified under section 2(a)(2)(A), BLM will look at all of the Federal coal lessee's, or any affiliate's, Federal coal leases at that time and determine if all of the Federal coal leases that the Federal coal lessee, or any affiliate, holds and has held for at least 10 years are *producing in commercial quantities*, as measured over a certain time period. If each such Federal coal lease is *producing in commercial quantities* in that certain time period, the Federal coal lessee is satisfying section 2(a)(2)(A) and that Federal coal lessee, or any affiliate, may be issued another Federal lease. Section 2(a)(2)(A) requires that the Federal coal lease must have been held by the current Federal coal lease holder for 10 years before the prohibition attaches. Section 2(a)(2)(A) also states that, in computing the 10-year period, periods of time preceding August 4, 1976, shall not be included.

The Federal coal lease holding period, however, is independent of the timeframe over which production will be measured for section 2(a)(2)(A). The period over which commercial quantities is measured is not tied to August 4, 1976. Neither the law nor the rules prescribe such a timeframe. For Federal coal leases not yet readjusted (or otherwise made subject to FCLAA) after August 4, 1976, the beginning of the production bracket may begin as late as the date that coal is first produced on or after August 4, 1976. BLM has determined that 10 years is appropriately set as the maximum time over which production can be credited toward the producing-in-commercial-quantities obligation of Section 2(a)(2)(A).

Regarding Federal coal leases that are *not yet subject to amended MLA*, BLM has adopted 10 years as an appropriate maximum time for determining commercial quantities under section 2(a)(2)(A); however, 10 years should not be used for all such Federal coal leases. Therefore, 10 years is the maximum time period that can be assigned by the Authorized Officer (AO), defined at 43 CFR 3400.0–5(b), to a Federal coal lease as a bracket during which the AO makes his determination whether the Federal coal lease is *producing in commercial quantities*. The AO should examine the approved mine plan or production scenarios based on existing contracts, keeping in mind a margin for error to account for such things as the phase of the operation (e.g., start-up vs. ongoing) and other related factors, to determine what is a commercial level or rate of production, and thus what an appropriate time period is in which commercial quantities must be produced. The time period should then be set at less than 10 years in cases where that more closely approximates what is "commercial" given the reality of the operation. For example, the timeframe might more appropriately range from 3 years (similar to the regulatory 3-year timeframe for measuring production for maintaining continued operation) to 5 years (reflecting the duration of mining permits approved pursuant to the Surface Mining Control and Reclamation Act of 1977 (SMCRA)). After determining the appropriate timeframe over which to measure *producing in commercial quantities*, the AO should assign that timeframe to each individual Federal coal lease that is not yet subject to amended MLA. Of course, this timeframe may be adjusted, at the AO's discretion to reflect changing conditions; for example, for an operation that moves from its initial start-up phase into an ongoing operation phase, the AO may determine that the assigned timeframe should be of a shorter duration.

Once the Federal coal lease becomes subject to amended MLA, the governing timeframe is the 10-year diligent development period or the continued operation year *as long as* production is occurring or the amended MLA production requirements are relieved pursuant to section 7(b) (i.e., *force majeure* suspensions or payment of advance royalty *in lieu* of continued operation). This is because, for pre-FC LAA Federal coal leases that have been readjusted (or otherwise made subject to amended MLA), nonproduction during the 10-year diligent development period would also be nonproduction for section 2(a)(2)(A) purposes, regardless of the timeframe assigned to the Federal coal lease prior to its becoming subject to amended MLA. Therefore, the Federal Coal lessee, or any affiliate, would not be qualified under section 2(a0(2)(A) to be issued a Federal lease on or after August 4, 1986, due to *not producing in commercial quantities*.

In all cases, the operative *quantity* to use in determining whether a Federal coal lease is producing in commercial quantities is 1 percent, as that is, per the Secretary of the Interior's 1982 preamble statement, prescribed by rule unless and until changed. The assigned bracket for pre-FCLAA Federal coal leases not yet readjusted (or otherwise made subject to FCLAA), however, is to be determined at the AO's discretion with the facts of the operation in mind.

Figure 1 gives a schematic presentation of the various paths leading to the determination of qualifications for a Federal lease issuance on or after August 4, 1986, as related to section 2(a)(2)(A). The purpose of Figure 1 is to diagram the text of these guidelines. There are instances when the diagram is not applicable (e.g., where a Federal coal lease is under a section 39 (30 U.S.C. 209) suspension). These exceptions are discussed later in this text.

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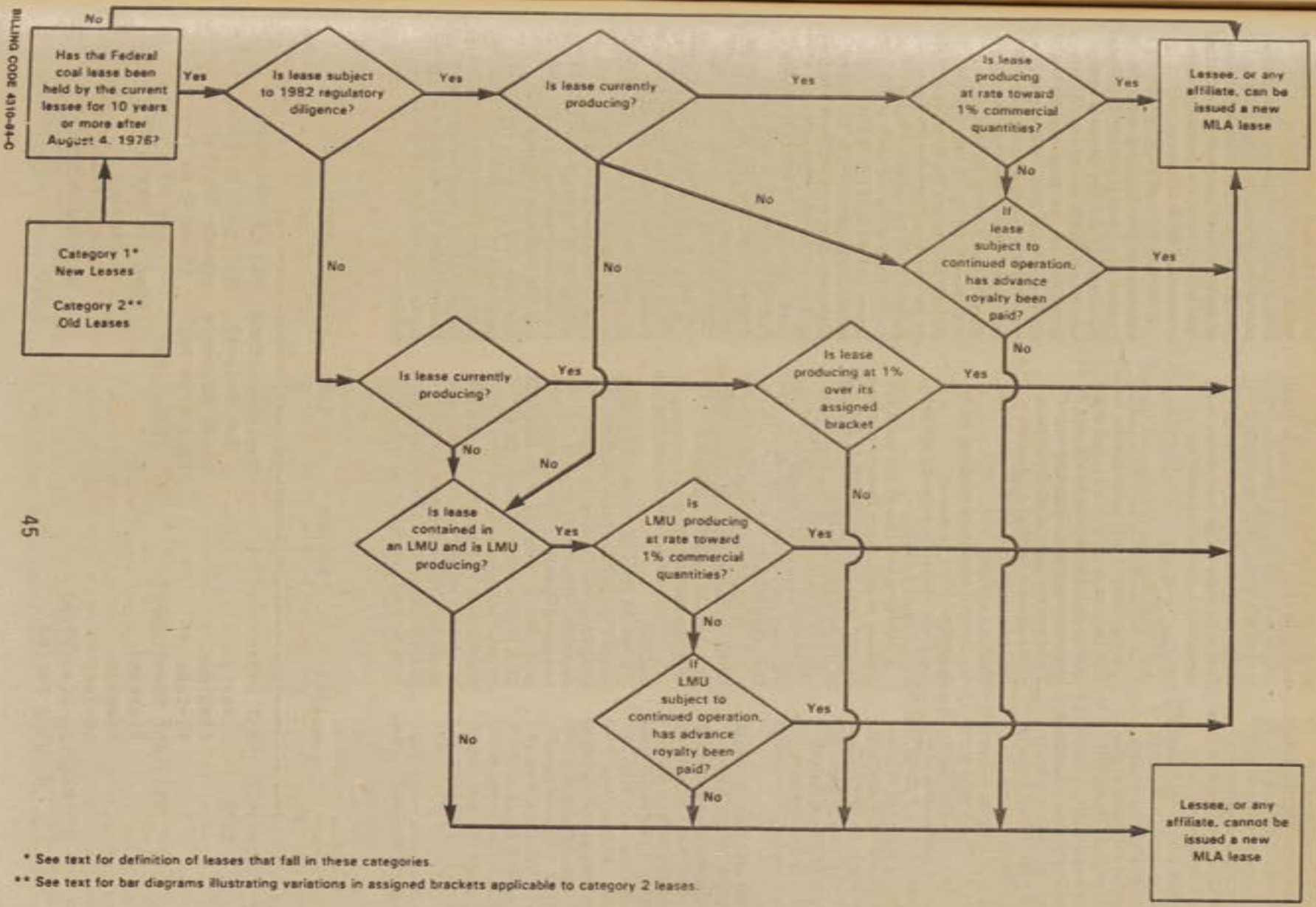


* See text for definition of leases that fall in these categories.

** See text for bar diagrams illustrating variations in assigned brackets applicable to category 2 leases.

Figure 1—Schematic Diagram Of How Coal Production Satisfies Section 2(a)(2)(A) Of The Mineral Leasing Act Of 1920 (Section 3 Of The Federal Coal Leasing Amendments Act Of 1976)

Examples of start/end times for assigned brackets follow the discussion of Federal coal leases not subject to the 1982 regulatory diligence system. The question of *producing in commercial quantities*, at the time that qualifications for Federal lease issuance are being determined, must be addressed using the bracket assigned by the AO. BLM has determined that the recoverable coal reserves are those in existence at the beginning of the assigned bracket in question, as is further explained below. Therefore, at the time that qualifications for a Federal lease issuance are being determined, each Federal coal lease of each Federal coal lessee, or any affiliate, wishing to qualify for a Federal lease issuance on or after August 4, 1986, must be looked at individually:

1. Has the Federal coal lessee, or any affiliate, individually held a Federal coal lease for a combined period of at least 10 years since August 4, 1976, and still hold it? *If* the answer is *no*, the Federal coal lessee, or any affiliate *is qualified* under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986. *If* the answer is *yes*, go to number 2 below.

2. Is that Federal coal lease producing, contained in a producing LMU, or suspended from producing under section 7(b) of MLA by either *force majeure* or payment of advance royalty *in lieu* of continued operation or suspended from producing under section 39 of MLA in the interest of conservation? *If* the answer is *no*, the Federal coal lessee, or any affiliate *is not qualified* under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986. *If* the answer is *yes*, the Federal coal lessee, or any affiliate, *is qualified* under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986.

The following discussion addresses how, at the time qualifications for a new Federal lease are being determined, section 2(a)(2)(A) affects Federal coal leases in the following three categories: (1) Subject to the 1982 regulatory diligence system; (2) not subject to the 1982 regulatory diligence system; or (3) contained in producing LMU's.

Category 1: Federal Coal Leases Subject to the 1982 Regulatory Diligence System

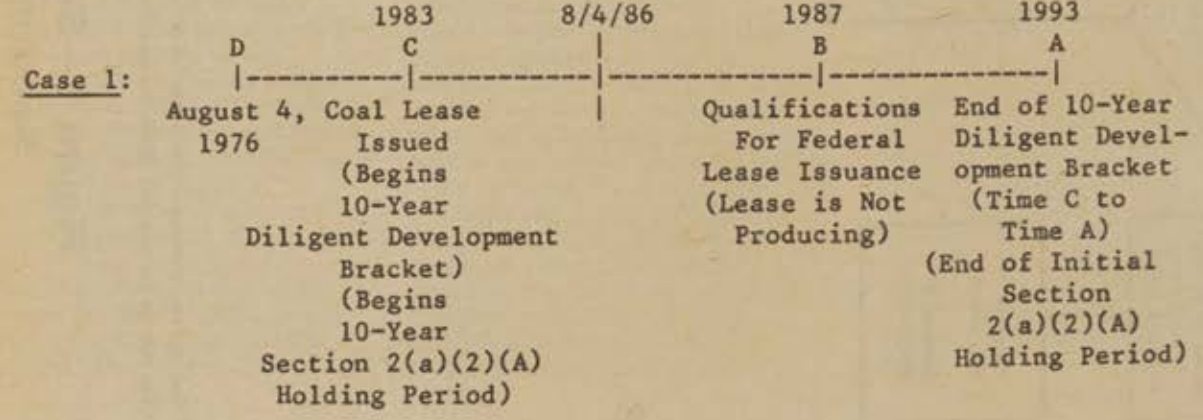
Is the Federal coal lease subject to the 1982 regulatory diligence system at the time qualifications for a new Federal lease issuance are being determined? There are six types of circumstances under which a Federal coal lease becomes subject to the 1982 regulatory diligence system:

1. Federal coal lease issuance after August 4, 1976;
2. Federal coal lease readjustment after August 4, 1976;
3. Modificiation (the noncompetitive *addition* of acreage or Federal coal to a Federal coal lease under MLA, 30 U.S.C. 203) after August 4, 1976.
4. Revision (Federal coal lessee execution of revised Federal coal lease diligence provisions at the request of DOI) during 1980;
5. BLM-approved election filed between August 1982 and August 1983 to be subject to the 1982 regulatory diligence system; or
6. Inclusion of a Federal coal lesae in an LMU.

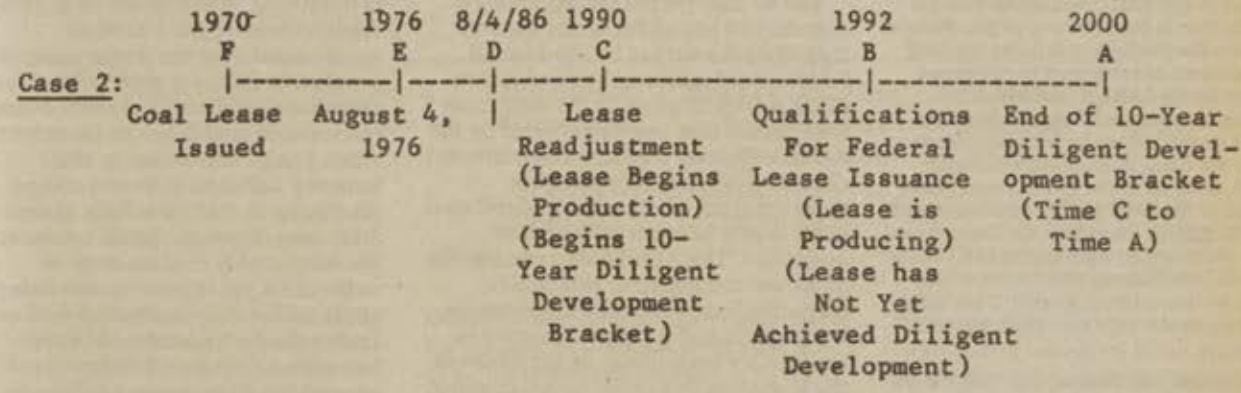
Once the Federal coal lease becomes subject to amended MLA diligence, the governing timeframe is the 10-year diligent development period or the continued operation year *as long as* production is occurring or the amended MLA production requirements are relieved pursuant to section 7(b) (i.e., *force majeure* suspensions or payment of advance royalty *in lieu* of continued operation). This is because, for pre-FCLAA Federal coal leases that have been held for at least 10 years and have been readjusted (or otherwise made subject to FCLAA), nonproduction during the 10-year diligent development period would also be nonproduction for section 2(a)(2)(A) purposes, regardless of the timeframe assigned to the Federal coal lease prior to its becoming subject to amended MLA diligence.

If the Federal coal lease is one that was issued after August 4, 1976, the Federal coal lease is subject to diligent development and has 10 years within which to produce commercial quantities, or the Federal coal lease may be lost. If the Federal coal lease falls within one of the other five types of circumstances listed above (i.e., other than issuance after August 4, 1976), has the Federal coal lease been held by the current Federal coal lessee for 10 years or more at the time qualifications for a new Federal lease issuance are being determined? If the current Federal coal lessee has not held the Federal coal lease for 10 years or more, the Federal coal lease does not prohibit the Federal coal lessee, or any affiliate, from qualifying under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986. See also the discussion on assignments in the section entitled "EXCEPTIONS."

If the Federal coal lease has been held for 10 years or more by the current Federal coal lessee, can the AO determine that the Federal coal lease or LMU is currently *producing in commercial quantities?* If so, the production is being credited toward the production requirements of the 1982 regulatory diligence system and, therefore, this specific Federal coal lease does not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued another Federal lease. See the diagrams below concerning Category 1 Federal coal leases.



Case 1 includes *only* those Category 1 Federal coal leases issued on or after August 4, 1976. The Case 1 Federal coal lease has 10 years from time C to produce 1 percent of the recoverable coal reserves in existence at time C. At time B, since the Federal coal lease is still in its diligent development period and only has been held for 4 years, it does not have to be producing at time B in order to allow the Federal coal lessee, or any affiliate, to qualify under section 2(a)(2)(A) for another Federal lease issuance.



Case 2 includes all other Category 1 Federal coal leases *except* those issued on or after August 4, 1976. Between time D and time C, if the Federal coal lease was *not producing*, that Federal coal lease would prohibit the Federal coal lessee, or any affiliate, from qualifying under section 2(a)(2)(A) for a Federal lease issuance between time D and time C. Any time of nonproduction between time D and time A also prohibits the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued a Federal lease at the time that the Federal coal lease is nonproducing. Upon becoming a Category 1 Federal coal lease (e.g., by readjustment on or after August 4, 1976) and prior to time A, the applicable timeframe for "producing in commercial quantities" is the 10-year diligent development period. The Case 2 Federal coal lease has 10 years from time C to produce 1 percent of the recoverable coal reserves in existence at time C in order to achieve diligent development. However, to be in compliance with section 2(a)(2)(A), the Federal coal lease must be producing in commercial quantities any time on or after August 4, 1986 (i.e., on or after time D), if the Federal coal lessee, or any affiliate, wishes to qualify for a new Federal lease. *Even though the Federal coal lease is in its 10-year diligent development period until time A and in compliance with its Federal coal lease-specific "diligence," it must be producing in commercial quantities at time B* (i.e., producing at a rate that will achieve diligent development by time A) *in order to allow the Federal coal lessee, or any affiliate, to qualify under section 2(a)(2)(A) for another Federal lease issuance.* Otherwise, if the current Federal coal lessee has held the Federal coal lease for 10 years, the Federal coal lease would have been held for 10 years and *not producing in commercial quantities*. However, see also the discussions of suspensions in the section entitled "EXCEPTIONS."

Discussion: Category 1 Federal Coal Leases

For both Case 1 and Case 2, Category 1 Federal coal leases, after diligent development is achieved (which may occur as late as time A), the Federal coal lease is subject to continued operation. If the Federal coal lease is satisfying the continued operation requirement by production or by payment of advance royalty, the Federal coal lessee, or any affiliate, is not prohibited by section 2(a)(2)(A) from qualifying for another Federal lease issuance at time A or any time thereafter. Where the Federal coal leases are not maintaining continued operation by production or by payment of advance royalty *in lieu* of continued operation, the Federal coal lease would be subject to cancellation. However, see also the discussion of suspensions in the section entitled "EXCEPTIONS."

For Federal coal leases issued after August 4, 1976, if the Federal coal lease has been held for 10 years and has not produced commercial quantities, the Federal coal lease would be lost for failure to achieve diligent development. If such a Federal coal lease is lost, that Federal coal lease could not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued another Federal lease because the Federal coal lease would no longer exist. If that Federal coal lease has achieved diligent development, then it is subject to the condition of continued operation. As long as the Federal coal lessee satisfies continued operation by production or by payment of advance royalty, that Federal coal lease does not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued another Federal lease. If the Federal local lessee does *not* satisfy continued operation by production or by payment of advance royalty, that Federal coal lease is subject to cancellation. After such a Federal coal lease is cancelled, that Federal coal lease could not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued another Federal lease because the offending Federal coal lease would no longer exist.

For the other five types of circumstances (i.e., all other Category 1 Federal coal leases *except* those issued on or after August 4, 1976), the Federal coal leases are also subject to the 1982 regulatory diligence system. Once Federal coal leases are subject to the 1982 regulatory diligence system, any subsequent production is credited toward diligent development or continued operation. Since the production is being credited toward diligent development or continued operation, if the Federal coal lease is *producing in commercial quantities* on the date of determinaton of qualifications for Federal lease issuance, the Federal coal lease or LMU is in compliance with section 2(a)(2)(A). Therefore, the Federal coal lease would

not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued a Federal lease on or after August 4, 1986.

Note.—If there is an LMU, any production after the effective date of the LMU approval is credited toward all *Federal* coal leases contained in that LMU, regardless whether the production is from Federal or non-Federal coal. Since the production is being credited toward diligent development or continued operation for the LMU, if the LMU is *producing in commercial quantities* on the date that qualifications for a Federal lease issuance are being determined on or after August 4, 1986, all of the Federal coal leases contained in the LMU are in compliance with section 2(a)(2)(A). Therefore, the Federal coal lease(s) contained in a producing LMU would not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued a Federal lease on or after August 4, 1986.

If a Federal coal lease, that otherwise is subject to the section 2(a)(2)(A) prohibition, is included in an LMU and that LMU stops productions (i.e., nonproduction occurring while the LMU is in its specific diligent development period and no advance royalty can be being paid *in lieu* of production), that Federal coal lease, looked at individually in its nonproducing status, would prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued another Federal lease on or after August 4, 1986. Although, in this example, the LMU would be in compliance with its approval stipulations and the 1982 regulatory diligence system, the Federal coal lease is not protected by inclusion in an LMU if that LMU *is not producing*.

Note.—For Federal coal leases in Category 1, the recoverable coal reserves for section 2(a)(2)(A) commercial quantities are those remaining at the time the Federal coal lease becomes subject to the 1982 regulatory diligence system. Under the 1982 regulatory diligence system, the recoverable coal reserves figure cannot decrease due to any production after the initial estimate is made. However, if new information is obtained (e.g., a previously undiscovered fault that makes some of the coal unrecoverable), the recoverable coal reserves may be revised by the AO pursuant to 43 CFR 3482.2(a)(3).

Category 2: Federal Cool Leases Not Subject to the 1982 Regulatory Diligence System

If the Federal coal lease is not subject to the 1982 regulatory diligence system at the time qualifications are being determined for a Federal lease issuance on or after August 4, 1986, has the Federal coal lease been held by the current Federal coal lessee for 10 years or more? If the current Federal coal lessee has not held the Federal coal lease for 10 years or more, the Federal coal lease does not prohibit the Federal coal lessee, or any affiliate, from qualifying under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986. However, see also the discussion on assignments in the section entitled "EXCEPTIONS."

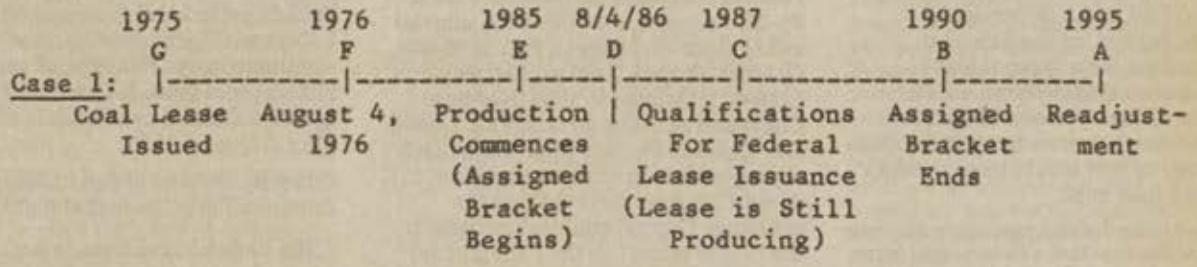
The 10-year period for determining commercial quantities under section 2(a)(2)(A) should not be used for all Federal coal leases not yet subject to FCLAA. The 10 years is the maximum time period that can be assigned by the AO to a Federal coal lease as a bracket during which the AO makes his determination whether the Federal coal lease is *producing in commercial quantities*. The AO should examine the approved mine plan or production scenarios based on existing contracts, keeping in mind a margin for error to account for such things as the phase of the operation (e.g., start-up vs. ongoing) and other related factors, to determine what is a commercial level or rate of production, and thus what an appropriate time period is in which commercial quantities must be being produced. The time period should then be set at less than 10 years in cases where that more closely approximates what is "commercial" given the reality of the operation. For example, the timeframe might more appropriately range from 3 years (similar to the regulatory 3-year timeframe for maintaining continued operation) to 5 years (reflecting the duration of permits approved pursuant to SMCRA). After determining the appropriate timeframe over which to measure *producing in commercial quantities*, the AO should assign that timeframe to each individual Federal coal lease that is not yet subject to amended MLA. Of course, this timeframe may be adjusted, at the AO's discretion, to reflect changing conditions; for example, for an operation that moves from its initial start-up phase into an ongoing operation phase, the AO may determine that the assigned timeframe should be of a shorter duration.

For Category 2 Federal coal leases, the date that Federal coal is first produced on or after August 4, 1976, begins the assigned timeframe (bracket). When a Category 2 Federal coal lease reaches the end of its assigned timeframe, the beginning of the assigned timeframe moves forward in time as the Federal coal lease ages. This imposes two criteria that must be met to satisfy producing in commercial quantities for Category 2 Federal coal leases that have reached the end of their first assigned bracket—*has produced 1 percent* during the assigned bracket *and is currently producing*. For example, a Federal coal lease was issued in 1975. The Federal coal lease begins producing in 1984. In 1986, the AO assigns a 5-year bracket to the Federal coal lease. The beginning of the assigned bracket is 1984 and the end of the assigned bracket is 1989. Between 1986 and 1989, if the Federal coal lease is producing, that production is being credited toward the 1 percent requirement over the 5-year assigned bracket. In 1989, the Federal coal lease must have produced 1 percent of the recoverable coal reserves (in existence when production began in 1984) between 1984 and 1989 and still be producing. In 1990, the Federal coal lease must have produced 1 percent of the recoverable coal reserves in existence 5 years prior to that date (i.e., 1985), and still be producing; and so forth until the Federal coal lease becomes a Category 1 Federal coal lease or until the AO assigns a different bracket (see the previous paragraph regarding adjusting Category 2 assigned timeframe (brackets)).

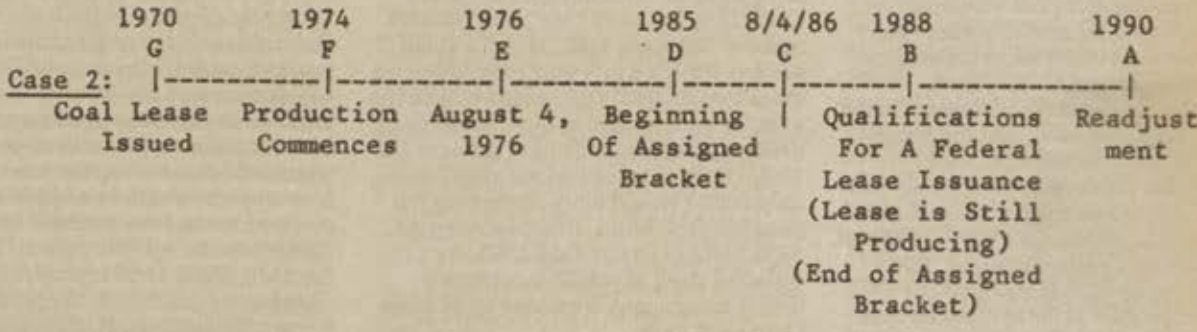
Note.—Once the Federal coal lease becomes subject to amended MLA (i.e., switches over from a Category 2 Federal coal lease to a Category 1 Federal coal lease), the governing timeframe is the 10-year diligent development period or the continued operation year *as long as* production is occurring or the amended MLA production requirements are relieved pursuant to section 7(b) (i.e., *force majeure* suspensions or payment of advance royalty *in lieu* of continued operation). This is because, for pre-FCLAA Federal coal leases that have been readjusted (or otherwise made subject to FCLAA), nonproduction during the 10-year diligent development period would also be nonproduction for section 2(a)(2)(A) purposes, regardless of the timeframe assigned to the Federal coal lease prior to its becoming subject to amended MLA. Therefore, the Federal coal lessee, or any affiliate, would not be qualified under section 2(a)(2)(A) to be issued a Federal lease on or after August 4, 1986, due to *not producing in commercial quantities*.

If the Federal coal lease has been held for 10 years or more by the current Federal coal lessee, can the AO determine that the Federal coal lease is currently *producing in commercial quantities* in the bracket assigned to it? If the AO determines that the Federal coal lease is *producing in commercial quantities* in the bracket assigned to it, the Federal coal lease does not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued other Federal leases. If the AO determines that the Federal coal lease is not *producing in commercial quantities* in the bracket assigned to it, then that Federal coal lease disqualifies the Federal coal lessee, or any affiliate,

under section 2(a)(2)(A) from being issued a Federal lease on or after August 4, 1986. See the following diagrams concerning Category 2 brackets.



For Case 1, the Federal coal lease has been assigned a 5-year bracket by the AO, beginning at time E, to produce 1 percent of the recoverable coal reserves in existence at time E. At time C, since the Federal coal lease is *producing in commercial quantities* using the quantity of recoverable coal reserves in existence at time E for the computation, the Federal coal lessee, or any affiliate, qualifies under section 2(a)(2)(A) for another Federal lease issuance at time C. For Case 1, if the Federal coal lese is not *producing in commercial quantities* at any time between time D and time A, the Federal coal lessee, or any affiliate, is not qualified under section 2(a)(2)(A) to be issued a Federal lease during that time of *not producing in commercial quantities, regardless* of the amount of production between time E and the date the Federal coal lease *stops producing in commercial quantities.*



For Case 2, the Federal coal lease has been assigned a 3-year bracket by the AO. Time B determines the *end* of the assigned bracket relevant here because a Federal lease is to be issued at time B which is after August 4, 1986. The assigned bracket within which the Federal coal lease must be *producing in commercial quantities* can start *no earlier* than 10 years prior to the date that qualifications are being determind for the Federal lease issuance. In this case, because the AO has determined that the applicable bracket to be assigned to this Federal coal lease is no longer than 3 years, the beginning of the assigned bracket in which the Federal coal lease must be *producing in commercial quantities* cannot occur more than 3 years prior to the date that qualifications for another Federal lease issuance are being determined (time B). If the Federal coal lease produced 1 percent of the recoverable coal reserves (in existence at time D) from time D to time B, *and* if the Federal coal lease is still producing at time B, the Federal coal lessee, or any affiliate, qualifies under section 2(a)(2)(A) for a Federal lease issuance at time B.

For Case 2, if the Federal coal lease is *not producing in commercial quantities* at any time between time C and time A, the Federal coal lessee, or any affiliate, is not qualified under section 2(a)(2)(A) to be issued a Federal lease during that time of *not producing in commercial quantities, regardless* of the amount of production between time D and the date the Federal coal lease *stops producing in commercial quantities.* The following serves to depict the severity of the section 2(a)(2)(A) prohibition in such instances.

For example, between time D and time B, the Federal coal lessee could have produced 90 percent of the recoverable coal reserves in existence at time D. However, if at time B the Federal coal lease is not *producing in commercial quantities*, the Federal coal lessee, or any affiliate, is not qualified under section 2(a)(2)(A) to be issued another Federal lease. Section 2(a)(2)(A) is *first contingent* upon what is occurring on the date that qualifications are being determined for a Federal lease issuance on or after August 4, 1986. Therefore, if the Federal coal lease is not producing at time B, previous production history cannot be considered.

General Discussion: Category 2 Federal Coal Leases

At the time that qualifications for a Federal lease issuance are being determined, if the Federal coal lease is a Category 2 Federal coal lease, the assigned bracket begins on the date that coal is first produced from the Federal coal lease on or after August 4, 1976

(Case 1), or the number of years the AO assigned as a producing-in-commercial-quantities bracket to the Federal coal lease prior to the time that qualifications are being determined (Case 2), which ever is most recent. It is important to note that for Case 2 the assigned brackets depend on the date that qualifications for a Federal lease issuance are being determined. For example, if there were to be another Federal lease issuance in 1992, the Case 2 assigned brcket would have to begin no earlier than 1989.

Note.—Under the 1982 regulatory diligence system, at the time that a Federal coal lease is readjusted (or otherwise made subject to amended MLA), thus becoming a Category 1 Federal coal lease, the recoverable coal reserves are established as the basis for commmercial quantities for the satisfaction of diligent development and/or continued operation; that amount does not decrease with production after a Federal coal lease becomes a Category 1 Federal coal lease.

For Category 2 Federal coal leases, the *recoverable coal reserves decrease with production until* the Federal coal lease becomes a Category 1 Federal coal lease. Because of this, *the commercial quantities amount also decreases with production until* the Federal coal lease becomes a Category 1 coal lease. Therefore, for Federal coal leases issued prior to August 4, 1976, that are not in Category 1, the recoverable coal reserves are those estimated by the AO to have existed on the *date that Federal coal was first produced* from the Federal coal lease on or after August 4, 1976 (Case 1), or at *the beginning of the assigned bracket prior to the date that qualifications* for a Federal lease issuance *are being determined* (Case 2), whichever is most recent. For section 2(a)(2)(A) purposes, the *producing-in-commercial-quantities* requirement must be based on the recoverable coal reserves remaining on the date that is *no earlier than* 10 years prior to the date that qualifications for a Federal lease issuance are being determined. Therefore, for Case 2, if there were to be another Federal lease issuance in 1992, the *production of 1 percent* of the recoverable coal reserves *in the assigned bracket and* the *producing-in-commercial-quantities* requirements would be based on the recoverable coal reserves remaining in 1989, not those in existence in 1985.

Note.—Mobile Federal coal lease w23929 is considered to be a Category 2 Federal coal lease until its readjustment in 1991. This is because the Federal coal lease is subject to its terms, as well as the *Mobil* v. *Andrus* litigation settlement stipulation, and will not be subject to the 1982 regulatory diligence system until its readjustment in 1991.

Discussion: Category 2 Federal Coal Leases Resulting From Exchanges Authorized or Mandated by Congress

There have been several Congressionally authorized or mandated Federal coal lease exchanges: Pub. L. 95–87, August 3, 1977 (SMCRA alluvial valley floor exchanges); Pub. L. 95–554, October 30, 1978 (I–90 exchanges); Pub. L. 96–401, October 9, 1980 (Northern Cheyenne exchanges); and Pub. L. 96–475, October 19, 1980 (Bisti exchange), among others. In the I–90 and Bisti cases, Congress directed that the exchange Federal coal leases contain the "same terms" as the Federal coal lease of which all or a portion thereof was relinquished. For example, under Pub. L. 95–554 (I–90), Exxon Coal USA, Inc. relinquished part of Federal coal lease w5035 in exchange for Federal coal leases w83394 and w83395. Although w83394 and w83395 were issued on January 28, 1983, both Federal coal leases have the "same terms," and thus the same effective date, as w5035 (i.e., December 1, 1967). Although, on paper, the Federal coal leases appear to have been in effect since 1967, Exxon Coal USA, Inc. only "has held" w83394 and w83395 since 1983. Therefore, the section 2(a)(2)(A) 10-year prohibition on these two Federal coal leases will not be a factor in determining qualifications for Federal lease issuance until January 28, 1993. Of these three Federal coal leases, only w5035 would have carried such a possible prohibiton, effective August 4, 1986, had not Exxon Coal USA, Inc. divested itself of w5035 in an arm's-length assignment approved by BLM on October 1, 1983.

Note.—The readjustment of all three Federal coal leases in 1987 will not affect the section 2(a)(2)(A) 10-year holding period, as the readjustment 10-year clocks (amended Section 7 of MLA) are wholly independent from the section 2(a)(2)(A) 10-year holding period before qualifications must be determined. This type of exchange Federal coal lease falls within Category 2 until the effective date of the first post-August 4, 1976, Federal coal lease readjustment, or modification that adds Federal recoverable coal reserves or acreage, whichever occurs first.

This issue arises only with Federal (non-Indian) coal leases resulting from Congressionally authorized or mandated exchanges, and whose terms are those of the Federal coal lease of which all or a portion thereof was relinquished (i.e., the terms regarding the original Federal coal lease issuance and next readjustment anniversary date).

Federal coal leases resulting from the other listed exchange authorities, such as those mandated by Pub. L. 96–401 (Northern Cheyenne), are issued with no retroactive effective date (e.g., Federal coal lease w80954, North Duck Nest Creek, which was effective October 1, 1982), and this question does not arise. For this type of exchange Federal coal lease, both the section 2(a)(2)(A) 10-year holding period and the amended section 7 10-year diligent development clock run simultaneously. This type of exchange Federal coal lease falls within Category 1, as the Federal coal lease is effective after August 4, 1976.

Category 3: Federal Coal Leases Contained in a Producing LMU

If a Federal coal lease is *not producing in commercial quantities* at the time that qualifications for a Federal lease issuance on or after August 4, 1986, are being determined, and that Federal coal lease is contained in an LMU, has the Federal coal lease been held for 10 years or more by the current Federal coal lessee? If the current Federal coal lessee has not held the Federal coal lease for 10 years or more, the Federal coal lease does not prohibit the Federal coal lessee, or any affiliate, from qualifying under section 2(a)(2)(A) for another Federal lease issuance. If the Federal coal lease has been held for 10 years or more by the current Federal coal lessee, can the AO determine that the LMU is currently *producing in commercial quantities?* Section 2(d) of amended MLA states that production from anywhere within an LMU may be credited toward the production obligations for all Federal coal leases in the LMU. If the LMU is *producing in commercial quantities*, the production is being credited toward the commercial quantities requirement of the 1982 regulatory diligence system for the LMU. Such LMU production is also credited for purposes of meeting the commercial quantities requirement of section 2(a)(2)(A) for all Federal coal leases within the LMU. Therefore, any nonproducing Federal coal lease contained in a *producing* LMU does not prohibit the Federal coal lessee, or any affiliate, from qualifying under section 2(a)(2)(A) for another Federal lease issuance.

General Discussion: Category 3 Federal Coal Leases

See the Category 1 Discussion regarding Federal and non-Federal coal production within an LMU and Federal coal leases contained in *nonproducing* LMU's.

Exceptions

In certain instances, a Federal coal lessee, or any affiliate, can qualify under section 2(a)(2)(A) for another Federal

lease issuance because the Federal coal lease is relieved of a production requirement or because the Federal coal lessee no longer holds the Federal coal lease. For example, where Federal coal leases are required to be held (for reclamation purposes) for either 5 or 10 years after the Federal coal lease is mined out, they *should not* subject the Federal coal lessee to the section 2(a)(2)(A) prohibition against acquiring Federal leases.

With respect to Federal coal leases that *are subject to amended MLA "diligence,"* however, this is one of several sections of the existing 43 CFR Group 3400 rules that BLM has identified as requiring revision; this is due to the current regulatory definition of continued operation and the regulatory language regarding payment of advance royalty *in lieu* of the continued operation production obligation. That regulatory revision effort is currently scheduled to commence during the latter part of FY 1985, with completion during FY 1986. However, as the rules are currently written, Federal coal leases that *are subject to amended MLA "diligence"* and that are held for any reason after being mined out *may* prohibit the Federal coal lessee from Federal lease issuance. For example, by defining continued operation in terms of commercial quantities (1 percent of the recoverable coal reserves), the Federal coal lessee, pursuant to the 1982 regulatory diligence system, must pay an advance royalty which could never be recouped by production; this holds true even if the Federal coal lease has been mined out. Under the 1982 regulatory diligence system, the Federal coal lessee would have no relief from a payment obligation. Until the promulgation of corrective rules, such situations will be assessed on a case-by-case basis.

For Federal coal leases, *not yet subject to amended MLA "diligence,"* that have been mined out and are being held for any reason (e.g., reclamation), such a problem does not exist in the current regulatory language. 43 CFR 3472.1–2(e) (1984) states that the prohibition attaches to Federal coal leases from which coal is not being produced in commercial quantities, as that term is defined by rule. Commercial quantities is defined by rule to be 1 percent of the recoverable coal reserves. Obviously, under the current regulatory language, Federal coal leases, *not yet subject to amended MLA "diligence,"* that have been mined out have no remaining recoverable coal reserves. If the AO determines this to be the case, then such Federal coal leases would not jeopardize the Federal coal lessee, or any affiliate, regarding his qualifications under section 2(a)(2)(A).

The following discussion addresses five other instances expressly allowed by amended MLA.

Force Majeure Suspensions

A Federal coal lease (Category 1) or the Federal coal leases in an LMU (Categories 1 and 3) can be relieved of the section 2(a)(2)(A) prohibition under the statutory "except as provided in section 7(b) of this Act" clause. After a Federal coal lease or LMU is subject to either diligent development or continued operation, section 2(a)(2)(A) may be satisfied by *force majeure* suspension (strikes, the elements, or casualties not attributable to the Federal coal lessee), if approved by the Secretary. If, at the time of Federal lease issuance on or after August 4, 1986, a Federal coal lease or LMU is under a *force majeure* suspension, it is relieved of the requirement to produce commercial quantities. Since there is no production obligation, the Federal coal lease or LMU does not prohibit the Federal coal lessee, or any affiliate, from qualifying under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986. However, under the 1982 regulatory diligence system (i.e., the current rules), a *force majeure* suspension does not extend the 10-year diligent development period; it only suspends the production obligation.

Category 2 Federal coal leases, however, are not subject to amended Section 7(b) of MLA; therefore, section 2(a)(2)(A)'s exception does not apply to them. Thus, even if a *force majeure* suspension can be granted by the Secretary under a lease-specific, *force majeure* Federal coal lease term, it will not relieve the Federal coal lessee, or any affiliate, of the section 2(a)(2)(A) obligation. Although there is no production obligation, the *Federal coal lease does prohibit the federal coal lessee,* or any affiliate, *from qualifying* under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986.

Payment of Advance Royalty in lieu of Continued Operation

As discussed in Category 1, once a Federal coal lease, which is subject to the 1982 regulatory diligence system, or LMU is subject to the condition of continued operation, the production obligation may be relieved by the payment of advance royalty *in lieu* of production to maintain continued operation. As long as the Federal coal lessee is paying advance royalty, the Federal coal lease does not have to be producing and, therefore, the Federal coal lease does not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued a Federal lease on or after August 4, 1986.

Note.—The payment of advance royalty *in lieu* of continued operation only applies to federal coal leases that are subject to the 1982 regulatory diligence system or to LMU's. Payments made *in lieu* of actual production under the minimum production clause of a Federal coal lease (issued prior to August 4, 1976, and not yet subject to the 1982 regulatory diligence system after August 4, 1976) are not advance royalty for the purposes of suspending the *producing-in-commercial-quantities* requirement of section 2(a)(2)(A).

Section 39 (30 U.S.C. 209) Suspensions

If any Federal coal lease or LMU (Category 1, 2, or 3) is under a section 39 (30 U.S.C. 209) suspension (in the interest of conservation), as approved by the Secretary, the Federal coal lessee has no beneficial use of the Federal coal lease or LMU by statute, except to meet obligations such as to maintain mine openings and equipment, and to satisfy the reclamation obligations pursuant to SMCRA. Since such a federal coal lease or LMU has no production obligation and no *right* to produce (because the Section 39 suspension has temporarily: stopped the section 2(a)(2)(A) bracket assigned by the AO; suspended the section 2(a)(2)(A) holding requirement; and, if applicable, suspended the amended Section 7 requirement to maintain continued operation), the Federal coal lease or LMU does not prohibit the Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued other Federal leases. It should be noted that when the Section 39 suspension terminates, the section 2(a)(2)(A) bracket assigned by the AO and, if applicable, the time remaining to satisfy the production obligation for diligent development or continued operation, resumes from the point at which it was stopped. It should be further noted that under the 1982 regulatory diligence system (i.e., the current rules), a section 39 suspension does *not* extend the 10-year diligent development period which applies to federal coal leases subject to amended section 7 of MLA.

Federal Coal Lease Assignments/ Reassignments

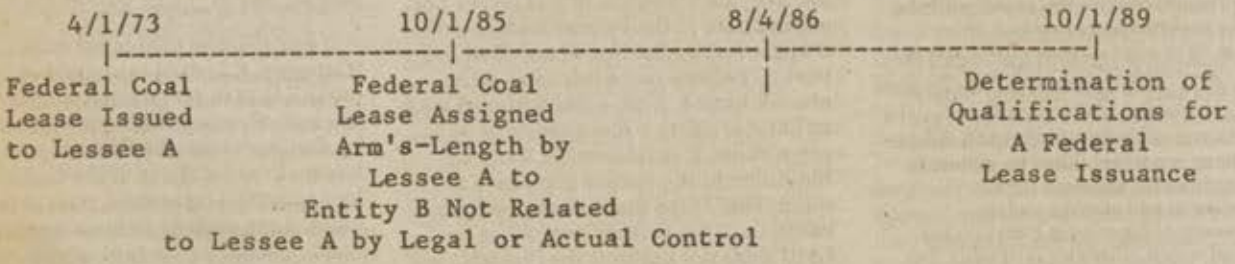
Consideration of questions related to assignments requires the following clarification of several matters about holding a Federal coal lease and the 10-year period. First, any holder of record title, even if less than 50 percent or not in control of the Federal coal *lease,* "holds" for section 2(a)(2)(A) purposes.

Lack of control is relevant in defining affiliates of Federal coal lessees, but not who holds the Federal coal lease itself. An assignment of a 50 percent, undivided interest in a Federal coal lease may start a new clock for the new 50-percent holder, but the holder of the other 50 percent continues under his pre-existing clock. Second, where a Federal coal lease is assigned by a parent corporation to a subsidiary after August 4, 1976, absent the Federal coal lease producing in commercial quantities, that new Federal coal lessee cannot qualify on or after August 4, 1986, as long as the parent corporation remains in control. This is because Federal lease issuance to the subsidiary would be barred by the parent corporation's prohibition. Similarly, a new parent corporation, upon acquiring control of a Federal coal lessee corporation, cannot qualify on or after August 4, 1986, as long as the subsidiary it controls remains in violation of section 2(a)(2)(A).

If a Federal coal lessee transfers the holding of a Federal coal lease via an arm's-length assignment, approved by the AO after his determination that the assignment is for 100 percent of the Federal coal lease or 100 percent of a portion of the Federal coal lease, the effective date of the approval of the assignment begins a new section 2(a)(2)(A) 10-year holding period for the assignee. That is, the 10-year holding period is Federal coal *lease-holder-specific* for each Federal coal lease.

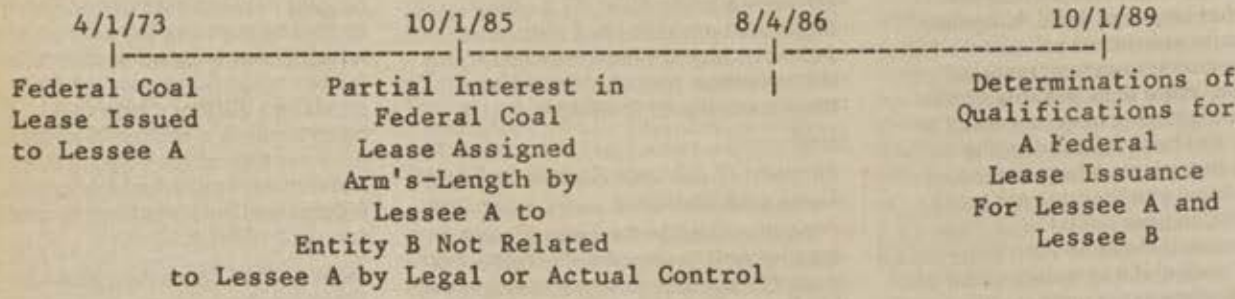
[Note.—The diligent development and continued operation requirements are Federal coal *lease-specific* or, if applicable, *LMU-specific*; they are *not* Federal coal *lease-holder-specific*.

See the diagram and discussion below.



The Federal coal lease was issued to Federal coal lessee A on April 1, 1973, and there has been no production from that Federal coal lease. This is the only Federal coal lease that Federal coal lessee A holds. On October 1, 1985, Federal coal lessee A assigns 100 percent interest in that Federal coal lease to Entity B, who is not related to Federal coal lessee A by legal or actual control, and this is the only Federal coal lease that Entity B holds. Entity B then wants to qualify for a Federal lease issuance on or after August 4, 1986. Assume that the date that qualifications for Federal lease issuance are being determined is October 1, 1989. Since Entity B has only held this nonproducing Federal coal lease for 4 years after August 4, 1976, Entity B does not have any problem with the section 2(a)(2)(A) prohibition of holding such a Federal coal lease for 10 years at the time that qualifications for the October 1, 1989, Federal lease issuance are being determined. Since the Federal coal lease was the only Federal coal lease that Federal coal lessee A had held, Federal coal lessee A also does not have any problem with the section 2(a)(2)(A) prohibition of holding such a Federal coal lease for 10 years because Federal coal lessee A no longer holds any portion of, or any interest in, the Federal coal lease.

If a *partial acreage assignment* is made, or the assignment of an undivided interest, the *assignee may not have a problem* of being prohibited under section 2(a)(2)(A) from being issued a Federal lease on or after August 4, 1986. That is, the assignor's and the assignee's status must be determined independently (see the discussion following the diagram below).



The Federal coal lease was issued to Federal coal lessee A on April 1, 1973, and there has been no production from that Federal coal lease. On October 1, 1985, Federal coal lessee A assigns an undivided interest in that Federal coal lease (less than 100 percent) to Entity B, who is not related to Federal coal lessee A by legal or actual control, and Federal coal lessee A retains the remaining interest in the Federal coal lease. This Federal coal lease is the only Federal coal lease in which Entity B holds any interest. On October 1, 1989, qualifications for a Federal lease issuance are being determined. *Federal coal lessee A*, having held the Federal coal lease (or portion of, or interest in,

the Federal coal lease) for 13 years after August 4, 1976, *cannot qualify under section 2(a)(2)(A) because the Federal coal lease is not producing in commercial quantities.* However, Entity B can qualify under section 2(a)(2)(A) for the Federal lease issuance because Entity B has only held its portion of the Federal coal lease for 4 years after August 4, 1976.

If an assignment of a partial interest results in the creation of a new Federal coal lease, the same logic applies. That is, the section 2(a)(2)(A) 10-year holding period is Federal coal lease-holder-specific.

Note.—By rule (43 CFR 3453.3–1(a)(8)) (1982), a Federal coal lessee, or any affiliate, cannot be assigned any or all of a Federal coal lease on or after August 4, 1986, if that Federal coal lessee, or any affiliate, "holds . . . and has held" a nonproducing Federal coal lease for 10 years or more after August 4, 1976. However, such a Federal coal lessee, or any affiliate, is not prohibited by statute or rule from obtaining approval for a modification to add acreage and/or recoverable coal reserves to Federal coal leases that would otherwise disqualify that Federal coal lessee, or any affiliate, under section 2(a)(2)(A) from being issued a Federal lease on or after August 4, 1986. This is because modification is *not* a Federal lease issuance, and although BLM has discretion not to modify leases, such a prohibition could result in bypass situations in many instances. However, it should be noted that a Federal coal lease modification to an unreadjusted Federal coal lease that was issued prior to August 4, 1976, results in that Federal coal lease falling under Category 1, whereas, prior to such a modification, that Federal coal lease would have fallen under Category 2.

Section 2(a)(2)(A) states that a Federal coal lessee must hold *and have held* a nonproducing Federal coal lease for 10 years before the Federal coal lessee, or any affiliate, is prohibited under section 2(a)(2)(A) from being issued Federal leases. The legislative history shows that when Congress added that language to MLA, it was specifically inserted as an antispeculation-in-the-coal-market provision. Were BLM to allow arm's-length assignments from one entity to another and back again, solely in an attempt to retrigger a new section 2(a)(2)(A), 10-year holding period, the intent of Congress would be compromised. Therefore, any *prior holding period* of a specific Federal coal lease *attaches to the prior Federal coal lease-holder if the Federal coal lease is once again held by the prior Federal coal lessee by its reassignment.* That is, the *"has held"* provision of section 2(a)(2)(A) *is additive for each time that an* individual *entity holds any portion* of, or interest in, *a Federal coal lease* on or after August 4, 1976. If a Federal coal lease has been assigned arm's-length, the Federal coal lessee has no control over that Federal coal lease until the Federal coal lessee receives it again by its reassignment. The first Federal coal lessee cannot be charged with a holding period during a time when that Federal coal lessee has no control over the Federal coal lease.

Federal Coal Lease Relinquishments

If a Federal coal lessee with only one Federal coal lease has held that Federal coal lease for 10 years or more after August 4, 1976, the Federal coal lease is relinquished in accordance with 43 CFR 3452.1, and the relinquishment is effective *prior to* the time that qualifications for a Federal lease issuance are being determined, that Federal coal lessee, or any affiliate, does not have any problem with the section 2(a)(2)(A) prohibition of holding such a Federal coal lease for 10 years. This is due to the dual requirement of section 2(a)(2)(A) which states, in part, "holds . . . *and has held."* *(Emphasis added.) Since the Federal coal lessee no longer holds the Federal coal lease, the "has held" provision of section 2(a)(2)(A) is not a factor at the time that qualifications are being determined for a Federal lease issuance on or after August 4, 1986.*

General Statement on Federal Coal Lease Assignments, Relinquishments, and LMU Applications

Rules will be developed to protect the priority of noncompetitive oil and gas lease-applicants and prevent adverse action on other mineral lease and LMU applications, and assignment and relinquishment approval requests, where BLM is unable to act upon nonproducing Federal coal lease assignments, relinquishments, or LMU's within a specific period of time that will be established in the rules. This will include mineral lease and LMU applications, and assignment and relinquishment approval requests, *pending on August 4, 1986.*

Summary

In determining whether a Federal coal lessee, or any affiliate, can qualify under section 2(a)(2)(A) for a Federal lease issuance on or after August 4, 1986, each of the Federal coal leases or LMU's that that Federal coal lessee, or any affiliate, holds and has held for at least 10 years must be assessed individually for compliance. Individually, the Federal coal leases, or LMU's containing such Federal coal leases, must satisfy the *producing-in-commercial quantities* requirements, with the exceptions discussed above.

Any *previous* or any *subsequent* failure to comply with section 2(a)(2)(A) does *not* negate a Federal coal lessee, or any affiliate, from qualifying for another Federal lease issuance, *Provided That,* at the time that qualifications for a Federal lease issuance on or after August 4, 1986, are being determined, the Federal coal lessee, or any affiliate, is in full compliance with section 2(a)(2)(A). Any Federal coal lessee, or any affiliate, must satisfy section 2(a)(2)(A) *at the time* that qualifications are being determined. There is no provision in section 2(a)(2)(A) that mandates retroactive or future punishment because that Federal coal lessee, or any affiliate, failed to satisfy section 2(a)(2)(A) at another time.

For example, if a nonproducing Category 2 Federal coal lease, that has been held by the current Federal coal lessee for at least 10 years after August 4, 1976, is contained in a producing LMU, and the Federal coal lessee is issued another Federal lease at that time; any subsequent failure to comply with section 2(a)(2)(A) would not negate that Federal lease that was issued to that Federal coal lessee. Any subsequent failure to comply with section 2(a)(2)(A) would only disqualify the Federal coal lessee, or any affiliate, from being issued Federal leases at the subsequent time of noncompliance.

ON OR AFTER AUGUST 4, 1986, IF A FEDERAL COAL LEASE, THAT HAS BEEN HELD BY THE CURRENT FEDERAL COAL LESSEE FOR AT LEAST 10 YEARS, IS *NOT PRODUCING IN COMMERCIAL QUANTITIES* OR *NOT UNDER A SUSPENSION,* THE *FEDERAL COAL LESSEE, OR ANY AFFILIATE, CANNOT QUALIFY* UNDER SECTION 2(a)(2)(A) FOR A NEW ONSHORE FEDERAL LEASE ISSUED PURSUANT TO MLA.

Appendix A—Definitions

Advance Royalty: A payment made *in lieu* of actual production to meet the continued operation obligation under amended section 7(b) of MLA for a Federal coal lease, when authorized by BLM. Payments made under the minimum production clause *in lieu* of actual production (from a Federal coal lease issued prior to August 4, 1976, and not yet subject to the 1982 regulatory diligence system) to meet the minimum production/minimum royalty lease-specific Federal coal lease term are not advance royalty for the purposes of suspending the *producing-in-commercial-quantities* requirement of section 2(a)(2)(A) of MLA.

Commercial Quantities: One percent of the recoverable coal reserves or LMU recoverable coal reserves.

Continued Operation: Production of not less than commercial quantities of the recoverable coal reserves in each of the first 2 continued operation years following the achievement of diligent development and an average amount of not less than commercial quantities of recoverable coal reserves per continued operation year thereafter, computed on a 3-year basis consisting of the continued operation year in question and the 2 preceding continued operation years.

Continued Operation Year: The 12-month period beginning with the commencement of the first royalty reporting period following the date that diligent development is achieved and each 12-month period thereafter, except as suspended in accordance with the 1982 regulatory diligence system.

Diligent Development: Production of recoverable coal reserves in commercial quantities prior to the end of 10 years from the date that the Federal coal lease is first subject to the 1982 regulatory diligence system. See the LMU Application and Processing Guidelines for the start and end dates of the diligent development period for LMU's.

Federal Lease Issuance: Receipt *at issuance* of a whole or undivided interest in any onshore Federal lease issued pursuant to MLA, as amended, and, by rule, receipt *at assignment* of a whole or undivided interest in a Federal coal lease. The term "Federal Lease Issuance" does *not* include modifications to existing Federal coal leases.

Producing: For purposes of section 2(a)(2)(A), producing means actually severing coal, or operating an ongoing mining operation in a commercially reasonable manner without coal severance occurring on a given day (e.g., for such reasons as dragline moving, overburden removal, sale from stockpiles, or repair of equipment). An ongoing mining operation may be processing, loading or transporting mined Federal coal (for an LMU, either Federal or non-Federal coal) from point of severance to point of sale and be treated as "producing" for this purpose without continuous actual severance of Federal coal (for an LMU, either Federal or non-Federal coal).

1982 Regulatory Diligence System: The 43 CFR Part 3480 rules, effective on August 30, 1982, which implement the section 7 diligence provisions of MLA, as amended by FCLAA on August 4, 1976, as amended.

Appendix B

Federal Onshore Mineral Commodities, Leasable Pursuant to MLA, that are Prohibited from being Issued to any Entity that Cannot Satisfy the Obligations of Section 2(a)(2)(A) of MLA (Section 3 of FCLAA) at the Time that Qualifications are being Determined for a Federal Lease Issuance on or after August 4, 1986.

Coal
Gilsonite, including All Vein-Type, Solid Hydrocarbons
Onshore Oil & Gas, including Tar Sands
Oil Shale
Phosphate
Potash
Sodium
Sulphur

Appendix C—Discussion of Affiliates

Under section 2(a)(2)(A), the Secretary, subject to certain exceptions, may not issue a Federal lease "to any person, association, corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation, where any such entity . . ." has held a Federal coal lease for a period of 10 years and the entity is not producing coal from that Federal coal lease.

The legislative history and administrative interpretation of Section 11 of FCLAA are particularly relevant in interpreting section 2(a)(2)(A) of MLA, because the language used in both Sections is identical. The legislative history of section 11 states, in part, that "[t]he purpose . . . of this language is to assure that the restrictions . . . are not circumvented by the formation of holding companies, or other devices of corporate organization." H.R. Rep. No. 94-687, 94th Cong., 1st Sess. 25 (1975) It is apparent from the plain language of section 2(a)(2)(A) and the legislative history of section 11 that "control" is the key concept through which ownership of a Federal coal lease will be attributed to related corporate entities. The phrase "controlled by or under common control with such person, association, or corporation" modifies the words "subsidiary," "affiliate," and "persons." Therefore, when a chain of corporate ownership is involved, the question is whether a given corporation is "controlled by or under common control with" a related corporation. If there is sufficient control of a corporation by another corporation, related corporations in the corporate chain will be charged with ownership of the Federal coal lease. This analysis is consistent with DOI's established interpretation of section 11. See 46 FR 61390, 61403 (1981). The question of whether a particular entity is "controlled by or under common control with" another entity for section 2(a)(2)(A) purposes will have to be determined on a case-by-case basis at the time that qualifications are being determined for a Federal lease issuance on or after August 4, 1986. However, DOI believes that the following principles should guide these determinations:

(1) A corporation is a subsidiary under legal control of another corporation when more than 50 percent of its voting securities is held directly or indirectly by such other corporation.

(2) A corporation is an affiliate under legal control of another corporation when more than 50 percent of the voting securities of each such corporation is held directly or indirectly by another person, corporation, or entity; or

(3) The Secretary may determine that in the absence of legal control through stock ownership a person, association, or corporation is under the actual control of another person, association, or corporation.

Actual control of a corporation will often exist without ownership of a majority of the corporation's voting stock. Ownership of less than 50 percent may provide actual control where stock ownership is widely dispersed. These determinations will necessarily have to be made on a case-by-case basis.

Generally, the application of section 2(a)(2)(A) to a Federal coal lease holding entity will not be affected by a corporate reorganization of the entity. This is true even if the reorganized entity is renamed. In addition, if a Federal coal lessee in violation is acquired by a corporation resulting in a parent-subsidiary structure, the section 2(a)(2)(A) violation will automatically run to the parent corporation. This is because the section 2(a)(2)(A) leasing prohibition runs up and down a chain of corporate ownership. That is, a parent's violation is charged to a controlled subsidiary and a subsidiary's violation is charged to a controlling parent, as well as to any other subsidiary commonly controlled by that parent.

The guidelines do not currently speak to partners of partnership Federal coal lessees, and venturers in joint-venture Federal coal lessees. BLM currently intends to implement ownership/control/affiliation concepts with respect to such entities in a manner consistent with the Office of Surface Mining's rules for control-responsibility of noncorporate business entities. These rules were proposed April 5, 1985 (50 FR 13724), and BLM awaits the final

rulemaking before issuing supplemental guidelines on this issue.

[FR Doc. 85-20609 Filed 8-28-85; 8:45 am]
BILLING CODE 4310-84-M

Minerals Management; Logical Mining Unit Application and Processing; Guidelines

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Final Guidelines.

SUMMARY: This notice sets forth guidelines for the Department of Interior's administration of section 2(d) of the Act of February 25, 1920, (otherwise known as the Mineral Leasing Act (MLA)). These guidelines will be used by Bureau of Land Management personnel in order to process logical mining unit (LMU) applications, develop stipulations, ensure public participation, and monitor operator compliance of an approved LMU.

EFFECTIVE DATE: August 29, 1985.

ADDRESS: Department of the Interior, Bureau of Land Management (660), 18th and C Streets, NW, Room 3411, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Paul W. Politzer or Allen B. Agnew, (202) 343-7722, or William C. Stringer, (202) 343-7753.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management published draft guidelines on April 11, 1985 (50 FR 14303). Comments were invited for 60 days, ending June 10, 1985. As a result of publication of the draft guidelines, 15 comments were received. The comments are addressed below; the text of the guidelines has been changed as appropriate.

In general, comments addressed eight specific topics: the effect of LMU formation on the requirements of section 2(a)(2)(A) of MLA; diligent development and continued operation requirements; effective control of lands within an LMU; single operator/single operation requirement; 40-year mine-out requirement; contiguity requirement; effective date of approval; and resource recovery and protection plan submittal requirement. Following the *General Discussion*, the comments received on the specific topics are addressed.

General Discussion

Section 5 of the Federal Coal Leasing Amendments Act of 1976, as amended (FCLAA), added paragraph 2(d) to MLA. This amendment states that the Secretary, upon determining that maximum economic recovery of Federal coal will be achieved, may approve the consolidation of Federal coal leases in an LMU.

An LMU may contain one or more Federal coal leases, and may include non-Federal coal. Federal coal leases issued prior to enactment of FCLAA may only be included in an LMU with the consent of all lessees whose Federal coal leases will be included in the LMU. If requested by a person having a direct interest that is or may be adversely affected; a public hearing must be held prior to LMU approval.

All lands in an LMU must be under the effective control of a single operator, be able to be developed and operated as a single operation, and be contiguous. No LMU may contain more than 25,000 acres.

An approved LMU is subject to the diligence requirements of section 7 of MLA—diligent development, continued operation, and resource recover and protection plan submittal. Formation of an LMU allows production of coal from anywhere within the boundaries of the LMU to be construed as occurring on all Federal coal leases in the approved LMU. However, the entire LMU recoverable coal reserves must be mined out within 40 years.

These guidelines provide a background and general discussion of the provisions of MLA and set forth the formation criteria, application requirements, consultation and public participation requirements, and approval stipulations. The guidelines also discuss how the section 7 of MLA diligence requirements of individual Federal coal leases do or do not govern the diligence requirements imposed on the LMU. The guidelines further discuss modifications and adjustments to aproved LMU's, how an LMU may fail and the results of the failure on the individual Federal coal leases contained therein, and how the Department of the Interior intends to monitor the diligence requirements on both a lease-specific and LMU basis.

General Comments

One comment stated that formation of an LMU is a new and separate Federal action requiring a new and separate environmental review. The Department of the Interior has taken the position that the determination and designation of an LMU is categorically excluded (46 FR 7485-7486, 516 DM 6, Appendix 2, section 2.4(B)(1)(g)) from preparation of an environmental impact statement. A statement to this effect has been included in the guidelines as an insert in the notice of availability.

Several comments stated that the guidelines should address the effects of LMU formation and failure or termination on the requirements of section 2(a)(2)(A) of MLA. The LMU guidelines address only the implementation of Section 2(d) of MLA, as codified at 43 CFR 3487. The Department of the Interior has developed separate guidelines for implementation of section 2(a)(2)(A); the effects of the section 2(a)(2)(A) lessee-qualification prohibition on Federal coal leases included in an approved LMU are addressed therein.

Two comments stated that many of LMU application requirements are duplicative of the requirements for a permit application package under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The comments suggest that an LMU applicant be authorized to incorporate, by reference, existing information the LMU application. The guidelines do not require that the LMU applicant recreate existing documents solely to conform to the application format. Information contained in a SMCRA permit application may be extracted and submitted, as appropriate, to satisfy the LMU application requirements with little or no modification.

Specific Comments

1. *Sections 7(a) and 7(b) of MLA.* Many comments were received on the various aspects of diligent development and continued operation. The guidelines do not alter any aspect of the provisions of diligent development or continued operation as provided by statute or rule. The regulatory requirements for diligent development and continued operation will be examined during a forthcoming regulatory revision and these comments will be considered at that time.

2. *Resource Recovery and Protection Plan (R2P2).* Several comments pointed out an apparent discrepancy between the draft guidelines and the rules regarding the 3-year submittal requirement for an R2P2 on an LMU. The guidelines are not inconsistent with the rules by basing the requirement for R2P2 submittal on the effective date of post-FCLAA leases. The rules state, in part, that the R2P2 must be submitted "within 3 years from the effective date of LMU approval * * *." The Office of the Solicitor has interpreted this to mean that 3 years is the maximum time period allowed for submittal for the R2P2; however, a shorter timeframe must be established in certain circumstances, as discussed in the guidelines.

3. *Effective control of LMU lands.* Several comments stated that the requirement for "effective control" of lands within an LMU is tantamount to requiring surface owner consent. The

guidelines specifically state that "effective control" is not related to surface owner consent provisions. The requirement for "effective control" of all lands within the LMU ensures that all recoverable coal reserves within the LMU can be mined. Failure to require "effective control" prior to LMU approval could result in a situation where Federal coal resources would be bypassed with no chance of recovery in the future. In draft, these guidelines addressed "effective control" with respect to SMCRA. Upon reconsideration, the Department of the Interior has determined that these guidelines are not the appropriate place to discuss this subject. As a result, this reference has been removed.

4. *40-year mine out.* Several comments stated that the guidelines should not indicate that annual production from an LMU would have to average 2½ percent in order to achieve mine-out in 40 years. The intent of the guidelines was to point out that in order to achieve mine-out of the LMU recoverable reserves by the 40th year, an *average* annual production of 2½ percent would be necessary. In order to avoid confusion, this statement has been removed from the guidelines.

5. *Contiguity.* Several comments stated that the meaning of the term "legal subdivision" for purposes of satisfying the contiguity requirement is unclear. One comment further stated that in some cases rights-of-ways may be necessary to satisfy the contiguity requirement. The term "legal subdivision" applies to any parcel of land which is described by a legal survey. In most cases, the smallest "legal subdivision" in the western United States is 10 acres. However, it is not uncommon to find surveyed lots which are either less than 10 acres or are of irregular shapes which do not lend themselves to description in terms of a standard rectangular subdivision (e.g., NW ¼ NW ¼ SW ¼, Section 2). The Department of the Interior has determined that a right-of-way may not be used to satisfy the requirement for contiguity between two or more noncontiguous coal leases. On the other hand, a right-of-way or physical discontinuity does not destroy existing contiguity.

6. *Consultation.* Several comments stated that ample opportunity for consultation should be provided prior to and during the development of the LMU stipulations as well as providing for adjustments and modifications to existing LMU's based on changed conditions or new information obtained after approval. The consultation/public participation phase allows ample opportunity for applicant input to the development of LMU stipulations. In addition, the Authorized Officer may modify stipulations as necessary at any time, based on new information and consultation with the LMU operator.

7. *Non-Federal coal reserves.* One comment stated that non-Federal coal reserves should only be considered in determining the LMU recoverable coal reserves for the purpose of establishing the diligent development and continued operation requirements. The stipulations developed for an LMU must contain non-Federal reserves for purposes of diligent development and continued operation as stated. In addition, the stipulations must require production figures for non-Federal leases so that the statutory and regulatory provisions governing the Federal coal leases in the LMU can be enforced. With this exception, the Department of the Interior does not intend to include non-Federal coal lands in its Inspection and Enforcement program.

8. *Effective approval date.* Several comments stated that the establishment of an effective date for LMU approval which is retroactive to the date of submittal of the LMU application could be inconsistent with the current rules. The guidelines are not inconsistent with the rules by allowing the effective date of LMU approval to be no earlier than the date that the Authorized Officer receives an LMU application in accordance with 43 CFR 3487 (1984). The effective approval date for an LMU may be established at any time between the dates of application submittal and application approval based on consultation with the LMU applicant, as stated in the guidelines.

9. *Rent and royalty.* Several comments stated that inclusion in an LMU should not affect any of the lease-specific terms and conditions of those Federal coal leases not otherwise subject to the provisions of section 7 of MLA. The guidelines clearly state that the rental and royalty *rates* of existing leases are not modified by inclusion in an LMU. However, lease-specific diligence terms and conditions are superseded by the LMU diligence stipulations which are governed by Section 7 of MLA.

10. *Single Operation.* Several comments stated that for purposes of an LMU, maximum flexibility should be provided in defining "single operation." The guidelines allow for the Authorized Officer's discretion by not establishing definitive qualification criteria. The Department of the Interior is well aware of the various complexities associated with large mining operations and, as such, the determination will be made on a case-by-case basis by the Authorized Officer.

11. *Directed LMU Formation.* Two comments stated that the authority of the Authorized Officer to direct formation of an LMU is overly broad and of questionable legality. One comment further stated that unrequested LMU formation may adversely affect the operators economic minability, diligence requirements, and others. Section 2(d)(6) of MLA states that the Secretary, by regulation, may require a lessee to form an LMU and may provide for determination of participating acreage within an LMU. The guidelines do not imply that the Authorized Officer is encouraged to initiate LMU formation as a matter of course. The same requirements for LMU formation apply regardless of whether the operator or the Authorized Officer initiates the action. This being the case, the proposed LMU would have to be developed in an economical manner with due regard to conservation of the resource. If formation of an LMU can be shown to achieve increased conservation of the Federal resource without undue hardship to the operator, the Authorized Officer may so order. The operator, of course, may appeal this action.

12. *Termination.* Two comments stated that the guidelines incorrectly state that "an LMU which does not achieve diligent development will be automatically terminated by law." The comments further stated that termination is an administrative decision based on whether diligent development has been achieved. The Department of the Interior agrees with this comment and the guidelines have been changed accordingly. To avoid confusion, the term "cancellation," as it applies to the approved LMU, has been replaced with "termination." Failure of the LMU to comply with its stipulations subjects the LMU to termination by administrative decision. Cancellation procedures apply to individual Federal coal leases and must be pursued in a court of competent jurisdiction.

The final guidelines were formulated in light of informal advice rendered by Solicitor's Office staff.

The primary authors of these guidelines are Allen B. Agnew and William C. Stringer, Branch of Technical Support, Solid Mineral Operations Division, Bureau of Land Management (BLM), assisted by other BLM field and headquarters personnel and the Office of the Solicitor, Department of the Interior.

The guidelines are set forth below.

Dated: August 22, 1985.

James M. Parker,

Acting Director, Bureau of Land Management.

LMU Application and Processing Guidelines

I. Background

Section 5 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), added Section 2(d) to the Mineral Leasing Act of 1920 (MLA), which provides the legislative framework for logical mining units (LMU's). The implementing rules at 43 CFR Part 3480, which were published in the Federal Register on July 30, 1982 (effective August 30, 1982), provide LMU description and establishment criteria. The Authorized Officer (AO), defined at 43 CFR 3400.0–5(b),[1] may approve an LMU application submitted by an operator/lessee or may direct that an LMU be established. The Bureau of Land Management (BLM) State Director is the AO for the purposes of denying, approving, modifying, or terminating the LMU.

Although the Secretary, through the AO, has discretion to order LMU formation, it is not the policy of BLM to order LMU formation. Such an order would only be given when maximum economic recovery (MER) of the coal deposits would be increased in accordance with section 2(d)(1) of MLA. An LMU may be enlarged by the addition of other Federal coal leases or with interests in non-Federal coal, may be diminished by creation of other separate Federal leases or LMU's, or may be diminished by the relinquishment of recoverable coal reserves and/or acreage. Federal coal lease segregation, which results in the assignment of new lease serial numbers for the segregated portion of the original Federal coal leases do *not* constitute Federal coal lease readjustments.

See Appendix A for example notification letters to affected parties during the public participation phase of LMU approval. See Appendix B for an example notification letter to the LMU applicant and containing an example of LMU approval stipulations. See Appendix C for a discussion of notifications to lessees regarding, and the monitoring of, diligent development and continued operation for both Federal coal leases and LMU's. All data regarding LMU application, processing and monitoring, 3-year resource recovery and protection plan submittals, diligent development, continued operation, advance royalty and others for Federal coal leases and for LMU's must be entered and maintained up-to-date in the appropriate Solid Leasable Minerals System (SLMS) data bases.

II. General Discussion

The purpose of these guidelines is to set forth the requirements and conditions that must be satisfied to enable an LMU to be approvable. The guidelines do not alter any aspect of the AO's discretionary authority in acting on LMU applications, which is set forth in the 43 CFR Part 3480 rules.

"*Federal* coal leases" means Federal coal leases on public or acquired lands *only*. "*Non-Federal* leases" includes Indian tribal, Indian allotted, fee/private, and State coal. This is an extremely important distinction for the following reason. Production from anywhere (Federal or non-Federal coal) within the LMU is construed as occurring on all *Federal* coal leases within the LMU. However, the reverse is not true. Federal production within an LMU is *not* construed as occurring on any *non-Federal* coal leases within the LMU. For example, if an Indian coal lease, the lease form of which states that the lease lasts as long as production continues, is contained in an LMU, production from *other* non-Federal coal or from Federal coal does *not* satisfy the Indian, lease-specific production requirement, unless the Indian lease document so specifies.

Federal coal leases have diligence provisions that are lease-specific. The diligence provisions for LMU's are LMU-specific. When a Federal coal lease is included in an LMU, both types of diligence run *simultaneously*. However, in essence, LMU-specific diligence takes precedence over lease-specific diligence, as long as that Federal coal lease is contained in an approved LMU. In other words, LMU diligence *supersedes*, but *does not suspend*, lease-specific diligence requirements. As long as all LMU approval conditions/stipulations, including diligence, are complied with, *an individual Federal coal lease contained in an approved LMU is not in noncompliance with lease-specific diligence requirements.*

Diligence is based on recoverable coal reserves, as determined by the AO. The standards for coal reserve base, minable reserve base, recoverable coal reserves, and MER are defined in the rules at 3480.0–5. The regulatory criteria may be adapted locally to determine the recoverable coal reserves.

Therefore, a narrative of the coal reserve base, minable reserve base, and recoverable coal reserves, by bed, will be required in the LMU application, in addition to a narrative regarding *any* Federal coal that the operator proposes to not mine or to render unminable. Such coal may either be required to be mined as a condition of LMU approval, may be assigned to another lessee upon approval by the AO, may be relinquished if authorized by the AO, may be segregated into another Federal coal lease or into another LMU, or may be retained in the LMU if such coal could not be mined (e.g. that portion of the coal reserve base that could be economically mined by any entity or operation).

A Federal coal lease, or LMU, *must* produce commercial quantites of coal prior to the end of 10 years, or the Federal coal lease or LMU *shall be terminated*. There is no statutory or regulatory relief from this provison. Nothing prohibits LMU formation just prior to the end of the first 10-year period that a Federal coal lease is individually subject to diligence.

Since production from anywhere within an LMU is deemed to have occurred on all *Federal* local leases within the LMU, as long as criteria for LMU approval are adhered to, that Federal coal lease is not in jeopardy. But, if LMU diligent development is not satisfied, the LMU is terminated; then, the Federal coal leases must be assessed individually for compliance with MLA. Upon LMU failure, if a specific Federal coal lease would have not achieved lease-specific diligent development within its initial 10-year period, that Federal coal lease shall *also* be terminated.

The commerical quantities (by rule, 1 percent of the LMU recoverable coal reserves) for diligent development and continued operation is the *minimum* required to satisfy the LMU diligence provisions. However, in order to achieve the LMU 40-year recoverable coal reserves exhaustion requirement, the operator will have to supply a prodution schedule as part of the LMU application showing that the 40-year mine out will be achieved.

Once the LMU is subject to continued operation, annual production *cannot be less than* 1 percent annually or based on a 3-year rolling average; otherwise, advance royalty will be due.

Note.—There is a limitation on the number of years that advance royalty can be paid for an LMU. See section VII.G. regarding Advance Royalty.

If an LMU application shows that there are more than 40 years of reserves, then some land/coal must either be relinquished, assigned out from the LMU, made part of another LMU, or

[1] Hereafter, all "3400 . . . ." citations refer to "43 CFR," unless otherwise stated or unless referring to a complete Group or Part at 43 CFR.

segregated from the LMU into another separate Federal coal lease. Once a Federal coal lease is segregated and assigned a new lease number, it remains a separate and distinct entity. If an LMU were to fail and if the lessee(s) wished to have the segregated Federal coal leases recombined, there is no appropriate authority at 43 CFR Group 3400 to consolidate the segregated Federal coal leases back into the original Federal coal lease by administrative decision.

If the LMU application shows that the coal will be mined within 40 years, *and* if the operator fails to achieve that 40-year mine out, the LMU is subject to termination by administrative decision. There is no relief from the 40-year mine-out provision. In fact, 40-years is actually a maximum. The Secretary has discretion to impose shorter mine-out timeframes. However, Department policy (as codified at 3487) is to allow the full 40-year mine-out period for any approved LMU.

If a Federal coal lease has no production during the life-of-the-mine for the LMU, and if the 40-year LMU mine-out provision is violated, the LMU must be terminated by administrative decision and the Federal coal lease reverts to its individual, lease-specific diligence requirements. Since there had been no production, the Federal coal lease would be terminated. This is because that Federal coal lease, individually, would never have achieved its own diligent development by production of commerical quantities of the lease-specific recoverable coal reserves prior to the end of the lease-specific diligent development period. Other ramifications on specific Federal coal leases when an LMU fails are discussed in Appendix C.

All *lands* within the LMU must be under the effective control of a single operator. This requirement is *not* related to the "surface owner consent" requirements of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) or the surface-owner consultation process at 43 CFR Part 3420. Where there is non-Federal land and/or non-Federal coal to be included in the LMU, the public participation procedures require that all surface owners and all coal owners, if other than the Federal Government, be notified. In addition, to demonstrate effective control, the LMU application must contain a narrative of agreements with the surface *and* coal owners, if other than the Federal Government. If necessary, hard copies of those executed agreements may have to be provided; for example, the agreements may be required to be produced as the result of a public hearing, if one is held.

An LMU approval is an agreement between the Federal Government and a non-Federal entity. Failure by the non-Federal entity to comply with that agreement constitutes a breach. Therefore, LMU termination is an administrative action, not a judicial action. LMU's may be terminated by administrative decision, for just cause, stating the cause of the termination.

III. LMU Formation Criteria

The application for an LMU or modification to an approved LMU must satisfy certain statutory and regulatory criterial. The AO, except for good cause stated in a decision disapproving the LMU application, shall approve an LMU *if* the LMU application satisfies *all* of the following:

1. Within the proposed LMU boundary, the LMU recoverable coal reserves must be *capable of being developed in an efficient, economical and orderly manner as unit*, with due regard to conservation of the recoverable coal reserves and other resources.

2. The LMU *may consist of one or more Federal coal leases and* may include *intervening or adjacent lands* in which the United States does not own the coal.

3. All lands and coal in the LMU shall be under the *effective control of a single operator.*

4. All lands must be *able to be developed and operated as a single operation.* A single operation may include a series of excavations.

5. All lands within the LMU *must be contiguous* (i.e., have at least one point in common, including cornering tracts). Intervening physical separations such as burn or outcrop lines and intervening legal separations such as right-of-way do not destroy contiguity, as long as the legal subdivisions have at least one point in common.

6. Mining *operations must achieve MER of the Federal recoverable coal reserves* within the LMU.

7. If portions of a single Federal coal lease are to be included in more than one LMU, that Federal coal lease shall be segregated into two or more Federal coal leases. The segregated portions of the Federal coal leases are each assigned new serial numbers. The assignment of new serial numbers does *not* constitute a lease readjustment.

8. If only a portion of a Federal coal lease is to be included in an LMU, the remaining land shall be segregated into another Federal coal lease.

9. The operator may apply to relinquish any portion of a Federal coal lease, segregated under item 7 or 8 above, in accordance with 3452.1, or may assign any portion of such a Federal coal lease in accordance with 3453.

10. The LMU cannot exceed 25,000 acres, including both Federal and non-Federal lands.

11. The operator must agree to the LMU stipulations.

IV. LMU Application requirements

Five copies of the LMU application must be submitted to the AO. The resource recovery and protection plan (R2P2),[2] of R2P2 modification if there is a currently approved R2P2 for at least one of the Federal coal leases, will have to contain all of the requirements of 3482.1(c) for the life-of-the-mine for the LMU. (See section VII.A. regarding *Resource Recovery and Protection Plan* submittals for LMU's on which there is an already approved R2P2 or, for non-Federal coal, an already approved SMCRA permit.) Therefore, only information sufficient to determine satisfaction of the LMU FORMATION CRITERIA needs to be submitted in the LMU application. The LMU application must contain a *narrative* that covers the following:

1. Name and address of the *designated operator* of the LMU [3487.1(c)(1)]:

• This is very important, as more than one operator/lessee may want its Federal coal lease(s) included in the LMU.

2. A listing of the Federal coal lease serial numbers, a description of the land and all coal beds (including thickness and quality) within the boundary of the LMU, and an identification of those coal beds proposed to be mined and those coal beds proposed to be excluded from any Federal coal lease which would be a part of the LMU [3487.1(c)(2)]:

• The listing of all Federal coal lease serial numbers must include the name and address of all lessees with Federal coal leases proposed to be included in the LMU.

• As stated in the July 30, 1982, preamble to the 43 CFR Part 3480 rules, the rules are intended to require the operator to demonstrate his *right to enter and mine all recoverable coal reserves* contained in the proposed LMU. The legal description of all lands (Federal and non-Federal) within the proposed LMU boundary is required on

[2] Hereafter, R2P2 means the plan of operations submitted pursuant to MLA, in accordance with 3482.1(b) of the 1982 regulatory diligence system, or the "mine plan" approved for Federal coal leases prior to the 1982 rulemaking.

a lease-by-lease basis. For the Federal portion, it most probably will be the legal land discription contained in each Federal coal lease form. For non-Federal portions, the legal land description should be on a surface-owner-specific and, if applicable, coal-owner-specific basis. The requirement of a description on a surface-owner-specific basis is necessary for two reasons. First, all lands within the LMU must be under the *effective control of a single operator.* (See item 3 below.) Second, all surface and coal owners must be notified of the proposed LMU action pursuant to public participation procedures. Where the non-Federal coal owners are different from the surface owners, the legal land description is also required or that coal on a coal-owner-specific basis. The name and address of the surface and coal owners, if other than the Federal Government, must be included with the legal land description.

These requirements are not be to be confused with the *"surface owner consent"* provisions of SMCRA or the surface owner consultation process at 43 CFR Part 3420.

• A narrative describing the *surface and underground coal reserve base, minable reserve base,* and *recoverable coal reserves, by bed,* of *all* coal (Federal and non-Federal) within the proposed LMU boundary.

• A narrative describing and justifying that part of the *Federal coal reserve base* that the applicant intends to exclude (segregate) from the LMU, to relinquish, to assign, to not mine, or to render unminable. Representative cross-section are recommended; but, they are not required unless the AO deems their submittal to be necessary in order to determine whether relinquishment would be in the public interest or that MER would not be achieved by exclusion or relinquishment, or to determine which coal will have to be segregated into another Federal coal lease(s) or LMU(s) by the exclusion [see 3487.1(f)(3), concerning segregations and relinquishment].

If a portion of the Federal coal reserve base contains coal that is not recoverable (e.g., could not be recovered economically by any entity or any operation), that coal does *not* fall in the category of "not to mine, or to render unminable" for the purposes of segregation into another Federal coal lease(s) or LMU(s).

Note—"Unmined or rendered-unminable" includes coal proposed to be: (a) not mined; (b) rendered unminable; (c) assigned to another entity and not included in the LMU; (d) relinquished; or (e) segregated into another Federal coal lease or LMU.

Otherwise, the situation could result where the lessee would hold a Federal coal lease, by segregation, from which no Federal coal could be mined.

3. Documents and related information showing all lands are under the *effective control of a single operator* and capable of being *mined as a single operation* [3487.1(c)(3)]:

• A narrative of any necessary surface owner agreements and their effective dates for *all* lands (surface owners and coal owners, if other than the Federal Government) within the proposed LMU boundary is sufficient. If the surface of a Federal coal lease is private or if there is non-Federal coal, the narrative can state, for example: "On August 1, 1980, [LMU applicant] executed a surface-owner agreement [or lease, right-of-way, or other similar agreement] with [non-Federal entity], the surface owner [coal owner (if appropriate)] for the right to mine or develop the coal contained in the following described lands [coal (if appropriate)]:" followed by a legal description of the surface or coal, as appropriate; if the legal description is the same as described in item 2, a cross-reference to the appropriate legal description is sufficient.

• Since all surface owners and all coal owners, other than the Federal Government, must be notified individually during the public participation procedures, a narrative of effective control of the surface and of the right to enter and mine *all* recoverable coal reserves is all that is needed here. If a surface or coal owner protests the LMU formation or if a public hearing is required, documentation of the effective control by the operator/lessee will have to be produced at that time.

• If more than one Federal coal lessee wants Federal coal leases combined to form an LMU, then the lessees must execute an agreement that a single designated operator has effective control of *all* the land and coal within the proposed LMU boundaries. The LMU must be under the effective control of a single operator; however, two or more Federal coal lessees may execute an agreement resulting in a joint partnership or consortium. In such an event, that partnership or consortium could be the designated operator if the executed agreement(s) so states.

• If any conditions exist that cause the land in the proposed LMU to *not* constitute a *single operation,* the proposed LMU must be reconfigured so that the LMU would constitute a *single operation.* Otherwise, the LMU cannot be approved. The ultimate determination as to whether the LMU will be mined as a single operation must be made by the AO. The following examples are provided for discussion purposes only, and are not intended to set forth the sole criteria for what constitutes a single operation:

a. If coal from a single mine on the LMU is marketed through more than one separate and distinct loadout facility, each of which has its own support facilities, that most probably would constitute a single operation and would not prohibit LMU approval.

b. If the coal to be mined from two different parts of the LMU were to go to market through separate and distinct loadout facilities, each having its own support facilities, that could constitute two different operations and not allow the LMU to be approved.

c. If two mines are "related" but have separate and distinct loadout facilities and markets, they might constitute a single operation (e.g., where the existence and sequencing of two mines are dependent on each other, such as two underground mines separated vertically, but not horizontally; see 3484.1(c)(4) concerning multiple coal-bed mining).

4. Sufficient data to allow MER determination for the Federal recoverable coal reserves [3487.1(c)(4)]:

• See item 2 above regarding narrative requirements and apply them in the same manner to any coal bed, or portion thereof, proposed to not be mined or to be rendered unminable. Sufficient information concerning the non-Federal coal must be provided to allow the AO to determine that MER of the Federal recoverble coal reserves will be achieved. For this part of the application, the narrative must be in sufficient detail to justify the unmined or rendered-unminable portion.

5. Any other information required [3487.1(c)(5)]:

• In order to be able to develop the LMU stipulations, the AO may need to ask for a narrative of a preliminary schedule that would show the intent of the LMU applicant to satisfy the diligent development and continued operation requirements to be imposed on the LMU [3487.1(e)(2)], as well as the 40-year mine out requirement [3487.1(e)(6)].

• These should be simple narratives, because the R2P2, or R2P2 modification, for the LMU will have to contain all of the requirements of 3482.1(c) for the life-of-the-mine for the LUM, and will have to show a life-of-the-mine schedule for a 40-year mine out. The estimates of the *recoverable coal reserves* will be subject to revision only as new information becomes available. That information may come from exploration

drilling prior to submittal of the R2P2, or R2P2 modification, for the LMU or prior to submittal of the permit application package, or from new information obtained during the mining operation such as a previously undiscovered fault that causes some of the LMU recoverable coal reserves to be rendered unminable. Once mining commences, the AO, through inspection and enforcement/production verification of the LMU, may determine that the recovery factor is greater or lesser than originally planned. In such an event, the LMU recoverable coal reserves estimate and LMU commercial quantities requirement would be revised accordingly.

6. Confidential information [3487.1(c)(6)]:

• Treat such information in accordance with the provisions at 3481.3.

V. Consultation/Public Participation

1. Prior to approval of an LMU, the AO must consult with the LMU applicant concerning any *Federal* recoverable coal reserves that the LMU applicant either wishes to not mine, to render unminable, to assign, to relinquish or to segregate into another Federal coal lease or LMU. The AO must also consult with the LMU applicant about proposed LMU stipulations that will supersede the lease-specific diligence provisions for the duration of the LMU, in order to allow consistent application of the LMU diligence provisions (i.e., R2P2 submittal for the LMU, 40-year LMU recoverable coal reserves exhaustion requirement, diligent development, continued operation, advance royalty, and Federal rental and royalty collection requirements) [3487.1(d)(1)].

2. The public participation procedures at 3481.2, must be completed *prior to* LMU approval [3487.1(d)(2)]. The consultation with the LMU applicant, as discussed above, may be done prior to *or* concurrently with the public participation procedures. Assuming the LMU application is in an approvable form, the following must be done to satisfy the public participation procedures.

• The LMU application or modification must be made available for public inspection in the office of the AO, with the exceptions of the confidential information, which is handled in accordance with the provisions at 3481.3.

• The AO must post a notice of availability at his office and mail a notice of availability (*certified, return receipt requested*) to:

a. All surface and all coal owners, if other than the Federal Government, within the boundary of the proposed LMU.

b. All appropriate State and Federal Agencies (e.g., if only Federal coal and Federal surface is involved, it is only necessary to notify the Office of Surface Mining (OSM) or, if applicable, State Regulatory Authority and the Surface Management Agency, if other than BLM; however, if non-Federal coal or non-Federal surface is involved, it is necessary to notify the surface or coal owners and appropriate State Agencies, in addition to OSM).

c. The clerk or other appropriate officer in the County or Counties in which the proposed LMU would be located.

d. A local newspaper(s) of general circulation in the locality of the proposed LMU for publication at least once a week for two consecutive weeks.

• If the AO receives a written request for a public hearing from any person having a direct interest which is or may be affected adversely by the approval of the LMU, a public hearing must be held. However, the written request for such a hearing must be received within 30 days from the date of the *first newspaper publication of the notice of proposed decision.* A complete transcript must be made available to the public at the BLM office that held the hearing. Copies of the transcript must be furnished *at cost* to anyone interested.

• The AO must consider all relevant testimony presented at the public hearing in determining whether to approve the LMU.

• Prior to final approval of an LMU, the proposed decision must also be published in a local newspaper(s) of general circulation in the locality of the proposed LMU at least once a week for two consecutive weeks. This notice of proposed decision may be published concurrently with the notice of availability.

Note.—The example notice in Appendix A–2 incorporates both the notice of availability and the notice of proposed decision.

In either event, the LMU *cannot* be approved *before* 30 days, from the date of the *first* newspaper publication of the notice of proposed decision, has expired.

Although an LMU may not be approved prior to 30 days after the first newspaper publication of the notice of proposed decision, the *effective date* of LMU approval can be established by the AO within the timeframe bounded by: (1) the date that the AO receives an application for LMU approval; and (2) the date that the AO approves the LMU. The effective date of the LMU approval must be determined by the AO in consultation with the LMU applicant [3487.1(a), revised 1985].

Note.—The words contained in the brackets in Appendices A and B are the alternative phrasing that should be used, depending on the specifics of the application, for either an LMU or LMU modification.

VI. LMU Approval Stipulations

Prior to LMU approval, the AO must transmit the LMU stipulations to the LMU applicant. Appendix B–1 is an example of such notification. The letter transmitting the LMU stipulations to the LMU applicant must contain a narrative of the criteria the AO used to determine compliance with the LMU FORMATION CRITERIA. The approval date for an LMU must be at least 30 days *after* the first newspaper publication of the notice of proposed decision. (See the previous discussion regarding the *effective date* of that approval.) If a public hearing is requested, the date of the LMU approval will be dependent on the results of that hearing. For example, if the result of the hearing is to proceed with the LMU approval, the approval date could be 30 days after the first newspaper publication of the notice of proposed decision (i.e., backdated from the date of the hearing). If the results show that the LMU should only be approved with special stipulations, the approval date could be the date that the LMU applicant concurs with the special stipulations following the hearing. The LMU approval stipulations must contain the following:

1. R2P2, or R2P2 modification, for the LMU must be submitted not later than 3 years from the effective date of the most recent Federal coal lease that is subject to the 1982 regulatory diligence system prior to LMU approval. The R2P2, or R2P2 modification, for the LMU must contain all the information required by 3482.1(c) for the life-of-the-mine for all Federal and non-Federal lands/coal within the LMU.

• The LMU operator has 3 years from the effective date of the most recent Federal coal lease, which is subject to the 1982 regulatory diligence system prior to LMU approval, to submit either an R2P2 for the entire LMU or a modification to the existing R2P2 that will cover the entire LMU. This applies only if there is an approved R2P2 for at least one of the Federal coal leases to be included in the LMU and, *on the date of LMU approval,* there is *no production* occurring from anywhere within the LMU. See section VII.A. regarding *Resource Recovery and Protection Plan* submittal where there are ongoing

mining operations at the time of LMU approval.

2. A schedule for achieving diligent development and maintaining continued operation for the LMU.

3. Reporting periods for rental and royalty payments for Federal coal leases within the LMU must be exactly the same. This provision applies to the LMU. However, although the Federal coal lease rental and royalty *rates* are not changed by LMU formation, lease-specific rentals are not allowed to be credited against lease-specific production and royalty payments must be made on a monthly basis as long as the Federal coal leases are contained in the approved LMU. These conditions are made a part of the LMU-specific diligence stipulations; the lease-specific terms and conditions shall not be so amended.

4. The superseding, *for the duration of the LMU*, of Federal lease diligence terms and conditions for the individual Federal coal leases within the LMU, in order to be consistent with the LMU diligence stipulations. This provision applies to the LMU; the Federal coal lease terms and conditions shall not be so amended or altered by adjudicative action at the time of LMU approval. Federal *royalty rates* will not be changed by LMU formation.

• As Federal coal lease readjustments occur while the Federal coal leases are in the LMU, the royalty rates and other lease-specific terms and conditions will be changed in accordance with applicable rules. A readjustment of a Federal coal lease contained in an approved LMU does not change the approval stipulations or conditions of the LMU.

5. Estimates of the Federal and non-Federal recoverable coal reserves using data acquired by generally acceptable exploration methods.

• These estimates, determined by the AO are subject to revision at the time of R2P2 submittal for the LMU, or based on new information [see 3482.2(c)].

6. Beginning the 40-year LMU recoverable coal reserves exhaustion requirement on the *date that coal is first produced* on or after the effective date of LMU approval. This is determined during the first royalty reporting period following that date, regardless whether the production occurs from Federal or non-Federal recoverable coal reserves.

If coal is being produced from anywhere within the LMU boundary on the date of LMU approval, the 40-year clock begins on the effective date of LMU approval [3487.1(e)(6)].

Section 2(d)(4) of MLA states: "The Secretary *may amend* the provisions of any lease included in a logical mining unit so that mining under that lease will be consistent with the requirements imposed on that logical mining unit." (Emphasis added) The rules at 3475.6(b) state: "When a lease is included in an LMU with other Federal leases or with interests in non-Federal coal deposits, the terms and conditions of the Federal lease or leases shall be amended so that they are consistent with *or are superseded* by the requirements imposed on the LMU of which it has become a part." (Emphasis added.) The rules at 3487.1(e)(4) provide for "[t]he revision . . . of terms and conditions of the individual Federal leases included in the LMU . . . [by amendment of the Federal coal lease terms] so that they are consistent with the stipulations of the LMU." The LMU approval stipulations apply to all Federal and non-Federal coal and land contained in the approved LMU. The LMU approval stipulations "amend" the lease-specific diligence provisions by *superseding*, but *not suspending*, the lease-specific diligence provisions for the life-of-the-LMU. If the LMU were to fail for whatever reason, the individual, lease-specific diligence provisions would apply to the Federal coal leases as if they had never been included in an LMU.

VII. Diligence for LMU operations

Any Federal coal lease included in an LMU shall be subject to the diligent development and continued operation requirements imposed on the LMU *in lieu* of those diligent development and continued operation requirements that would apply to the Federal coal lease individually [3483.1(c)]. See also the Appendix C entitled "Notification to Lessees Regarding, and the Monitoring of, Diligent Development and Continued Operation."

Following are five methods by which a Federal coal lease becomes "subject to diligence," [3] as currently implemented by the 1982 regulatory diligence system, *without* LUM formation:

1. Issuance after August 4, 1976;

2. Readjustment after August 4, 1976;

3. Modification (to *add* acreage and/or recoverable coal reserves) after August 4, 1976;

4. Revision to the Federal coal lease form, to include diligence provisions, at the request of the Department of the Interior in 1980; or,

5. Election in August 1982, to have a Federal coal lease(s) be subject to the 1982 regulatory diligence system (43 CFR Part 3480) *in lieu* of the Federal coal lease terms regarding minimum production and minimum royalty.

If production has occurred from any of these Federal coal leases, after the date they became "subject to diligence" and prior to their inclusion in LMU, then the LMU diligent development must be credited with that production. Such production can be credited *only* toward the LMU diligent development requirement [3482.2(a)(3)]. If the total credit exceeds 1 percent of the LMY recoverable coal reserves, the LMU diligent development is deemed to have been achieved on the effective date of the LMU approval. Thereafter, the LMU is subject to continued operation, beginning the first LMU royalty reporting period following the effective date of the LMU approval.

A. Resource Recovery and Protection Plan

The R2P2 for the LMU is due within 3 years from the effective date of the most recent (recent is relative to date of LMU approval) Federal coal lease that is "subject to diligence" prior to LMU approval. If the LMU contains at least one Federal coal lease that is *not* "subject to diligence," and if there is no production occurring within the LMU boundary on the date of LMU approval, the R2P2 for the LMU is due within 3 years from the effective date of LMU approval. If there is an approved R2P2 for at least one of the Federal coal leases to be included in the LMU, and if there is no production occurring within the LMU boundary on the date of LMU approval, the LMU operator has 3 years from the effective date of the most recent Federal coal lease or, if applicable, 3 years from the effective date of LMU approval (see the preceding discussion) to submit either an R2P2 for the life-of-the-mine for the LMU, or a modification to the existing R2P2 that will cover the life-of-the-mine for the LMU.

The 3-year R2P2 submittal timeframe for the LMU stops at the end of the 3-year anniversary of the most recent (recent is relative to LMU approval) Federal coal lease that became "subject to diligence" prior to LMU formation. However, if the LMU contains at least one Federal coal lease that is not "subject to diligence" prior to LMU formation, the 3-year R2P2 submittal timeframe stops 3 years from the effective date of the LMU approval, *with*

[3] Technically, all Federal coal leases are subject to some form of diligence. For example, for Federal coal leases issued prior to August 4, 1976, the Federal coal lease terms regarding minimum production/minimum royalty are a form of diligence. Therefore, "subject to diligence" means only those Federal coal leases that are subject to the 1982 regulatory diligence system which implements the diligence provisions of MLA, as amended by FCLAA in 1976.

two exceptions. First, where the Federal coal lease that would control the 3-year timeframe is older than 3 years at the time of LMU application, the R2P2 for the entire LMU must be submitted with the LMU application. This is because if the Federal coal lease's 3-year timeframe were to govern, there would be a situation where the R2P2 for the LMU would have had to have been approved prior to the LMU application being submitted for approval. *Second,* and more importantly, if there are *ongoing mining operations on Federal or non-Federal coal* at the time of LMU approval, the R2P2 for the entire LMU must be submitted with the LMU application. This is because any production from anywhere within the LMC is applied toward the diligence obligations for the entire LMU. Therefore, in such an instance, the R2P2 for the LMU must be approved at the same time that the LMU is approved.

1. For *nonproducing* LMU's containing *at least one* Federal coal lease issued prior to August 4, 1976, that is not "subject to diligence" prior to LMU approval:

Example "a":
Lease "A" effective: March 1, 1971
Lease "B" Effective: February 1, 1981
Lease "C" effective: January 2, 1982
LMU approved containing leases "A", "B", and "C": March 30, 1983
R2P2 for LMU due not later than: March 30, 1986

Example "b":
Lease "D" effective: April 9, 1957
Lease "E" effective: June 12, 1964
Lease "D" readjusted: April 9, 1977
Lease "F" effective: January 15, 1981
LMU approved containing leases "D", "E", and "F": May 10, 1983
[Lease "E" readjusted: June 12, 1984]
R2P2 for LMU due not later than: May 10, 1986

2. For *nonproducing* LMU's containing *only* Federal coal leases that are "subject to diligence" prior to LMU approval (may also include non-Federal coal; i.e., the LMU contains *no* Federal coal leases that are *not* "subject to diligence"):

Example "a":
Lease "A" effective: July 7, 1977
Lease "B" effective: August 8, 1978
Lease "C" effective: September 9, 1982
LMU approved containing leases "A", "B", and "C": April 1, 1983
R2P2 for LMU due not later than: September 9, 1985

Example "b":
Lease "D" effective: June 6, 1960
Lease "E" effective: May 5, 1979
Lease "D" readjusted: June 6, 1980
Lease "F" effective: October 10, 1982
LMU approved containing leases "D", "E", and "F": April 2, 1983
R2P2 for LMU due not later than: October 10, 1985

3. For *nonproducing* LMU's containing *only* Federal coal leases that have been "subject to diligence" for *more than 3 years* prior to LMU approval (may also include non-Federal coal; i.e., the LMU contains no Federal coal leases that are *not* "subject to diligence"):

Example:
Lease "A" effective: July 7, 1977
Lease "B" effective: August 8, 1978
Lease "C" effective: September 9, 1982
LMU approved containing leases "A", "B", and "C": April 1, 1986
R2P2 for LMU due at the time of submittal of the LMU application.
R2P2 for LMU approved: April 1, 1986

4. For LMU's containing either a *producing* Federal coal lease or *producing* non-Federal coal, the R2P2 *must be submitted at the time of LMU application.* The LMU cannot be approved without a simultaneous approval of the R2P2.

B. Diligent Development

"One percent of the total LMU recoverable coal reserves (i.e., Federal and non-Federal) contained in the approved LMU must be produced prior to the end of the LMU diligent development period." [3480.0–5(a)(13)].

The total LMU recoverable coal reserves figure (from which the 1 percent LMU commercial quantities requirement is derived) is that number estimated by the AO as of the date of approval of the R2P2 submitted for all Federal and non-Federal coal included in the LMU [3487.1(e)(1)]. However, if there are ongoing mining operations under a previously approved R2P2 and SMCRA permit on either Federal or non-Federal coal, the estimate of the LMU recoverable coal reserves must be made at the time of LMU approval, based on information submitted in the LMU application and R2P2 for the life-of-the-mine for the LMU so that LMU commercial quantities production requirements can be determined.

Any adjustment to the LMU recoverable coal reserves may be accomplished by the AO after consultation with the operator/lessee. If the LMU recoverable coal reserves are adjusted during the 10-year, LMU diligent development period, based on new information or LMU modification, the 1 percent LMU recoverable coal reserves production requirement to achieve diligent development must also be adjusted and will be effective *immediately.*

C. Production Crediting

The total LMU recoverable coal reserves figure at the time of LMU approval includes the recoverable coal reserves from Federal lands and non-Federal lands, and any production credited toward Federal coal lease diligent development *prior to* inclusion in the LMU. The timeframes, from which the LMU recoverable coal reserves are estimated, follow:

1. All non-Federal recoverable coal reserves at the time of LMU formation;

2. All Federal recoverable coal reserves remaining at the time of LMU formation for Federal coal leases not yet "subject to diligence;"

3. All Federal recoverable coal reserves determined by the AO (for Federal coal leases "subject to diligence") to have been in existence *on the effective date that each of those Federal coal leases became "subject to diligence," not* only those recoverable coal reserves remaining at the time of LMU formation; and,

4. All Federal coal, produced after August 4, 1976, that the operator/lessee has requested to be credited toward Federal coal *lease* diligent development *prior to* LMU formation (i.e., *prior production* credits).

Any *prior production* credited, at the lessee's request, toward diligent development for a Federal coal lease *prior to* inclusion of that Federal coal lease in an LMU, must also be credited toward diligent development for the LMU [3482.2(a)(3)].

A request to credit prior production for a Federal coal lease contained in an approved LMU, *cannot* be accepted while that Federal coal lease is contained in the LMU. *Prior-production* crediting is only allowed toward lease-specific diligent development [3483.5 (d) and (e)]. Once a Federal coal lease is included in an LMU, the LMU-specific diligence requirements supersede the lease-specific diligence requirements.

D. Federal Coal Lease vs. LMU Production Credits

Under 3483.5 (a), (b), and (c), any *production occurring after* a Federal coal lease is "subject to diligence" is credited toward diligent development for the Federal coal lease. If that Federal coal lease is included in an LMU, any production credited toward lease-specific diligent development and/or continued operation prior to LMU formation is credited toward LMU-specific diligent development. Any production from a Federal coal lease after it is included in an approved LMU is credited toward *both* lease-specific

and LMU-specific diligent development and/or continued operation, if the Federal coal leases individually are "subject to diligence."

If a Federal coal lease is not "subject to diligence," production is only credited toward the LMU-specific diligent development and/or continued operation. After that Federal coal lease becomes "subject to diligence," production is also credited toward the lease-specific diligent development and/or continued operation. Once the lease-specific or, if in an LMU, the LMU-specific diligent development is achieved, the Federal coal lease or LMU is subject to its specific continued operation requirement.

Both 3483.5 (d) and (e) allow for *prior-production* credits for Federal coal leases. Those prior-production credits, by rule, can only be applied toward *lease-specific* diligent development. Once a Federal coal lease is included in an LMU, the LMU-specific diligence requirements supersede the lease-specific diligence requirements. Therefore, in accordance with 3483.5(g), *no prior-production* credits can be applied to a Federal coal lease or LMU *while that Federal coal lease is contained in an approved LMU.*

If production to achieve diligent development is occurring from non-Federal recoverable coal reserves contained in the LMU, then the AO must require the submittal of certified production reports and maps for non-Federal as well as Federal portions of the LMU. Since production from non-Federal coal would be used to satisfy a Federal requirement imposed on the LMU, Secton 2(d) of MLA allows the AO to require submittal of such information. Also, since non-Federal production is being used to satisfy a Federal requirement imposed on the LMU, the AO must verify the non-Federal production as part of his inspection and enforcement responsibilities. This requirement is addressed in Appendix B-2, LMU Approval Stipulations, under item 1, "Supervision."

E. Diligent Development Period Start Dates

For LMU's containing *only* Federal coal leases that are "subject to diligence" prior to LMU approval (may also include non-Federal coal; i.e., the LMU contains *no* Federal coal leases that are *not* "subject to diligence"):

The LMU diligent development period begins on the effective date that the most recent (recent is relative to date of LMU approval) Federal coal lease became "subject to diligence" prior to LMU approval [3480.0-5(a)(ii)(B)].

Example "a":

Lease "A" effective: July 1977
Lease "B" effective: August 8, 1978
Lease "C" effective: September 9, 1979
LMU approved containing leases "A", "B", and "C": April 1, 1983
LMU diligent development period begins: September 9, 1979
Latest date to achieve LMU diligent development: September 9, 1989

Example "b":

Lease "D" effective: June 6, 1960
Lease "E" effective: May 5, 1979
Lease "D" readjusted: June 6, 1980
Lease "F" effective: October 10, 1982
LMU approved containing leases "D", "E", and "F": April 2, 1983
LMU diligent development period begins: October 10, 1982
[Lease "D" readjusted: June 6, 1990]
Latest date to achieve LMU diligent development: October 10, 1992

For LMU's containing *at least one* Federal coal lease issued prior to August 4, 1976, that is not "subject to diligence" prior to LMU approval:

The LMU diligent development period begins on the effective date of LMU approval (regardless whether the LMU also contains at least one Federal coal lease that is "subject to diligence" *prior to* LMU approval) [3480.0-5(a)(14)(ii)(A)].

Example "a":

Lease "A" effective: March 1, 1971
Lease "B" effective: February 1, 1981
Lease "C" effective: January 2, 1982
LMU approved containing leases "A", "B", and "C": March 30, 1983
LMU diligent development period begins: March 30, 1983
[Lease "A" readjusted: March 1, 1991]
Latest date to achieve LMU diligent development: March 30, 1993

Example "b":

Lease "D" effective: April 9, 1957
Lease "E" effective: June 12, 1964
Lease "D" readjusted: April 9, 1977
Lease "F" effective: January 15, 1981
LMU approved containing leases "D", "E", and "F": May 10, 1983
LMU diligent development period begins: May 10, 1983
[Lease "E" readjusted: June 12, 1984]
[Lease "D" readjusted: April 9, 1987]
Latest date to achieve LMU diligent development: May 10, 1993

In the preceding example, the governing Federal coal lease is Lease "E". Therefore, the LMU diligent development period begins on the date of LMU approval. The LMU diligent development period stops at the end of the royalty reporting period in which production of 1 percent of the LMU recoverable coal reserves is achieved, or at the end of the 10-year diligent development period for the LMU, whichever comes first. A pre-August 4, 1976, Federal coal lease that is not "subject to diligence" *prior to* LMU approval does *not* affect the lease-specific diligence provisions of any other Federal coal lease contained in the approved LMU. LMU diligence *supersedes* lease-specific diligence, it does *not suspend* lease-specific diligence. See the discussion below regarding LMU failure and Appendix C.

Failure to achieve LMU diligent development results in the LMU being terminated. At that time, the Federal coal lease(s) reverts to its individual Federal coal lease diligence terms that would otherwise have governed the Federal coal lease had it not been included in an LMU.

Example:

Federal coal lease "A" effective: April 1, 1984
Federal coal lease "B" effective: June 18, 1986
LMU approved containing leases "A" and "B": July 15, 1988
LMU fails, for whatever reason: July 15, 1993
Latest date for Federal coal lease "A" to achieve diligent development: April 1, 1994
Latest date for Federal coal lease "B" to achieve diligent development: June 18, 1996

• Even though Federal coal leases "A" and "B" were contained in the LMU for 5 years, the 10-year, lease-specific diligent development periods for Federal coal leases "A" and "B" were not suspended, they were just superseded. Federal coal leases "A" and "B" must achieve diligent development by April 1, 1994, and June 18, 1996, respectively, or they will be terminated.

F. Continued Operation

"Once the operator/lessee of a Federal coal lease or LMU has achieved diligent development, the operator/lessee shall maintain continued operation on the Federal lease or LMU for every continued operation year thereafter, except as provided in 3483.3." [3483.1(a)(2)].

1. The first LMU continued operation year begins on the first day of the royalty reporting period immediately following the royalty reporting period in which LMU diligent development was achieved. A continued operation year ends on the last day of the royalty reporting period that completes the 12-month period.

2. A least 1 percent of the *total* LMU recoverable coal reserves (Federal *and* non-Federal) must be produced *each* continued operation year for the first 2 continued operation years following the

achievement of diligent development. Thereafter, 1 percent of the LMU recoverable coal reserves must be produced for each following continued operation year, averaged on 3-year intervals (i.e., the continued operation year in question, averaged with the two preceding continued operation years).

If the LMU recoverable coal reserves are adjusted during the course of any continued operation year, based on new information or LMU modification, the 1 percent LMU recoverable coal reserves production requirement to maintain continued operation must also be adjusted and will be effective *beginning the next continued operation year.*

G. Advance Royalty

Advance royalty, accepted *in lieu* of continued operation for an LMU, is paid in an amount equivalent to the production royalty that would be owed on 1 percent of the *Federal* LMU recoverable coal reserves. For LMU's, the advance royalty rate is 8 percent if the Federal LMU recoverable coal reserves will be mined only by underground mining methods. The advance royalty rate is 12½ percent if the Federal LMU recoverable coal reserves would be mined only by other methods or a combination of methods [3483.4(c)].

If some production has occurred, but that production is insufficient to maintain continued operation, then advance royalty must be paid. The amount of the advance royalty is assessed on the *difference* between the coal actually produced and the production that would have been required to maintain continued operation.

If an operator knows that, in the forthcoming operation year, he will not produce the required 1 percent, the operator must apply to the AO for approval to pay advance royalty for that year [3483.4(a)]. Such request must be made no later than 30 days after the beginning of that continued operation year [3483.4(b)].

If an operator requests authorization *later than* 30 days after the beginning of that continued operation year, the AO *may* condition his approval of the advance royalty payment on the payment of a late-payment charge on the amount of the advance royalty due [3483.4(b)]. The provision allows for those instances where the operator is producing but, for whatever reason, fails to produce the required 1 percent of the LMU recoverable coal reserves during a continued operation year. The late payment charge, if required, shall be calculated by the Minerals Management Service in accordance with 30 CFR 218.200.

Production from anywhere within an LMU is construed as occurring on all Federal coal leases within the LMU; *this does not apply vice versa.* Therefore, if *LMU* continued operation is not met, some advance royalty is due, prorated against the amount of Federal vs. non-Federal recoverable coal reserves in the LMU, regardless whether production was greater than 1 percent of the Federal portion of that LMU. The LMU ADVANCED ROYALTY FORMULA, based on such prorating, was developed to determine the amount of advance royalty due (se VII.H. below).

For example, if an LMU contains Federal recoverable coal reserves of 25 million tons and non-Federal recoverable coal reserves of 75 million tons, the 1 percent commercial quantities requirement is 1 million tons; however, the advance royalty is based on only 250,000 tons. If during a continued operation year only 500,000 tons were produced, the LMU continued operation requirement would not have been met. Therefore, advance royalty is due. Again, LMU advance royalty is based only on the *Federal* portion of the total LMU recoverable coal reserves.

H. Amount of Advance Royalty Due

As with nonproducing Federal coal leases, nonproducing LMU's can satisfy the condition of continued operation by payment of advance royalty *either:* (1) During the continued operation year in question or, (2) averaged over a 3-year period (the continued operation year in question plus the 2 preceding continued operation years). As long as the condition of continued operation is being satisfied by payment of advance royalty in *either* instance, the LMU is in compliance with the condition of continued operation.

In order to determine the amount of LMU advance royalty due, use the following:

1. Was 1 percent produced during the continued operation year?
   a. Yes, no advance royalty due.
   b. No, go to 2.
2. Was 3 percent or more produced during the continued operation year plus the 2 preceding continued operation years, thereby satisfying the regulatory 3-year rolling average provision?
   a. Yes, no advance royalty due.
   b. No, advance royalty *is* due.

For the first 2 LMU continued operation years, *advance royalty is paid on* 1 percent of the *Federal LMU* recoverable coal *reserves prorated against* the *total LMU* recoverable coal *reserves.* Thereafter, advance royalty is paid on 1 percent of the prorated Federal LMU recoverable coal reserves for the continued operation year in question *or* 3 percent of the prorated Federal LMU recoverable coal reserves for the continued operation year plus 2 preceding continued operation years, *whichever is less.*

If the LMU is in one of its first 2 continued operation years, advance royalty must be paid for the continued operation year in question. The following formula shows how that calculation must be made. The formula incorporates the concept that, for LMU's, advance royalty is only owed on the prorated *Federal* portion of the total LMU recoverable coal reserves.

LMU Advance Royalty Formula

$$ARD = [COYR - COYP] \times \frac{ARB}{COYR} \times ARR \times UV$$

Where

ARD = Advance Royalty Due
COYR = Continued Operation Year *Production Requirement* (i.e., 1 percent of *total recoverable coal reserves,* Federal plus non-Federal, in LMU)
COYP = *Total LMU Production Achieved,* Federal plus non-Federal, During Continued Operation Year
ARB = Advanced Royalty Base (i.e., 1 percent of *Federal recoverable coal reserves,* in LMU)
ARR = LMU Advance Royalty Rate (e.g., 12½ percent, or 8 percent, as applicable)
UV = Unit Value (determined under 3485.2(g))

Note.—COYR and ARB are equal *only if* the LMU contains no non-Federal coal. The ARB and COYP are LMU-specific regardless from which coal the conditions were being satisfied. If the LMU is in the 3-year rolling average for continued operation, a determination must be made as to whether the LMU produced 1 percent in the continued operation year in question *or* 3 percent during the continued operation year in question plus the 2 preceding continued operation years.

To determine the amount of advance royalty due for an LMU, compare the *total tons* that should have been produced to maintain continued operation for the year in question with the *total tons* that should have been produced to maintain continued operation for the 3-year period consisting of the continued operation

year in question plus the 2 preceding continued operation years. The LMU advance royalty due will be assessed on the lesser of the two amounts. After determining which of the two is the lesser *total tons* that would satisfy either condition of continued operation, use the LMU ADVANCE ROYALTY FORMULA to determine the amount due.

If the 3-year rolling average results in the lesser *total tons* the LMU ADVANCE ROYALTY FORMULA term "[COYR—COYP]" is calculated as follows:

COYR = 3 Continued Operation Years' *Production Requirement* (i.e., 3 percent of *total recoverable coal reserves*, Federal plus non-Federal, in LMU)

COYP = *Total LMU Production Achieved*, Federal plus non-Federal, During the Continued Operation Year *plus* the 2 Preceding Continued Operation Years

The rest of the LUM ADVANCE ROYALTY FORMULA remains unchanged.

The following shows one example of how the LMU ADVANCE ROYALTY FORMULA can be used to determine the amount of advance royalty due.

Example: Assume the total LMU recoverable coal reserves are 100,000,000 tons and the total Federal recoverable coal reserves are 75,000,000 tons. The 1 percent commercial quantities requirement is 1,000,000 tons. The LMU has achieved diligent development.

Continued Operation Year (COY)	1	2	3	4	5	6	7	8	9
Recoverable Coal Reserves Produced (Million Tons)	1.0	1.0	5.0	0.0	0.5	1.8	0.8	0.2	0.3
Production on which Advance Royalty Due (Million Tons)	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.2	0.7

Is advance royalty due and, if so, on what percent of the Federal recoverable coal reserves is the advance royalty to be paid?

COY–1: 1,000,000 tons produced, no advance royalty due.

COY–2: 1,000,000 tons produced, no advance royalty due.

COY–3: 5,000,000 tons produced, no advance royalty due.

COY–4: 0 tons produced, is advance royalty due?

COY–2 + COY–3 + COY–4 = 6,000,000 tons.

Therefore, the LMU has produced more than 3,000,000 tons over the 3 years in question; no advance royalty due.

COY–5: 500,000 tons produced, is advance royalty due?

COY–3 + COY–4 + COY–5 = 5,500,000 tons.

Therefore, the LMU has produced more than 3,000,000 tons over the 3 years in question; no advance royalty due.

COY–6: 1,800,000 tons produced, no advance royalty due.

COY–7: 800,000 tons produced, is advance royalty due?

COY–5 + COY–6 + COY–7 = 3,100,000 tons.

Therefore, the LMU has produced more than 3,000,000 tons over the 3 years in question; no advance royalty due.

COY–8: 200,000 tons produced, is advance royalty due?

COY–8 production is less than 1,000,000 tons. COY–6 + COY–7 + COY–8 = 2,800,000 tons.

Therefore, the LMU has also not produced more than 3,000,000 tons over the 3 years in question; on what amount of production is advance royalty due.

COY–8: 1.0–0.2 = 800,000 tons.

COY–6/COY–7/COY–8:
3,000,000 – 2,800,000 = 200,000 tons.

Advance royalty must be paid on *200,000* tons, times the Advance Royalty Base, divided by *1,000,000* tons. This is the *lesser amount* required to satisfy either condition of continued operation.

$$ARD = [COYR—COYP] \times \frac{ARB}{COYR} \times ARR \times UV$$

Because the *3-year rolling average concept applies* for COY–8, [COYR—COYP] = [3,000,000 tons—2,800,000 tons] = *200,000 tons*

COYR = 1,000,000 tons

ARB = 0.01 × 75,000,000 tons = 750,000 tons

Therefore:

$$ARD = [200{,}000 \text{ tons}] \times \frac{750{,}000 \text{ tons}}{1{,}000{,}000 \text{ tons}} \times ARR \times UV$$

COY–9: 300,000 tons produced, is advance royalty due?

COY–9 production is less than 1,000,000 tons. COY–7 + COY–8 + COY–9 = 1,300,000 tons.

Therefore, the LMU has also not produced more than 3,000,000 tons over the 3 years in question; on what amount of production is advance royalty due?

$$ARD = [COYR - COYP] \times \frac{ARB}{COYR} \times ARR \times UV$$

Because the *continued operation year in question applies* for COY–9, [COYR—COYP] = [1,000,000 tons—300,000 tons] = *700,000 tons.*

COY–9: 1,000,000–300,000 = 700,000 tons.
COY–7/COY–8/COY–9: 3,000,000–1,300,000 = 1,700,000 tons. Advance royalty must be paid on *700,000* tons, times the Advance Royalty Base divided by *1,000,000* tons. This is the *lesser amount* required to satisfy either condition of continued operation.

COYR = 1,000,000 tons
ARB = 0.01 × 75,000 tons = 750,000 tons

Therefore:

$$ARD = [700{,}000 \text{ tons}] \times \frac{750{,}000 \text{ tons}}{1{,}000{,}000 \text{ tons}} \times ARR \times UV$$

I. Number of Times Advance Royalty May Be Paid for LMU's

Advance royalty can only be paid a total of 10 times. This is true regardless whether it is being paid *in lieu* of lease-specific or LMU-specific continued operation. However, the number of years for which LMU advance royalty may be paid is governed by the Federal coal lease that has paid advance royalty for the *fewest* years prior to LMU approval.

Example "a": LMU formed containing two Federal coal leases that are "subject to diligence." One of the Federal coal leases has paid advance royalty twice, the other has not paid advance royalty. How many times may advance royalty be paid for the LMU? *Ten.* This is because LMU diligence requirements supersede lease-specific diligence requirements for the duration of the LMU. Since one Federal coal lease has not paid advance royalty prior to LMU formation, it can have advance royalty paid for it ten times. Therefore, so can the LMU.

Example "b": LMU formed containing two Federal coal leases that are "subject to diligence." One of the Federal coal leases has paid advance royalty three times, the other has paid four times. How many times may advance royalty be paid for the LMU? *Seven.* This is because LMU diligence requirements supersede lease-specific diligence requirements for the duration of the LMU. The Federal coal lease with the fewest number of advance royalty payments dictates the number of times that advance royalty may be paid for the LMU.

Example "c": LMU formed containing two Federal coal leases; one is "subject to diligence," the other is not "subject to diligence." The one that is "subject to diligence" has paid advance royalty ten times. How many times may advance royalty be paid for the LMU? *Ten.* This is because LMU diligence requirements supersede lease-specific diligence requirements for the duration of the LMU. The Federal coal lease that is not "subject to diligence" has never had the option to pay advance royalty *in lieu* of continued operation; therefore, the LMU has the full ten times that advance royalty may be paid *in lieu* of LMU continued operation.

The *date* that the Federal coal leases, individually, became "subject to diligence" prior to LMU formation *does not affect* the number of times that advance royalty may be paid for an LMU.

J. Initial 20–Year Period Available for Payment of Advance Royalty for LMU's

Advance royalty can *only* be paid during the initial 20-year period that a Federal coal lease is "subject to diligence." This limitation carries over to LMU's, where the LMU 20-year period is dictated by the most recent (recent is relative to LMU approval) Federal coal lease that is "subject to diligence" prior to LMU formation. The end of this initial 20-year period available for the payment of advance royalty is dictated by the fact that a Federal coal lease is effective "... for twenty years and for so long thereafter as coal is produced annually in commercial quantities ...." 30 U.S.C. 207(a). Therefore, no advance royalty can be paid after the initial 20-year period has expired. Similarly, advance royalty paid during that initial 20-year period cannot be credited against production royalty after that initial 20-year period has expired.

The initial 20-year period for each individual Federal coal lease starts on the effective date that the Federal coal lease becomes "subject to diligence." The most recent (recent is relative to LMU approval) date of all Federal coal leases contained in the LMU dictates how many years of an initial 20-year period are left for the LMU.

1. For LMU's containing *only* Federal coal leases that are "subject to diligence" prior to LMU approval (may also include non-Federal coal; i.e., the LMU contains *no* Federal coal leases that are *not* "subject to diligence"):

Example "a":

Lease "A" effective and begins its initial 20-year period: July 7, 1977
Lease "B" effective and begins its initial 20-year period: August 8, 1978
Lease "C" effective and begins its initial 20-year period: September 9, 1982
LMU approved containing leases "A", "B", and "C": April 1, 1983
LMU initial 20-year period begins: September 9, 1982
[Lease "A" readjusted: July 7, 1997]
[Lease "B" readjusted: August 8, 1998]
[Lease "C" readjusted: September 9, 2002]
LMU initial 20-year period ends: September 9, 2002

Example "b":

Lease "D" effective: June 6, 1960
Lease "E" effective and begins its initial 20-year period: May 5, 1979
Lease "D" readjusted and begins its initial 20-year period: June 6, 1980
Lease "F" effective and begins its initial 20-year period: October 10, 1982
LMU approved containing leases "D", "E", and "F": April 2, 1983
LMU initial 20-year period begins: October 10, 1982
[Lease "D" readjusted again: June 6, 1990]
[Lease "E" readjusted: May 5, 1999]
[Lease "D" readjusted again: June 6, 2000]
[Lease "F" readjusted: October 10, 2002]
LMU initial 20-year period ends: October 10, 2002

2. For LMU's containing *at least one* Federal coal lease issued prior to August

4, 1976, that is not "subject to diligence" prior to LMU approval:

Example "a":

Lease "A" effective: March 1, 1971
Lease "B" effective and begins its initial 20-year period: February 1, 1981
Lease "C" effective and begins its initial 20-year period: January 2, 1982
LMU approved containing leases "A", "B", and "C": March 30, 1983
LMU initial 20-year period begins: March 30, 1983
[Lease "A" readjusted and begins its initial 20-year period: March 1, 1991]
[Lease "B" readjusted: February 1, 2001]
[Lease "A" readjusted again: March 1, 2001]
[Lease "C" readjusted: January 2, 2002]
LMU initial 20-year period ends: March 30, 2003

Example "b":

Lease "D" effective: April 9, 1957
Lease "E" effective: June 12, 1964
Lease "D" readjusted and begins its initial 20-year period: April 9, 1977
Lease "F" effective and begins its initial 20-year period: January 15, 1981
LMU approved containing leases "D", "E", and "F": May 10, 1983
LMU initial 20-year period begins: May 10, 1983
[Lease "E" readjusted and begins its initial 20-year period: June 12, 1984]
[Lease "D" readjusted again: April 9, 1987]
[Lease "E" readjusted again: June 12, 1994]
[Lease "D" readjusted again: April 9, 1997]
[Lease "F" readjusted: January 15, 2001]
LMU initial 20-year period ends: May 10, 2003

VIII. LMU Modifications and Adjustments

The boundaries of an LMU may be modified upon application by the operator/lessee and approval by the AO, or the AO may direct that the LMU be modified. The AO may adjust the estimate of LMU recoverable coal reserves either upward or downward, based on new information such as a previously undetected fault that renders some of the LMU recoverable coal reserves unminable. An LMU may be enlarged by the addition of other Federal coal leases, with interests in non-Federal coal, or both; and, the LMU boundaries may also be enlarged as a result of the enlargement of a Federal coal lease. The LMU may be diminished by the deletion (e.g., assignment or relinquishment) of other Federal coal leases, deletion of non-Federal coal, or both; and, the LMU may be diminished as a result of the diminishment of a Federal coal lease (e.g., partial assignment).

Based on new information, any adjustment to the LMU recoverable coal reserves may be accomplished by the AO after consultation with the operator/lessee. For example, if development drilling shows that the initial LMU recoverable coal reserves estimate was too small, as verified by the responsible mining engineer, the AO shall notify the LMU operator of the revised LMU recoverable coal reserves estimate and the revised LMU commercial quantities requirements. These data must also be updated in the SLMS LMU data base. The LMU recoverable coal reserves, upon which the 1 percent commercial quantities requirement is based, *cannot decrease due to production* from the LMU.

If the LMU recoverable coal reserves are adjusted, based on new information or LMU modification, prior to the LMU achieving diligent development, the 1 percent LMU commercial quantities requirement must also be adjusted, effective on the date of the adjustment or LMU modification. However, the LMU 10-year diligent development period is *not* extended by an LMU modification.

If unmined LMU recoverable coal reserves are *decreased* by the adjustment or modification, the LMU may already have produced 1 percent of the new LMU recoverable coal reserves figure; thus, the LMU would be deemed to have achieved diligent development on the effective date of the adjustment or modification. In this case, the first continued operation year would begin on the first LMU royalty reporting period following the effective date of the adjustment or modification. See also the discussion on DILIGENCE FOR LMU OPERATIONS.

The 40-year LMU recoverable coal reserves exhaustion date, that has already been determined due to the commencement of production from the approved LMU, cannot be extended due to the subsequent enlargement or diminishment of the LMU recoverable coal reserves [3487.1(g)(4)], or based on new information that results in the revision of the LMU recoverable coal reserves. For example, were an LMU to be approved that contained the original LMU and other lands, the new LMU would still have the same 40-year mine-out requirement date as the original LMU. If land and/or recoverable coal reserves are added or deleted from the LMU, the 40-year requirement is unaffected. The effect of adding or deleting recoverable coal reserves is the adjustment of the LMU recoverable coal reserves and the LMU commercial quantities requirement for LMU-specific diligent development and continued operation.

IX. LMU Failure/Termination

An LMU may fail for various reasons. An LMU may be terminated by administrative decision, for just cause, stating the cause of the termination.

The several reasons that an LMU may fail include, but are not limited to:

1. Failure to comply with LMU approval stipulations;
2. Failure to submit the R2P2 or modification to an approved R2P2, for the LMU within the applicable 3-year time period;
3. Failure to achieve diligent development within the 10-year LMU diligent development period;
4. Failure to maintain LMU continued operation or, *in lieu* thereof, to pay advance royalty;
5. Failure to achieve the LMU, 40-year recoverable coal reserves mine out; and,
6. For other reasons (e.g., failure to pay rental or royalty, or failure to comply with a notice of noncompliance).

There are several factors that must be considered on a lease-specific basis when an LMU fails, including, but not limited to:

1. The diligence provisions for each Federal coal lease apply as if the LMU never existed. This is because the LMU diligence *superseded, but did not suspend,* the lease-specific diligence. Thus, in effect, it is necessary to now "look back" to see whether the Federal coal leases individually have been satisfying their lease-specific diligence obligations:

a. The Federal coal lease must achieve diligent development within 10 years from the date it is "subject to diligence" or it is terminated.

b. After diligent development is achieved, the Federal coal lease must maintain continued operation.

2. Advance royalty must be paid *in lieu* of continued operation when there is less than 1 percent of the Federal coal lease's recoverable coal reserves produced in the first 2 continued operation years and, thereafter, on a 3-year rolling average.

a. Advance royalty can only be paid *in lieu* of continued operation for a total of 10 continued operation years.

b. Advance royalty can only be paid *in lieu* of continued operation during the initial 20-year period that the Federal

coal lease is "subject to diligence" after August 4, 1976.

For the duration of an LMU, lease-specific diligence provisions still apply to the Federal coal leases contained in the LMU. These provisions must be monitored in the Solid Leasable Minerals System *in addition to* the LMU-specific diligence provisions. LMU-specific diligence *supersedes*, but does *not suspend*, the lease-specific diligence. That is, the diligence clocks and requirements run simultaneously while the Federal coal leases are included in the LMU; but, the LMU clocks and requirements take precedence over the Federal coal lease clocks and requirements. Upon LMU failure, the compliance with lease-specific diligence will determine what, if any, administrative actions must be taken against the individual Federal coal leases.

Note.—Noncompliance/nonconformance with lease-specific diligence is *not* a factor that requires correction as long as that Federal coal lease is included in an LMU and the LMU operations are in compliance with *all* LMU-specific conditions (e.g., approval stipulations, LMU-specific diligence).

Note.—Any potential or prospective LMU failure or termination must be coordinated by the AO with WO-660.

The following discussion addresses several examples of what can happen if an LMU fails; the discussion is not meant to be exhaustive or complete. The examples are solely to demonstrate some scenarios that could happen.

Example 1: *Diligent Development Period*

Sequence of Events

Lease "a" effective: January 1, 1960.
Lease "b" effective: January 1, 1978.
Lease "a" readjusted: January 1, 1980.
LMU formed January 1, 1986. Neither Lease "a" nor Lease "b" has ever produced. Lease "a" controls the LMU 10-year diligent development period. Therefore, the LMU must achieve diligent development by January 1, 1990. LMU fails on January 1, 1989, for refusal to submit maps or to report non-Federal LMU production. There has been no Federal LMU production.
State Director issues Decision terminating the LMU.

Question: What is the effect on each Federal coal lease?

Federal coal lease "a" is unaffected at this time. It has until January 1, 1990, to achieve its diligent development.

Federal coal lease "b" is terminated for failure to achieve its diligent development by January 1, 1988.

EXAMPLE 2: *Federal Coal Leases Individually Not Subject to Diligence Prior to LMU Formation.*

Sequence of Events

Lease "a" effective: January 1, 1975.
LMU formed January 1, 1988; LMU also contains non-Federal coal.
LMU achieves diligent development January 1, 1990.
LMU advance royalty paid for 3 years, then LMU fails on January 1, 1993, because the LMU operator refuses to produce or pay additional advance royalty.
State Director issues Decision terminating the LMU.

Question: What is the effect on the Federal coal lease?

Individually, Federal coal lease "a" is not "subject to diligence" until readjustment on January 1, 1995. Therefore, *no* advance royalty can be applied toward Federal coal lease "a"-*individually*. As of January 1, 1995, Federal coal lease "a" would have 10 years to achieve diligent development. Federal coal lease "a" also has an initial 20-year period beginning on January 1, 1995, during which, once subject to continued operation, advance royalty could be paid up to a maximum of 10 years. This is because Federal coal lease "a", individually, is not "subject to diligence" until January 1, 1995; therefore, advance royalty paid for the LMU does not count as advance royalty paid for Federal coal lease "a".

EXAMPLE 3: *Initial 20-Year Period Sequence of Events*

Lease "a" issued: January 1, 1978.
Lease "b" issued: January 1, 1984.
Lease "a" achieves diligent development on January 1, 1988.
[Lease "a" readjusted: January 1, 1998]
Lease "b" achieves diligent development on January 1, 1994.
[Lease "b" readjusted: January 1, 2004]
Leases "a" and "b" maintain continued operation through production.
LMU formed on January 1, 1996.
[Lease "a" readjusted again: January 1, 2008]
LMU achieves diligent development on January 1, 1999.
LMU pays advance royalty for 3 years and on January 1, 2002, LMU fails for refusal to pay advance royalty.
State Director issues Decision terminating the LMU.

Question: What is the effect on each Federal coal lease?

Federal coal lease "a" *must* be cancelled. Its initial 20-year period that it is subject to diligence ended January 1, 1998. Advance royalty paid for an LMU is counted as one year for which advance royalty is paid for *all* Federal coal leases in the LMU that are "subject to diligence," or after a Federal coal lease becomes "subject to diligence" after LMU approval. Since advance royalty was paid after the Federal coal lease "a" initial 20-year period, when the LMU fails the Federal coal lease is in noncompliance with the law and must be cancelled.

Federal coal lease "b" is currently unaffected. Its initial 20-year period ends on January 1, 2004. Therefore, Federal coal lease "b" is still in its initial 20-year period, has had advance royalty paid for 3 years, and has 2 continued operation years more during which the lessee may request to pay advance royalty *in lieu* of continued operation.

EXAMPLE 4: *Number of Advance Royalty Payments.*

Sequence of Events

Lease "a" effective: January 1, 1975.
Lease "b" effective: January 1, 1978.
Lease "c" effective: January 1, 1981.
LMU formed January 1, 1994. As of this date, Federal coal lease "a" is still under its 1975 terms and has never produced. Federal coal lease "b" has achieved diligent development and paid advance royalty for 8 years. Federal coal lease "c" has achieved diligent development and paid advance royalty for 3 years. After the LMU achieves diligent development, Federal coal lease "c" controls the LMU for purposes of advance royalty; therefore, the LMU has only 7 years during which advance royalty may be paid *in lieu* of LMU continued operation. LMU 10-year diligent development period begins on effective date of LMU approval as Federal coal lease "a" controls because Federal coal lease "a" is not yet "subject to diligence." Assume that production credited toward LMU diligent development, due to production from Federal coal leases "b" and "c," equals 1 percent of the total LMU recoverable coal reserves.
LMU status on January 1, 1994: LMU diligent development achieved January 1, 1994. LMU is subject to continued operation. Lease "a" readjusted on January 1, 1995. LMU pays advance royalty for 3 years, then fails on January 1, 1997, for refusal to produce or to pay further advance royalty.

Note.—There was *no* production during the life of the LMU.

State Director issues Decision terminating the LMU.

Question: What is the effect on each Federal coal lease?

Federal coal lease "a" is unaffected. It is begining the third year of its lease-specific diligent development period, and has until January 1, 2005, to achieve diligent development.

Federal coal lease "b" *must* be cancelled by State Director Decision. Advance royalty can only be accepted for 10 years for any Federal coal lease. As long as the Federal coal lease was in the LMU, the LMU-diligence superseded the Federal coal lease diligence. Upon LMU failure, Federal coal lease "b" has now paid advance royalty for 11 total years which is a violation of the law. There is no other recourse but to cancel Federal coal lease "b."

Federal coal lease "c" is unaffected. Federal coal lease "c" has now paid advance royalty for a total of 6 years. Federal coal lease "c" is in its appropriate continued operation year and must comply with the lease-specific diligence requirements.

Example 5: *Production Credits Sequence of Events*

Lease effective: January 1, 1960.

Produces 0.6% of recoverable coal reserves, *in existence on August 4, 1976,* between August 4, 1976, and January 1, 1980.

Lease readjusted on January 1, 1980. "Subject to diligence."

Produces 0.8% of recoverable coal reserves, *in existence on January 1, 1980,* between January 1, 1980, and January 1, 1983.

Lease included in LMU on January 1, 1983. LMU also contains non-Federal coal.

LMU fails on January 1, 1993, for failure to achieve diligent development.

During the LMU, only non-Federal coal was produced.

State Director issues Decision terminating the LMU.

Question: What is the effect on each Federal coal lease?

Lessee immediately requests to credit production between 1976 and 1980 toward Federal coal lease diligent development, thus achieving a total greater than 1 percent of the recoverable coal reserves in existence in 1980 *plus* 1 percent of the production credited between 1976 and 1980.

The Federal coal lease is deemed to have achieved Federal coal lease diligent development on January 1, 1990 [the end of the lease-specific, 10-year diligent development period]. However, it is now January 1, 1993. If the lessee so requests, and if the AO so authorizes, the lessee may then pay 3 years of advance royalty bringing the Federal coal lease into compliance with the lease-specific diligence provisions. [NOTE: The initial 20-year period for the Federal coal lease began on January 1, 1980. Therefore, the lessee has until December 31, 1999, to exercise the option to pay advance royalty *in lieu* of the lease-specific continued operation, as long as the number of payments does not exceed ten (see item number 3. above).] January 1, 1993, status: Federal coal lease beginning its fourth continued operation year. Federal coal lease has paid 3 of the 10 years of advance royalty to which it is entitled.

X. General Statement on Processing LMU Applications

As stated in the Department's Guidelines on Section 2(a)(2)(A) of MLA, BLM in the revision of the 43 CFR 3480 rules will provide for the timely processing of ". . . LMU's within a specific period of time that will be established in the rules."

Appendix A–1

[EXAMPLE NOTIFICATION LETTER TO NON-FEDERAL SURFACE, OR]

[NON–FEDERAL COAL, OWNER]

[MUST BE MAILED *CERTIFIED, RETURN RECEIPT REQUESTED*]

[Surface Owner]
[Address]

Dear Mr./Ms. _____:

Enclosed is a copy of a public notice of availability and public notice of proposed decision for a logical mining unit [LMU] [modification (if appropriate)] for [insert the number of] Federal coal leases [and private and/or State lands and/or Indian lands (if there are any non-Federal lands to be included in the LMU)], part of which you are the surface [and/or coal (if appropriate)] owner. The LMU applicant has informed us that he has an agreement in the form of [insert the type of agreement; e.g., legal document, copy of a letter of agreement between the LMU applicant and the surface and/or coal owner] providing him effective control of the lands [and coal (if appropriate)] within the proposed LMU [modification (if appropriate)] boundaries. The lands stated to be covered by the agreement are contained in the public notice of availability.

If you have any comments concerning the approval of this LMU application [modification to the approved LMU (if appropriate)], please inform this office within 30 days from receipt of this letter.

Sincerely yours,
[Authorized Officer]
Enclosure
[Notice of Availability and Notice of Proposed Decision]

Appendix A–2

[EXAMPLE NOTICE INCORPORATING BOTH THE NOTICE OF AVAILABILITY]

[AND NOTICE OF PROPOSED DECISION]

NOTICE OF AVAILABILITY

APPLICATION FOR LOGICAL MINING UNIT [MODIFICATION (if appropriate)] APPROVAL [AND PROPOSED EFFECTIVE DATE OF APPROVAL (if both Notices are submitted concurrently, as in this example)].

The [insert the appropriate name of the] Office of the Bureau of Land Management has received an application from [insert the name and address of the LMU applicant] for a logical mining unit (LMU) [modification of an approved LMU (if appropriate)] in accordance with 43 CFR 3487. The application for the proposed LMU [modification (if appropriate)] is available for review at [insert the address of the responsible BLM Office].

The proposed LMU [modification (if appropriate)] contains lands from [insert the number of] Federal coal leases [and non-Federal lands (if appropriate)]. The descriptions of the lands contained within each Federal coal lease [and other lands (if appropriate)] and which are to form the LMU [modification (if appropriate)] are as follows:

FEDERAL COAL

LEASE NUMBER: ACREAGE
LAND DESCRIPTION
in Principle Meridian/]
[Township/Range/Section/]
[Lot or, if appropriate,]
[Latitude/Longitude/]
[Metes/Bounds]

NON-FEDERAL

LANDS: ACREAGE [description, as above]
TOTAL ACREAGE: [Sum of the above]

NOTICE OF PROPOSED DECISION

The [insert the appropriate name of the] Office of the Bureau of Land Management has received an application from [insert the name and address of the LMU applicant] for a logical mining unit (LMU) [modification of an approved LMU (if appropriate)] in accordance with 43 CFR 3487. The approval of this application is proposed to be effective [insert the date of the LMU application or other date, as appropriate (see Section V regarding effective date).

Any comments concerning the approval of this LMU application [modification (if appropriate)] should be sent, within 14 day of this notice, to:

[Originating BLM Office]
[Address]

Appendix A–3

[EXAMPLE NOTIFICATION LETTER TO FEDERAL OR STATE AGENCY]

[MUST BE MAILED *CERTIFIED, RETURN RECEIPT REQUESTED*]

[Federal (or State) Agency]
[Address]

Dear Mr./Ms. _____:

Enclosed is a copy of a public notice of availability and public notice of proposed decision for a logical mining unit (LMU) [modification (if appropriate)] for [insert the number of] Federal coal leases [and non-Federal lands (if appropriate), located in [State name(s)].

According to 43 CFR 3487, a notice of availability for any proposed LMU or proposed modification to an approved LMU shall be sent to appropriate Federal and State Agencies. If you have any questions regarding this LMU application [proposed modification to the approved LMU (if appropriate)], please telephone [name of the Authorized Officer] directly at [commercial telephone number], FTS _____.

If you have any comments on this LMU application [proposed modification to the approved LMU (if appropriate)], please send them to [originating BLM Office address] within 14 days.

Sincerely yours,
[Authorized Officer]
Enclosure
[Notice of Availability and Notice of Proposed Decision]

Appendix A–4

[EXAMPLE NOTIFICATION LETTER TO COUNTY CLERK]

[MUST BE MAILED *CERTIFIED, RETURN RECEIPT REQUESTED*]

[Name]
County Clerk, [Name of] County
[Address]

Dear Mr./Mrs. _____:

Enclosed is a copy of a public notice of availability and public notice of proposed decision for a logical mining unit (LMU) [modification (if appropriate)] for [insert the number of] Federal coal leases [and non-Federal lands (if appropriate)], part [all (if appropriate)] of which is located in [name of] County.

According to 43 CFR 3481.2, a notice of availability for any proposed LMU or proposed modification to an approved LMU shall be posted for public viewing in appropriate County Offices in the County or Counties in which the proposed LMU [modification (if appropriate)] is located.

Please post a copy of this letter and notices in your office for 30 days, beginning upon receipt of this letter.

If you have any questions regarding this LMU application [proposed modification to the approved LMU (if appropriate)] please contact [name of the Authorized Officer] on [commercial telephone number]. If you have any comments on this LMU application [proposed modification to the approved LMU (if appropriate)], please send them to [originating BLM Office address] within 14 days.

Thank you for your time and consideration.

Sincerely yours,
[Authorized Officer]
Enclosure
[Notice of Availability and Notice of Proposed Decision]

Appendix A–5

[EXAMPLE NOTIFICATION LETTER TO NEWSPAPER]

[MUST BE MAILED *CERTIFIED, RETURN RECEIPT REQUESTED*]

Publisher: [Name of] Newspaper
[Address]

Dear Sir or Madam:

Enclosed are three copies of the *Advertising Order*, Form SF–1143. Public Voucher for Advertising appears on the reverse of the *Advertising Order* and should be used by you for the purpose of settling accounts for amounts due.

To facilitate the settling of accounts, please furnish a copy of each publication to the above address, attention: [Name of Authorized Officer]. Include with this published copy all charges for publication. These charges should be placed on the Public Voucher form, as stated on the form.

Failure to comply with the above requirements may prevent or delay the settlement of your account.

Thank you for your time and consideration.

Sincerely yours,
[Authorized Officer]
Enclosures
[Advertising Order]
[Notice of Availability and Notice of Proposed Decision]

Appendix B–1

[NOTIFICATION, TO LMU APPLICANTS, OF LMU APPROVAL STIPULATIONS]

[AND REQUEST FOR LMU APPLICANT ACCEPTANCE]

[MUST BE MAILED *CERTIFIED, RETURN RECEIPT REQUESTED*]

In Reply Refer To:
[Appropriate Code]
[List of Federal]
[Coal Lease Serial]
[Number(s)]
[LMU Applicant Name and Address]

Dear Mr./Ms. _____:

We have completed our review of your logical mining unit (LMU) application [application to modify your logical mining unit (LMU) (if appropriate)], and have determined that it is in conformance with the basic approval criteria for LMU's. This determination is based on the following:

1. The LMU recoverable coal reserves are capable of being developed in an efficient, economical and orderly manner as a unit, with due regard to conservation of the recoverable coal reserves and other resources. [Insert a statement listing or discussing the criteria the AO used to arrive at this conclusion; e.g., "This statement is based on review by the responsible mining engineer of the LMU application and proposed sequencing and scheduling of development."]

2. All lands in the LMU are under the effective control of a single operator. [Insert justification statement; for example, cite the agreement of, or designtion statement for, the designated operator and include the designated operator's name.]

3. All lands within the LMU will be developed and operated as a single operation. [Insert justification statement.]

4. All lands within the LMU boundaries are contiguous. [Insert justification statement; e.g., "A review of the legal land-descriptions for all land and coal shows that the lands and coal have at least one point in common."]

5. Mining operations will achieve maximum economic recovery of the Federal recoverable coal reserves within the LMU. [Insert brief justification statement.]

6. No Federal coal leases to be included in this LMU are included in another LMU. [Otherwise, the AO must segregate such Federal coal leases into two or more Federal coal leases.]

7. The *total* acreage of the proposed LMU does not exceed 25,000 acres.

[Insert justification statement in the same format as in number 4. above.]

8. [If only a portion of a Federal coal lease is to be included in the LMU, a statement must be made that the remaining land must be segregated into another Federal coal lease or that the operator may apply to relinquish the remaining land in accordance with 43 CFR 3452.1, or may apply to assign the remaining land in accordance with 43 CFR 3453.]

Enclosed are two copies of the stipulations of approval for your LMU application [application to modify your approved LMU (if appropriate)]. If we'd not receive a response from you within 30 days of your receipt of this letter, we will assume that you no longer want to have the LMU formed [modified (if appropriate)], and the Federal coal leases [existing LMU (if appropriate)] will remain subject to their [its (if appropriate)] individual Federal coal lease [LMU (If appropriate)] terms. If you concur with the stipulations, please sign and date both copies and return one original to this office. The LMU [modification (if appropriate)] will be effective on [insert the date that is no earlier than the date the AO received the LMU application and no later than the date of approval, as determined in consultation with the LMU applicant], unless a public hearing is requested. If a public hearing is requested, the date of LMU approval [approval of the LMU modification (if appropriate)] will be dependent on the results of that hearing. If you have any questions, please contact [Name of Authorized Officer] of this Office at [insert commercial telephone number].

Sincerely,
[State Director]
Enclosure: 2 copies of [Name] Logical Mining Unit Stipulations

[Note.—The *name* of the LMU should be the mine name to be] associated with the] [LMU. If there is no mine name, use another identifier that would] [enable the name of the LMU to be distinctive. This is necessary] [because an operator may have two LMU's near each other. This is *not*] [the LMU *number*, which is assigned by WO-660 in the Solid Leasable] [Minerals System data base.

Appendix B-2

[Name (see Note at end of this Appendix)]

_____ LOGICAL MINING UNIT

(I.D. Number. See SLMS LMU Data Base Element Instructions)

DO SO

The Mineral Leasing Act of February 25, 1920, as amended by the Federal Coal Leasing Amendments Act of 1976, authorizes the consolidation of coal leases into a logical mining unit. A logical mining unit (LMU) is an area of land in which the coal resources can be developed in an efficient, economical and orderly manner as a unit with due regard to conservation of coal resources and other resources.

As a result of an application for an LMU designation filed by_____, the _____ LMU is approved effective _____ and provides as follows:

1. UNIT AREA. The area specified on the map attached hereto marked Exhibit A is hereby designated the LMU area, containing _____ acres described as follows:

The unit includes the following coal leases described in Exhibit B attached hereto:

(List all Federal and non-Federal leases)

2. UNIT OPERATOR. (name and address) is hereby designated as Unit Operator.

3. STIPULATIONS. As a consideration to the approval of this LMU, the operator/lessee consents to the following stipulations which make all Federal leases within the LMU subject to uniform requirements for submittal of resource recovery and protection plan, LMU recoverable coal reserves exhaustion, diligent development, continued operation, maximum economic recovery, advance royalty, and royalty reporting periods (but not royalty rates). As of the effective date of this LMU, the diligence terms and conditions of the Federal leases are subject to or are superseded by the diligence requirements imposed on the LMU.

a. *SUPERVISION:* The District Manager located at Bureau of Land Management, [insert appropriate office address], is responsible for the review and approval of exploration plans, and operations, and modifications thereto, prior to the commencement of mining operations within a permit area approved pursuant to the Surface Mining Control and Reclamation Act of 1977. That District Manager is also responsible for review and approval of resource recovery and protection plans and modifications thereto. That District Manager is also responsible for inspection and enforcement, including production verification, of such operations and all lands and all coal within the logical mining unit (LMU) and for implementing all other applicable provisions of the 43 CFR Group 3400 rules.

b. *RESOURCE RECOVERY AND PROTECTION PLAN:* In accordance with the requirements of 43 CFR 3482.1(b), [insert name of LMU applicant] shall submit a resource recovery and protection plan (R2P2) to the District Manager no later than [insert the date that is 3 years from the effective date that the most recent Federal coal lease became "subject to diligence" prior to the proposed effective date of the LMU approval (or, if the LMU will contain at least one Federal coal lease that is not "subject to diligence" prior to LMU approval, insert the date that is 3 years from the proposed effective date of the LMU approval). See the guidelines—VII.A.3. for an exception that requires the R2P2 to be submitted prior to LMU approval; that R2P2 must be approved at the time of LMU approved.]. The R2P2 must contain all the requirements of 43 CFR 3482.1(c) for the life-of-the-mine for the LMU. If there is a previously approved R2P2 for at least one Federal coal lease contined in the LMU, [insert name of LMU applicant] may opt to submit an R2P2 for the entire LMU or submit a modification to the existing R2P2 to enable it to cover the life-of-the-mine for the LMU. If [insert name of LMU applicant] decides to modify the existing R2P2, such modification shall be submitted to the District Manager within 3 years from the date listed above. If production is occurring from anywhere within the LMU, the R2P2 must be submitted for approval prior to approval of the LMU; that R2P2 must be approvable and be approved at the time the LMU is approved.

c. *DILIGENT DEVELOPMENT AND CONTINUED OPERATION:* Pursuant to 43 CFR 3480.0-5(a)(13)(ii)[(A)], the diligent development period for the LMU begins on the effective date of LMU approval [[OR] (B), the diligent development period for the LMU began on [insert the effective date that the most recent Federal coal lease became "subject to diligence" prior to the effective date of LMU approval—

Note.—Paragraph (A) applies if at least one of the Federal coal leases to be included in the LMU was issued prior to August 4, 1976, and is not yet "subject to diligence." Paragraph (B) applies in all other cases.]]. Therefore, the LMU must have production of commercial quantities before [insert the date that is 10 years from the effective date of the 10-year diligent development period as stated in the previous sentence.] [Name of LMU applicant] must mine [insert 1 percent of the estimated *total* Federal and non-Federal recoverable coal reserves] from anywhere within the LMU to achieve diligent development and, thereafter, to maintain continued operation or request to be allowed to pay advance royalty in lieu of continued operation.

d. *ADVANCE ROYALTY:* The number of years for which advance royalty may be paid *in lieu* of continued operation is

[insert the maximum number of years that is left for the Federal coal leases considered individually (see section VII. I. of these guidelines)]. Advance royalty may be paid *in lieu* of continued operation only until [insert the date that is 20 years from the date that the most recent Federal coal lease became "subject to diligence" (see section VII. J. of these guidelines)]. No advance royalty paid prior to that date may be credited against production royalty after that date.

e. *REPORTING PERIOD:* The rental amount for each Federal coal lease is to be prorated to the effective date of the LMU. Thereafter, the LMU rentals for all Federal coal leases within the LMU will be due in lump sum on each annual anniversary of the effective date of LMU approval. Upon approval and for the duration of this LMU, no Federal rentals may be credited against production royalties for any Federal coal lease contained in the LMU, the Federal coal lease terms of which allowed for such credits prior to the effective date of the LMU.

Royalties for Federal recoverable coal reserves produced within the LMU will be paid in lump sum, identified by individual Federal coal lease on the Coal Production and Royalty Reporting Form 9–373A.

Note.—[When Royalty Management of the Minerals Management Service obtains approval for a new form and number, this title and number must be changed to reflect that new form.] every royalty reporting period. The LMU royalty reporting period will be on a monthly basis beginning the royalty reporting period after the date that coal is first produced from the LMU, following the effective date of LMU approval. If coal is being produced on the effective date of LMU approval, the first royalty reporting period will begin the first day of the month following the effective date of the LMU approval. Since all production within an LMU is credited to the entire LMU, a certified record of all non-Federal LMU coal production must be provided to the District Manager on an annual basis. Progress maps and reports required by 43 CFR 3482.3 shall show *all* Federal *and* non-Federal production from anywhere within the LMU.

f. *RECOVERABLE COAL RESERVES EXHAUSTION:* The 40-year LMU recoverable coal reserves exhaustion period commences the date that coal is first produced from the LMU, following the effective date of LMU approval. If there is production occurring within the LMU on the effective date of LMU approval, the 40-year clock begins on the effective date of LMU approval.

g. *OTHER:* If the LMU, of which this [these (if appropriate)] Federal coal lease is [leases are (if appropriate)] a part, fails for whatever reason, the Federal coal lease[s] will automatically be subject to the diligence provisions that otherwise would have applied had the Federal coal lease[s] not been included in an LMU.

_____

Company or Lessee Name

By _____

(Signature of Lessee)

_____

(Title)

_____

(Date)

_____

Company or Lessee Name

By _____

(Signature of Lessee)

_____

(Title)

_____

(Date)

_____

Unit Operator

By _____

(Signature of Unit Operator)

_____

(Title)

_____

(Date)

[Note.—The *name* of the LMU should be the mine name to be associated with the] [LMU. If there is no mine name, use another identifier that would] [enable the name of the LMU to be distinctive. This is necessary] [because an operator may have two LMU's near each other. This is *not*] [the LMU *number*, which is assigned by WO–660 in the Solid Leasable] [Minerals System data base.]

[Special Note.—If these are LMU *Modification* Stipulations, stipulation 1] [should be repeated from the original LMU approval] [stipulations; stipulation 2 must be revised to state that the] [approved R2P2 must be modified within 3 years of the] [effective date of the modification to address the modified] [area, or modified prior to commencement of mining operations] [in the modified area, whichever occurs first; and stipulation] [3 should state that the original LMU approval stipulations] [are not altered by the approval of the modification.]

_____ LMU

EXHIBIT B

FEDERAL LEASES:
Serial Number:
Lease Effective Date:
Lessee:
Description of Land Committed:
Acres:

PRIVATE LEASES:
Lease No. or Other ID:
Lease Date:
Lessor:
Lessee:
Description of Land Committed:
Acres:

NOTIFICATION TO LESSEES REGARDING, AND THE MONITORING OF, DILIGENT DEVELOPMENT AND CONTINUED OPERATION

Due to the consequences of failing to achieve diligent development and to maintain continued operation, the importance of complete and accurate records should enforcement action be required, and to ensure nationwide consistency, the procedures set forth below are to be implemented immediately for Federal coal leases "subject to diligence" and for LMU's.

Notification Procedures (On a lease-by-lease basis, for Federal coal leases "subject to diligence", and on an LMU-by-LMU basis)

1. Initially notify each Federal coal lessee and, beginning on the date of the first diligent development year following the date of LMU approval (not following the effective date of that approval), each LMU designated operator (as well as the entity that applied, and subsequently received approval, for the LMU) of:

a. Date the diligent development period begins or began.

b. Date by which diligent development must be achieved.

c. Recoverable coal reserves estimate.

d. Commercial quantities requirement.

e. Beginning on the effective date of LMU approval, a certified record of non-Federal coal production must be submitted each year that the LMU is subject to diligent development.

2. At the completion of *each* diligent development, notify each lessee and each designated LMU operator (as well as the entity that applied, and subsequently received approval, for the LMU) of the remaining tonnage that must be produced to achieve diligent development.

3. Upon the achievement of diligent development, confirm in writing that diligent development has been achieved for the Federal coal lease or LMU. The confirmation must include:

a. The date of the royalty reporting period *during* which diligent development was achieved.

b. The date that the Federal coal lease or LMU is subject to continued operation (i.e., the beginning date of the royalty reporting period following the royalty reporting period during which diligent development was achieved).

c. The 12-month period which defines the continued operation year.

d. The tonnage that must be produced to maintain continued operation. Also, specify that this tonnage is required each of the first 2 continued operation

years and on a 3-year average thereafter.

e. The fact that advance royalty may only be accepted *in lieu* of continued operation upon application to and approval by the AO. When applications to pay advance royalty are made after the thirtieth calendar day of the continued operation year, acceptance may be conditioned on the assessment of a late payment charge.

f. Beginning on the effective date that the LMU is first subject to continued operation (see 3.b. above), the annual reporting date for non-Federal coal production shifts from the effective date of LMU approval to the beginning of each continued operation year.

4. At the end of any continued operation year during which continued operation was *not* maintained:

a. Issue a notice of noncompliance for failure to meet the continued operation requirement, and that failure to apply to pay advance royalty may result in Federal coal lease cancellation. For details on notices of noncompliance, see 3486.3.

5. Where advance royalty is paid for a continued operation year where continued operation was *not* met, notify the Federal coal lessee or designated LMU operator (as well as the entity that applied, and subsequently received approval, for the LMU) that the advance royalty payment counts against the total of 10 years for which it can be paid. Specify the total number of years advance royalty has been paid to date *in lieu* of continued operation and the total number of remaining continued operation years for which the lessee or LMU operator has the option to apply to pay advance royalty.

6. Where advance royalty is paid for a continued operation year and continued operation subsequently *is* met, notify the Federal coal lessee or designated LMU operator (as well as the entity that applied, and subsequently received approval, for the LMU) that the advance royalty payment *is not* counted against the total of 10 years for which it can be paid.

7. Upon approval of a revision of recoverable coal reserves based on new information, reissue the initial notification to reflect the AO's approval of the revision, with the revised commercial quantities requirement.

Note. If the revision occurs while the Federal coal lease or LMU is subject to diligent development, the revised commercial quantities requirement is effective immediately. If the revision occurs while the Federal coal lease or LMU is subject to continued operation, the revised commercial quantities requirement is effective on the beginning of the *following* continued operation year. In either case, the revision of recoverable coal reserves must be determined in consultation with the LMU applicant.

Special Note. Notifications for LMU's shall break down the production and recoverable coal reserves by Federal and non-Federal. *Note:* The term "Federal" includes only Federal recoverable coal reserves that are either "public" or "acquired." The term "non-Federal" includes recoverable coal reserves that are "fee" (sometimes referred to as "private"), "State," "Indian tribal," and "Indian allotted." These categories must also be separately broken down.

Monitoring Diligent Development and Continued Operation

On a lease-by-lease basis, for Federal coal leases that are "subject to diligence," and on an LMU-by-LMU basis, the diligent development, continued operation, commercial quantities, advance royalty, and LMU data elements *must be maintained* continuously up-to-date in the Solid Leasable Minerals System (SLMS) data base.

[FR Doc. 85-20610 Filed 8-28-85; 8:45 am]

BILLING CODE 4310-84-M

Arizona, Safford District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bureau of Land Management (BLM), Safford District announces a forthcoming meeting of the Safford District Grazing Advisory Board.

DATE: Friday, September 20, 1985; 9:00 a.m.

ADDRESS: BLM Office, 425 E. 4th Street, Safford, Arizona 85546.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with Pub. L. 92-463 and 94-579. The agenda for the meeting will include:

1. Field Tour to Bonita Creek.
2. Update on Grazing Fee Study.
3. Update on Land Exchange.
4. BLM Management Update.
5. Business from the floor.

Board members will meet at the BLM Office, 425 E. 4th Street, Safford, Arizona at 9:00 a.m. From here we will depart via BLM-provided vehicles for the field tour. Members of the public may accompany the tour but must provide their own transportation.

It is expected the Board members will return to the Safford District Office at approximately 1:00 p.m. for lunch. The meeting will reconvene at 2:00 p.m. and continue with the agenda.

The meeting will be open to the public. Interested persons may make oral statements to the Board between 2:00 p.m. and 3:00 p.m. A written copy of the oral statement may be required to be provided at the conclusion of the presentation. Written statements may also be filed for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 425 E. 4th Street, Safford, Arizona 85546, by 4:15 p.m., Thursday, September 19, 1985.

Summary minutes of the Board meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within thirty (30) days following the meeting.

Dated: August 20, 1985.

Lester K. Rosenkrance,

District Manager.

[FR Doc. 85-20652 Filed 8-28-85; 8:45 am]

BILLING CODE 4310-32-M

Coal Lease Application C-40672; Colorado; Public Hearing, Availability of Environmental Assessment, and Request for Public Comment

The Department of the Interior, Bureau of Land Management, Colorado State Office, Denver, Colorado, hereby gives notice that a public hearing will be held on October 1, 1985, at 7:00 p.m. in the Yampa Valley Electric Building, 32-10th Street, Steamboat Springs, Colorado. This emergency maintenance application has been made by Getty Minerals Marketing, Inc., to the United States to offer for lease the Wolf Creek and Wadge coal seams in the lands referred to as the Little Middle Creek Tract. The purpose of the hearing is to obtain public comments on the Environmental Assessment and on the following items: (1) The method of mining to be employed to obtain maximum economic recovery of the coal, (2) the impact that mining the coal in the proposed leasehold may have on the area, and (3) methods of determining the fair market value of the coal to be offered. Written requests to testify orally at the October 1, 1985, public hearing should be received at the Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625, prior to the close of business October 1, 1985. People who indicate they wish to testify when they check in at the hearing may have an opportunity if time is available.

Both oral and written comments will be received at the public hearing, but speakers will be limited to a maximum of three to five minutes each depending

on the number of persons desiring to comment. The time limitation will be strictly enforced, but the complete text of prepared speeches may be filed with the presiding officer at the hearing, whether or not the speaker has been able to finish oral delivery in the allotted minutes. Written comments regarding the Environmental Assessment may also be submitted to the Craig Distict Office at the above address, prior to close of business on October 8, 1985.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resources. Public comments will be utilized in establishing fair market value for the coal resources in the described lands. Comments should address specific factors related to fair market value including, but not limited to: the extent and quality of the coal resources, the price that the mined coal would bring in the market place, the cost of producing the coal, the interest rate at which anticipated income streams would be discounted, depreciation and other accounting factors, and the mining method or methods which would achieve maximum economic recovery of the coal. Documentation of similar maximum economic recovery of the coal. Documentation of similar market transactions, including location, terms and conditions, may also be submitted. The comments will be considered in the final determination of fair market value. Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Comments on fair market value should be sent to the State Director (CO–920), Bureau of Land Management, Colorado State Office, 2020 Arapahoe Street, Denver, Colorado 80205, and arrive no later than October 8, 1985.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The 2,011.47 acres included in the enviromental analysis are described as follows:

Little Middle Creek Area

T. 4 N., R. 86 W., 6th. P.M.
Sec. 19: Lots 11, 12, 13, and 14;
Sec. 30: Lots 3 and 4.
T. 4 N., R. 87 W., 6th. P.M.
Sec. 23: S½S½NE¼NE¼, SE¼NW¼NE¼, E½SW¼NE¼, SW¼SW¼NE¼, SE¼NE¼, SE¼NE¼SW¼, E½SE¼SW¼, SE¼;
Sec. 24: S½S½NW¼NW¼, SW¼NW¼, S½S½NE¼SW¼, NW¼SW¼, S½D½, S½N½NE¼SE¼, S½NE¼SE¼, S½D½NW¼SE¼;
Sec. 25: N½N½, N½N½SW¼NE¼, N½N½SE¼NE¼, N½SW¼NW¼, N½N½SE¼NW¼;
Sec. 26: N½NE¼NE¼, SE¼NE¼NE¼, N½NW¼NE¼, NE¼SE¼NE¼, NE¼NE¼NW¼.

This land described contains 1045.90 acres.

Fish Creek Area

T. 4 N., R. 87 W., 6th. P.M.
Sec. 12: Lots 1, 2, 3, S½.
T. 5 N., R. 87 W., 6th. P.M.
Sec. 36: Lots 1, 2, 3, 4, 11, 12, W½NE¼, NW¼.

This land described contains 965.57 acres.

The draft Environmental Assessment is available for review in the Craig District Office. Single copies are available from that office upon request.

A copy of the draft Environmental Assessment, the case file and the comments submitted by the public on fair market value, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, Bureau of Land Management, at the above shown address.

Richard E. Richards,

Acting Chief, Mineral Leasing Section.

[FR Doc. 85–20626 Filed 8–28–85; 8:45 am]

BILLING CODE 4310–JB–M

Arizona Strip District Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Arizona Strip District Advisory Board will meet Thursday, September 19, 1985 at 10:00 a.m. Primary purpose of the meeting is to review the draft management plan for the Paria Canyon-Vermilion Cliffs Wilderness Area.

DATE: September 19, 1985.

ADDRESS: Sugar Loaf Restaurant, 290 East St. George Blvd., St. George, Utah.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, 196 East Tabernacle, St. George, Utah 84770, (801) 673–3545.

SUPPLEMENTARY INFORMATION: The agenda will also include a review of the prescribed burn program and planned range improvement projects. The meeting is open to the public. Interested persons may make oral statements to the Board at 10:30 a.m. or file written statements by September 16 for the Board's consideration.

Dated: August 20, 1985.

G. William Lamb,

District Manager.

[FR Doc. 85–20628 Filed 8–28–85; 8:45 am]

BILLING CODE 4310–84–M

[Alaska AA–48398–N]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48398–N has been received covering the following lands:

Copper River Meridian, Alaska

T. 14 N., R. 3 W.,
Sec. 34, SW¼ NE¼.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from January 1, 1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48398–N as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective January 1, 1985, subject to the terms and conditions cited above.

Dated: August 21, 1985.

Kay F. Kletka,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 85–20650 Filed 8–28–85; 8:45 am]

BILLING CODE 4310–JA–M

[Alaska AA–48558–AF]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Alaska

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48558–AF has been received covering the following lands:

Copper River Meridian, Alaska

T. 7 S., R. 1 W.,
Sec. 25, NW¼.
(160 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5

per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from June 1, 1984, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48558–AF as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective June 1, 1984, subject to the terms and conditions cited above.

Dated: August 21, 1985.

Kay F. Kletka,

Acting Chief, Branch of Mineral Adjudication.

[FR Doc. 85–20651 Filed 8–28–85; 8:45 am]

BILLING CODE 4310–JA–M

Sodium Lease Sale; Wyoming

Correction

In FR Doc. 85–18391, appearing on page 31435, in the issue of Friday, August 2, 1985, make the following correction:

In the second column, in the legal description of **Tract 1**, T. 21 N., R. 108 W., 6th P.M., WY, Sec. 30, remove the comma separating "E½" and "W½" at the end of that line.

BILLING CODE 1505–01–M

[N–16385, N–12906, Nev–062283, CC–021027]

Order Providing for Opening of Lands; Nevada; Correction

August 21, 1985.

In FR Doc. 84–28889 appearing on page 44154 in the issue of Friday, November 2, 1984, the first paragraph in the third column should read as follows:

The minerals in the lands described in T. 30 N., R. 57 E; T. 35 N., R. 60 E; T. 34 N., R. 61 E., are in private ownership. The minerals in the lands described in T. 34 N., R., 63 E. were reconveyed to the United States.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 85–20723 Filed 8–28–85; 8:45 am]

BILLING CODE 4310–HC–M

[OR–39055]

Proposed Withdrawal and Reservation of Lands and Opportunity for Public Meeting; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Correction.

SUMMARY: This document corrects the following in a notice that appeared on pages 30240 and 30241 in the **Federal Register** of Wednesday, July 24, 1985, as Document 85–17597:

Details

The second line under **SUPPLEMENTARY INFORMATION** should read "27, 1985, an application was filed by the . . .:"

The first line in the last paragraph under **SUPPLEMENTARY INFORMATION** should read: "For a period of two years from the date . . . ."

Dated: August 21, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–20724 Filed 8–28–85; 8:45 am]

BILLING CODE 4310–33–M

[OR–37402(WASH)]

Proposed Continuation of Withdrawal; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army proposes that a land withdrawal for the Fort Lewis Military Reservation continue for an additional 50 years. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503–231–6905).

SUPPLEMENTARY INFORMATION: The Department of the Army proposes that the existing land withdrawal made by Executive Order 6628 of March 5, 1934, be continued for a period of 50 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land involved is located on Short Island in American Lake within Fort Lewis, approximately nine miles south of Tacoma, and contains 0.29 acre within Section 20, T. 19 N., R. 2 E., W.M., Pierce County, Washington.

The purpose of the withdrawal is to protect a portion of the Fort Lewis Military Reservation. The withdrawal segregates the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal. The 0.29 acre referred to by this notice is public domain land. The Department of the Army also has jurisdiction over approximately 100,000 acres of adjacent acquired lands which are not affected by this notice.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: August 21, 1985.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85–20725 Filed 8–28–85; 8:45 am]

BILLING CODE 4310–33–M

[W–71429, W–71430, W–71431]

Proposed Continuation of Reclamation Withdrawal; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that 1,281.75 acres withdrawn for the Glendo Unit, Pick-Sloan Missouri Basin Project continue until December 31, 2058 A.D. The lands will remain closed to surface entry and mining, but have been and will remain open to mineral leasing except for 160 acres which were reconveyed to the United States with no mineral interest.

DATE: Comments should be received by November 27, 1985.

ADDRESS: Comments should be sent to: Chief, Branch of Land Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003.

FOR FURTHER INFORMATION CONTACT: Scott Gilmer, Wyoming State Office, 307–772–2089.

The Bureau of Reclamation proposes

that the existing withdrawals made by Secretarial Order of March 17, 1947, Bureau of Land Management Order of June 6, 1956, Public Land Order 4981 of December 24, 1970, be continued until December 31, 2058 A.D., pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

Sixth Principal Meridian

T. 29 N., R. 67 W.,
Sec. 7, lots 5, 8.
T. 30 N., R. 67 W.,
Sec. 18, lot 2 (prev. described as SW¼NW¼).
T. 29 N., R. 68 W.,
Sec. 1, lot 5;
Sec. 2, SE¼SE¼;
Sec. 11, N½NE¼;
Sec. 12, lot 1;
Sec. 22, N½NW¼;
Sec. 23, SW¼NE¼, SE¼NW¼, NE¼SW¼;
Sec. 24, NE¼, NE¼NW¼, N½SW¼, SE¼SW¼, SE¼.
T. 30 N., R. 68 W.,
Sec. 8, NE¼SW¼;
Sec. 10, E½NW¼, N½SE¼;
Sec. 23, NW¼NE¼;
Sec. 26, lots 1,2.

The area described contains 1,281.75 acres in Platte County.

The purpose of the withdrawal is to protect the facilities of the dam, reservoir and spillway associated with the Missouri Basin Reclamation Project. The withdrawal segregates the lands from the operation of the public land laws generally, including the mining laws, but not the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawals may present their views in writing to the Chief, Branch of Land Resources, in the Wyoming State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination of the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Hillary A. Oden,
State Director.

[FR Doc. 85-20722 Filed 8-28-85; 8:45 am]
BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document; Walter Oil and Gas Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil and Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 2537, Block 265, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Cameron, Louisiana.

DATE: The subject DOCD was deemed submitted on August 22, 1985.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: August 23, 1985.

John L. Rankin,
Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-20653 Filed 8-28-85; 8:45 am]
BILLING CODE 4310-MR-M

INTERNATIONAL JOINT COMMISSION—UNITED STATES AND CANADA

Application of the State of Washington Concerning Order of Approval of December 9, 1982 for Regulating the Levels of Osoyoos Lake in the Province of British Columbia and the State of Washington; Public Hearings

Notice is hereby given that the International Joint Commission will hold public hearings at the times and places listed below regarding an Application from the State of Washington, seeking an amendment to the Commission's Order of Approval of December, 1982 for construction of new control works for regulating the levels of Osoyoos Lake in the Province of British Columbia and the State of Washington. The State of Washington wants approval to redesign and construct the control works about 2700 feet downstream from the location specified in the 1982 Order of Approval. It also wants the time for construction extended and to change the requirements for relocation of Tonasket Creek.

The Commission will be considering the Application pursuant to its continuing jurisdiction in this matter and responsibilities under Articles IV and VIII of the Boundary Waters Treaty of 1909.

The 1982 Order of Approval was issued in response to an application from the State of Washington for new control works to replace Zosel Dam. Information currently available for public scrutiny at the Oroville city hall and Osoyoos municipal office includes maps and drawings concerning the proposed changes.

Dated: August 21, 1985.

Louise L. Cox,
Acting Secretary, United States Section.

The Public Hearings will allow the Commission the opportunity to hear presentations of all interested parties. At the hearings opportunity will be given to anyone, whether on his own behalf or in a representative capacity, to offer relevant information to assist the Commission in disposing of this matter. While not mandatory, written statements are desirable to supplement oral testimony and to ensure accuracy of the report. When a written statement is presented, 30 copies, if possible, should be provided for distribution to the news media and for Commission purposes.

Time and Places of Hearings

September 19, 1985, 9:30 a.m., Old Oroville Depot, Oroville, Washington

September 19, 1985, 2:30 p.m., Osoyoos Community Hall, Osoyoos, B.C.

D.G. Chance, Secretary, Canadian Section, International Joint Commission, 100 Metcalfe Street, 18th floor, Ottawa, Ontario. K1P 5M1

D.A. LaRoche, Secretary, United States Section, International Joint Commission, 2001 "S" Street, N.W., Washington, D.C. 20440 USA

[FR Doc. 85-20622 Filed 8-28-85; 8:45 am]

BILLING CODE 4710-14-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-212]

Certain Convertible Rowing Exercisers; Commission Determination Not To Review Initial Determination Finding Respondent in Default and Imposing Procedural Sanctions

AGENCY: International Trade Commission.

ACTION: Nonreview of an initial determination (ID) finding a respondent in default and imposing procedural sanctions.

SUMMARY: Notice is hereby given that the Commission has determined not to review an ID of the presiding administrative law judge (ALJ) that finds respondent Pan's World in default and imposes procedural sanctions.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202-523-0493.

SUPPLEMENTARY INFORMATION: By Order No. 13, respondent Pan's World was ordered by the ALJ to comply with discovery requests. By Order No. 25, Pan's World was ordered to show cause why it should not be held in default. Pan's World did not respond to either order. On July 24, 1985, the ALJ issued an ID (Order No. 43) finding Pan's World in default. The ALJ also ordered that (1) Pan's World has waived its right to appear in the investigation, (2) no party is required to serve documents on Pan's World, and (3) Pan's World has waived the right to contest the allegations at issue. No petition for review was filed, nor were comments on the ID received from any Government agency.

By order of the Commission.

Issued: August 19, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-20611 Filed 8-28-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-215]

Certain Double-Sided Floppy Disk Drives and Components Thereof; Commission Decision Not To Review Initial Determination Terminating Two Respondents on the Basis of a Settlement Agreement and a License Agreement

AGENCY: International Trade Commission.

ACTION: Termination of two respondents, Sony Corporation and Sony Corporation of America, on the basis of a joint settlement and a license agreement.

SUMMARY: The U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 20) terminating respondents Sony Corporation and Sony Corporation of America (the Sony respondents) in the above-captioned investigation on the basis of a joint settlement and a license agreement.

FOR FURTHER INFORMATION CONTACT: Marcia H. Sundeen, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0480.

SUPPLEMENTARY INFORMATION: On July 8, 1985, complainant Tandon Corporation and respondents Sony Corporation and Sony Corporation of America filed a joint motion to terminate this investigation as to respondents Sony Corporation and Sony Corporation of America on the basis of a joint settlement agreement and a license agreement. On July 19, 1985, the administrative law judge issued an ID terminating the Sony respondents based on the joint settlement agreement and the license agreement. The Commission investigative attorney filed a response supporting the motion. No petitions for review of the ID or comments from other Government agencies or the public were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 210.51 and 210.53).

Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161.

Issued: August 20, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-20612 Filed 8-28-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-75]

Certain Large Video Matrix Display System and Components Thereof; Commission Decision To Review Initial Determination, Affirm the Administrative Law Judge, and Terminate Investigation

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has determined to review a portion of the presiding administrative law judge's (ALJ) initial determination (ID) that there is no violation of section 337 of the Tariff Act of 1930 in the above-captioned investigation. The Commission determined to review and affirm that portion of the ID finding U.S. Letters Patent 3,941,926 unenforceable. The Commission has determined not to review the remainder of the ID. Thus, the Commission has concluded that there is no violation of section 337 and has terminated this investigation.

Authority: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and in §§ 210.53-210.56 of the Commission's rules of Practice and Procedure, 49 FR 46123; to be codified at 19 CFR 210.53-219.56.

FOR FURTHER INFORMATION CONTACT: Catherine R. Field, Esq., Office of General Counsel, U.S. International Trade Commission, telephone 202-523-0189.

SUPPLEMENTARY INFORMATION: On October 25, 1979, Stewart-Warner Corp. (Stewart-Warner), of Chicago, Illinois, filed a complaint with the Commission alleging a violation of section 337 in the importation and sale of certain large video matrix display systems manufactured by SSIH Equipment SA (SSIH) of Bienne, Switzerland through the alleged infringement of claims of U.S. Letters Patent Nos. 3,594,762 ('762 patent), 3,941,926 ('926 patent), and 4,000,335 ('335).

On June 1, 1981, the Commission determined that there was a violation of section 337 of the Tariff Act of 1930 in the importation and sale of certain large video matrix display systems and components thereof (scoreboards), which infringe claims of the '726, '926 and/or '335 patents. The Commission issued an order excluding the infringing merchandise and components thereof manufactured by respondent SSIH Equipment SA of Bienne, Switzerland from entry into the United States for the remaining terms of the patents, except under license from the patent owner. 46

FR 32694. On August 10, 1981, the Commission modified its exclusion order so that it was effective solely against articles infringing the claims of the '762 patent. 46 FR 4317. The Commission acted in recognition of a Federal district court decision that the '926 and '335 patents were invalid. Stewart-Warner Corp. v. City of Pontiac, 213 USPQ 453 (E.D. Mich. 1981). The Commission's determination and the modified exclusion order became final on August 10, 1981.

Respondent SSIH appealed the Commission's determination to the U.S. Court of Customs and Patent Appeals, one of the predecessor courts to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). On July 15, 1983, the Federal Circuit decided to reverse the Commission's determination in part, vacate the exclusion order, and remand the case to the Commission for reconsideration of the issues of infringement of the '762 patent, injury, and public interest consistent with the Court's opinion. *See* SSIH Equipment SA v. USITC, 718 F.2d 365 (Fed. Cir. 1983).

Pursuant to the Federal Circuit's order, the Commission remanded this investigation to the ALJ for an ID on the issues of infringement of claim 12 of the '762 patent and injury to the domestic industry.

Concurrent, with SSIH's appeal of the Commission's determination to the Federal Circuit, complainant Stewart Warner appealed the Federal district court's decision concerning the '335 and '926 patents to the U.S. Court of Appeals for the Sixth Circuit (Sixth Circuit). On appeal, the Sixth Circuit upheld the district court's finding that the '335 patent was invalid, but reversed the district court's findings concerning anticipation of the '926 patent. The Sixth Circuit then remanded the case to the Federal district court for consideration of whether the '926 patent was invalid as obvious under 35 U.S.C. 103. *See* Stewart-Warner Corp. v. City of Pontiac, 717 F.2d 269 (6th Cir. 1982).

Upon consideration of the Sixth Circuit's decision and requests by both of the parties to this investigation, the Commission determined to modify its Action and Order of September 16, 1983, and to remand to the ALJ the additional issue of alleged inequitable conduct in the prosecution of all three patents and enforceability of the '762 and '926 patents. 46 FR 53188.

On March 9, 1984, the district court found that the '926 patent was obvious under 36 U.S.C. 103. Stewart-Warner then appealed that decision to the Federal Circuit.

On June 13, 1984, the ALJ issued an ID finding that (1) SSIH's system did not infringe the '762 patent, (2) there was no inequitable conduct in the prosecution of the '762 patent, (3) there was inequitable conduct in the prosecution of the '335 patent, (4) by operation of law, the inequitable conduct with regard to the prosecution of the '335 patent rendered the closely related '926 patent unenforceable, and (5) the effect of the imports was to substantially injure the relevant domestic industry. On August 5, 1984, the Commission decided not to review that portion of the ID pertaining to the '762 patent and suspended the remainder of the investigation until thirty days after the Federal Circuit issued its decision on the appeal from the district court's decision on remand, 49 FR 32691 (1984).

On July 18, 1985, the Federal Circuit issued its decision reversing the district court on the issue of obviousness. Thus, the '926 patent is valid.

Notice of the suspension of this investigation and the schedule for future Commission action was published in the **Federal Register** of August 15, 1984. 49 FR 321679 (1984).

Copies of the public version of the ID and all other non-confidential documents filed in connection with this investigation will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. Interntional Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

Issued: August 19, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–20613 Filed 8–28–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731–TA–253 (Final)]

Certain Welded Carbon Steel Pipes and Tubes From Venezuela

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–253 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishement of an industry in the United States is materially retarded, by reason of imports from Venezuela of certain circular welded carbon steel line pipes and tubes,[1] which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before October 21, 1985, and the Commission will make its final injury determination by an administrative deadline of November 29, 1985. The statutory deadline for this investigation is December 10, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: August 13, 1985.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202–523–4612), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain circular welded carbon steel line pipes and tubes from Venezuela are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on February 28, 1985, by the Committee on Pipe and Tube Imports. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of the course of that investigation, determined that there was

[1] For purposes of this investigation, the term "certain circular welded carbon steel line pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch, 0.375 inch or more but not over 16 inches in outside diameter, conforming to API specifications for line pipe, provided for in items 610.3208 and 610.3209 of the Tariff Schedules of the United States Annotated (1985) (TSUSA).

a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (50 FR 16167, April 24, 1985).

Participation in the Investigation.

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules of Practice and Procedure (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the Federal Register. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report

A public version of the prehearing staff report in this investigation will be placed in the public record on October 8, 1985, pursuant to § 201.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation begining at 10:00 a.m. on October 29, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 15, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:00 a.m. on October 18, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 22, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2)).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing 207.22). Posthearing briefs must conform with the provisions of section § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on November 5, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before November 5, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 am. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR § 207.20).

Issued: August 23, 1985.

By Order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-20618 Filed 8-28-85: 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-201]

Certain Products With "Gremlin" Character Depictions; Commission Determination To Review an Initial Determination, Affirm the Determination To Declare the Investigation More Complicated, and Extend the Deadline for Completion of the Investigation by One Month

AGENCY: International Trade Commission.

ACTION: Review of initial determination, affirm the determination to declare the investigation "more complicated", reverse the determination to extend the deadline for completion of the investigation by six months, and extend the deadline by one month.

SUMMARY: The Commission has determined to review the presiding administrative law judge (ALJ's) initial determination (ID), and to affirm the determination to declare the above-captioned investigation "more complicated" pursuant to 19 U.S.C. 1337(b)(1). The Commission, however, determined to reverse the ALJ's determination to extend the deadline for completion of the investigation by six months and, instead, to extend the deadline by one month, i.e., from November 15, 1985, to December 16, 1985.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0499.

SUPPLEMENTARY INFORMATION:

Background

The investigation is being conducted to determine whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the importation or sale of certain products with "Gremlin" character depictions. The proceedings were instituted on the basis of a complaint filed by Warner Bros. Inc. (Warner) alleging infringement of three copyrights owned by Warner. (*See* 49 FR 34422 (August 30, 1984).)

On April 26, 1985, Warner moved to declare this investigation more complicated. Before the ALJ could rule on the motion, the Court of Appeals for the Federal Circuit (CAFC) on April 29, 1985, issued a temporary stay of the proceedings. The temporary stay was vacated on July 15, 1985. Subsequently, on July 26, 1985, the ALJ issued his ID granting Warner's motion to declare the investigation "more complicated."

Reasons for Determination

The Commission has determined that this investigation should be designated "more complicated" because of the complex nature of the definition of the domestic industry, including the number of different products involed, and the difficulty in obtaining information regarding production and marketing from numerous licensees on the condition of the domestic industry.

The Commission, however, has determined to extend the deadline for completion of the investigation by one month, not six months. Section 337 investigations are to be conducted expeditiously. The Commission believes that an additional period of one month is sufficient to conduct any additional discovery and complete and record in this investigation.

Public Inspection

The ID and all other nonconfidential documents on the record of the investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20435, telephone 203–523–0471.

Issued: August 19, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–20614 Filed 8–28–85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 104–TA–26]

Termination of Additional Portions of the Investigation Regarding the Sugar Content of Certain Articles From Australia

AGENCY: International Trade Commission.

ACTION: Termination of additional portions of a review investigation under section 104(b) of the Trade Agreements Act of 1979, concerning the *Sugar Content of Certain Articles from Australia.*

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: Stephen McLaughlin, Esq., (202–523–0421), Office of the General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

SUPPLEMENTARY INFORMATION: On September 9, 1982, the International Trade Commission received a request from the Government of Australia under section 104(b) of the Trade Agreements Act of 1979 seeking a review of the outstanding countervailing duty order on the sugar content of certain articles from Australia. On May 30, 1985, the Commission published a notice in the **Federal Register** instituting a review investigation (Inv. No. 104–TA–26) of that outstanding countervailing duty order (50 FR 23006). On June 4, 1985, the Commission published a notice in the **Federal Register** requesting public comment on the proposed termination of all or part of investigation No. 104–TAA–26 (50 FR 23533). That notice stated that, in the absence of an expression of interest by interested parties representing an industry producing all or some of the subject products, the Commission may terminate the investigation as to those products.

During the public comment period, expressions of interest were filed by interested parties representing industries producing canned pears, canned peaches, canned fruit mixtures, and semi-processed confectionery containing chocolate or cocoa as provided for in TSUSa item numbers 156.24, 156.3045, 156.3050, 156.3065, and 156.47. An expression of interest was also filed by the Apricot Producers of California, but it was subsequently withdrawn. No other comments were received. Accordingly, the Commission determined to continue its review investigation, but to narrow the scope of that investigation to canned pears, canned peaches, canned fruit mixtures, and semi-processed confectionery containing chocolate or cocoa as provided for in TSUSA items listed above. The investigation was, therefore, terminated as to all other products covered by the outstanding countervailing duty order with a finding that no domestic industry would be materially injured or threatened with material injury, nor would the establishment of a domestic industry be materially retarded, by reason of the revocation of the countervailing duty order.

Subsequently, the expression of interest regarding semi-processed confectionery containing chocolate or cocoa as provided for in TSUSA item numbers 156.25, 156.3045, 156.3050, 156.3065, and 156.47 was withdrawn. Accordingly the Commission has determined to further narrow its review investigation to canned pears, canned peaches, and canned fruit mixtures. The investigation as to semi-processed confectionery has, therefore, been terminated with a finding that no domestic industry would be materially injured or threatened with material injury, nor would the establishment of a domestic industry be materially retarded, by reason of the revocation of the countervailing duty order regarding semi-processed confectionery. Accordingly, the Commission is requesting that the Department of Commerce revoke the countervailing duty order as to those products.

Issued: August 22, 1985.

By order of the Commission.

Kenneth R. Mason.

Secretary.

[FR Doc. 85–20615 Filed 8–28–85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30679]

Burlington Northern Railroad Co.; Construction Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts the Burlington Northern Railroad Company from the provisions of 49 U.S.C. 10901, to construct a 6.4 mile line of railroad between Moore, MT and Sipple, MT, subject to environmental conditions.

DATES: This decision is effective on August 29, 1985. Petitions to reopen must be filed by September 18, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30679 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Arthur R. Zaegel, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Ft. Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275–7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. Infosystems, Inc. Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: August 22, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Sterrett did not participate in the disposition of this proceeding. Chairman

Taylor was absent and did not participate in this decision.

James H. Bayne,

Secretary.

[FR Doc. 85-20705 Filed 8-28-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55; (Sub-152X)]

Seaboard System, Railroad, Inc.; Abandonment Exemption; Campbell County, KY, and Hamilton County, OH

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by the Seaboard System Railroad, Inc., of 1.56 miles of its Newport Branch between valuation station 5896+66 at Newport, KY, and valuation station 3979+39 near Cincinnati, OH, in Campbell County, KY, and Hamilton, County, OH, subject to standard labor protective conditions.

DATES: This exemption will be effective on September 30, 1985. Petitions to stay must be filed by September 9, 1985, and petitions for reconsideration must be filed by September 18, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-55 (Sub-No. 152X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc. Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 22, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lambolely, and Strenio. Commissioner Sterrett did not participate. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85-20706 Filed 8-28-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-84)]

Southern Pacific Transportation Co.; Abandonment; Modoc County, CA and Lake County, OR; Findings

The Commission has found that the public convenience and necessity permit Southern Pacific Transportation Company to abandon its 54.45 mile rail line between Alturas, CA (milepost 458.60) and Lakeview, OR (milepost 513.05) in Modoc County, CA and Lake County, OR. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA". An offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,

Secretary.

[FR Doc. 85-20707 Filed 8-28-85; 8:45 am]

BILLING CODE 7035-01-M

LEGAL SERVICES CORPORATION

Announcement of Availability of Funds for State Support in the State of Louisiana

AGENCY: Legal Services Corporation.

ACTION: Notice.

The Legal Services Corporation (LSC) announces the availability of state support grant funds for the State of Louisiana. The current recipient, Southeast Louisiana Legal Services Corporation, in Hammond, Louisiana, has notified LSC that it desires to relinquish its grant as soon as a replacement recipient can be found. State support grant funds are used within a state to assist Legal Services programs and clients by providing and maintaining resource materials, newsletters, mailings, and technical assistance; litigation through co-counsel, counsel and amicus; legislative and administrative representation; and coordination and communication with Legal Services programs, clients, client groups, and other organizations representing poor people. The annualized level of Legal Services Corporation funding for state support in Louisiana in 1985 is $151,674.

FOR FURTHER INFORMATION CONTACT: Gail D. Francis, Manager, Grants and Budget Unit, Office of Field Services, Legal Services Corporation, 733 Fifteenth Street, NW., Washington, D.C., 20005; (202) 272-4080. Interested parties should notify LSC within forty-five (45) days from publication of this announcement.

Dated: August 27, 1985.

Peter Broccoletti,

Acting Director, Office of Field Services.

[FR Doc. 85-20670 Filed 8-28-85; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Office for Partnership Advisory Panel; 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 Office for Partnership Advisory Panel (Locals Test Program Section) to the National Council on the Arts will be held on Wednesday and Thrusday, September 18-19, 1985 from 9:30 am-4:30 pm and Friday, September 20, 1985 from 9:30 am-1:00 pm in Room 730 of the Nancy Hanks Center in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on Friday, September 20, 1985 from 9:30 am-1:00 pm to discuss a report on rural arts, guidelines and other policy issues.

The remaining sessions of this meeting on September 18-19, 1985 9:30 am-4:30 pm 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** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained for Mr.

John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

August 23, 1985.

[FR Doc. 85–20677 Filed 8–28–85; 8:45 am]

BILLING CODE 7537-01-M

Theater Advisory Panel; 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 Theater Advisory Panel (Playwrights/Translators Section) to the National Council on the Arts will be held on Wednesday, September 18, 1985 from 9:00am–5:30pm in room M–07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

August 23, 1985.

[FR Doc. 85–20678 Filed 8–28–85; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESS: Comments should be addressed to Director, Division of Personnel and Management, National Science Foundation, Room 212, 1800 G Street NW., Washington, D.C. 20550.

FOR FURTHER INFORMATION CONTACT: Mr. John Wilkinson or Ms. Patricia Bond at the above address or (202) 357–7857.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Permanent Membership

John H. Moore, Deputy Director, Chairperson

Jeff Fenstermacher, Assistant Director for Administration, Executive Secretary

Rotating Membership

Judith Sunley, Deputy Director, Division of Mathematical Sciences, Directorate for Mathematical and Physical Sciences

Carl W. Hall, Deputy Assistant Director for Engineering, Directorate for Engineering

James F. Hays, Director, Division of Earth Sciences, Directorate for Astronomical, Atmospheric, Earth and Ocean Sciences

William L. Stewart, Deputy Director, Division of Science Resources Studies, Directorate for Scientific, Technological and International Affairs

Alan I. Leshner, Deputy Director, Division of Behavioral and Neural Sciences, Directorate for Biological, Behavioral and Social Sciences

Robert F. Watson, Head, Office of College Science Instrumentation, Directorate for Science and Engineering Education

James M. McCullough, Executive Assistant to Director, Office of Legislative and Public Affairs, Office of the Director

Dated: August 26, 1985.

Margaret L. Windus,

Director, Division of Personnel and Management.

[FR Doc. 85–20619 Filed 8–28–85; 8:45 am]

BILLING CODE 7555-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Entry Into Force of U.S.-Israel Free Trade Area Agreement

August 19, 1985.

FOR FURTHER INFORMATION CONTACT: Alexander H. Platt, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, D.C., telephone (202) 395–6951.

The Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (the "Agreement") was signed in Washington on April 22, 1985. Article 22 of the Agreement provides for its entry into force on the date on which both Parties to the Agreement have provided written notification to each other that domestic legal procedures necessary for implementation have been completed. The United States of America provided such written notification on June 12, 1985 and the Government of Israel on August 19, 1985. Therefore, the Agreement entered into force for both the United States of America and Israel on August 19, 1985.

Clayton Yeutter,

United States Trade Representative.

[FR Doc. 85–20679 Filed 8–28–85; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Application of Village Aviation, Inc., d/b/a Camai Air for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause, (Order 85–8–72) Docket 42860.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order finding Village Aviation, Inc., d/b/a Camai Air fit, awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

DATES: Persons wishing to file objections shall do so no later than September 13, 1985; answers to objections shall be filed no later than September 23, 1985.

ADDRESSES: Objections and answers to objections should be filed in Docket 42860 and addressed to the Documentary Services Division, U.S. Department of Transportain, 400 Seventh Street SW., Room 4107, Washington, D.C. 20590, and should be

served upon the persons listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Betsy L. Wolf, Office of Aviation Enforcement and Proceedings, U.S. Department of Transportation, 400 Seventh Street SW., Room 4116, Washington, D.C. 20590, (202) 426-2912.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-8-72 is available from our Documentary Services Division at the address above. Persons outside the metropolitan area may send a postcard request for Order 85-8-72 to that address.

Dated: August 23, 1985.

Jeffrey Shane,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-20718 Filed 8-28-85; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Flight Service Station at Milwaukee, WI; Notice of Closing

Notice is hereby given that on or about August 18, 1985, the Flight Service Station of Milwaukee, Wisconsin, will be closed. Services to the general public of Milwaukee, Wisconsin Flight Plan Area, formerly provided by this office, will be provided by the Flight Service Station in Green Bay, Wisconsin. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Des Plaines, Illinois, on August 19, 1985.

Paul K. Bohr,

Director, Great Lakes Region.

[FR Doc. 85-20606 Filed 8-28-85; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Executive Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Executive Committee to be held on September 20, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Opening Remarks, (2) Approval of Minutes of Meeting Held on July 19, 1985; (3) Chairman's Report on RTCA Administration and Activities; (4) Special Committee Activities Report for July and August 1985; (5) Approval of RTCA CY1986 Budget and Tentative CY1987 Budget; (6) Consideration of Special Committee 149 Report on Minimum Operational Performance Standards for Airborne Distance Measuring Equipment (DME); (7) Consideration of Change 2 to RTCA Document DO-185, "Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance Systems (TCAS) Airborne Equipment"; (8) Consideration of Change 2 to RTCA Document DO-181m "Minimum Operation Performance Standards for Air Traffic Control Radar Beacon System/Mode Select (ATCRBS/Mode S) Airborne Equipment"; (9) Consideration of Proposals to Establish New Special Committees; and (10) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on August 22, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-20605 Filed 8-28-85; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 151—Airborne Microwave Landing System Area Navigation Equipment; Meeting.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 151 on Airborne Microwave Landing System (MLS) Area Navigation Equipment to be held on September 25-27, 1985, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of the Ninth Meeting Held on June 5-7, 1985; (3) Review and Discuss Special Committee 137 (Airborne Area Navigation Systems), Special Committee 149 (Airborne Distance Measuring Equipment) and the European Organization for Civil Aviation Electronics (WG-27) Activities; (4) Briefing and Discussion of Activities Related to Helicopter Operational Tests of Computer Centerline Approaches using Offset Azimuth; (5) Reports of Working Group Activities; (6) Review of Draft Committee Report on Minimum Operational Performance Standards for Airborne MLS Area Navigation Equipment; (7) Working Groups Meet in Separate Sessions; (8) Committee Meeting in Plenary Session; (9) Assignment of Tasks; and (10) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on August 21, 1985.

Karl F. Bierach,

Designated Officer.

[FR Doc. 85-20604 Filed 8-28-85; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

[Docket S-773]

Moore McCormack Bulk Transport, Inc.; Application for a Waiver To Permit Prospective Domestic Operation of Vessels Owned by a Company Affiliated With a Subsidized Operator

Notice is hereby given that Moore McCormack Bulk Transport, Inc. (MMB) by letter dated August 12, 1985, has applied to the Maritime Administration for permission under section 805(a) of the Merchant Marine Act, 1936, as amended (Act), to be affiliated with a company operating in the domestic trades. MMB has proposed with the affiliate will own, operate and/or charter one or two of the tanker vessels named MORMACSTAR, MORMACSUN and MORMACSKY (Vessels) currently subject to Operating-Differential Subsidy Agreement, Contract No. MA/MSB-295 (ODS Contract).

MMB plans to have the construction-differential subsidy (CDS) with respect to the Vessels repaid pursuant to the recently promulgated CDS repayment regulations, 46 CFR Part 276.3, in order

that the domestic trading restrictions to which they are now subject may be lifted. Permission is required for the operator of such Vessel(s) to be affiliated with the operator of any subsidized Vessel(s) subject to the ODS Contract.

Upon repayment of the CDS for any of the Vessels, MMB intends to transfer the bareboat charters and operation of such Vessel to a separate affiliated company, Moore McCormack Marine Enterprises, Inc. (Enterprises) which will operate the Vessel in the domestic trade. It is also possible that Enterprises will purchase the Vessel(s) for Wilmington Trust Company, the owner trustee, and cancel the bareboat charter(s).

Any person, firm or corporation having any interest (within the meaning of section 805(a)) in MMB's request and desiring to submit comments concerning the request must by 5:00 PM on September 16, 1985, file written comments in triplicate with the Secretary, Maritime Administration, together with petition for leave to intervene. The petition shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petition for leave to intervene is received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

By Order of the Maritime Administrator.

Dated: August 23, 1985.

Georgia P. Stamas,

Secretary.

[FR Doc. 85-20671 Filed 8-28-85; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration

National Driver Register Advisory Committee; Public Meeting; Correction

In FR Doc. 82-20249 published on page 34227 of the issue for Friday, August 23, 1985, the room number of the meeting is corrected to read room 4200.

Issued in Washington, D.C. on August 23, 1985.

Carole S. Guzzetta,

Director, Executive Secretariat.

[FR Doc. 85-20617 Filed 8-28-85; 8:45 am]

BILLING CODE 4910-59-M

1977-85 Wayne School Buses; Public Hearing Rescheduled

The National Highway Traffic Safety Administration has rescheduled for October 1, 1985, a public hearing originally scheduled for September 4, 1985, at which the Wayne Corporation will be afforded an opportunity to present data, views, and arguments relating to an initial determination of noncompliance with Federal Motor Vehicle Safety Standard No. 221, *School Bus Body Joint Strength*, in the 1977-85 Wayne school buses. Notice of the initial determination of noncompliance and the original scheduling of the hearing appeared in the Federal Register on August 13, 1985 (FR 32671).

The rescheduling of the hearing responds to a petition for additional time in which to prepare for the hearing made by Wayne Corporation in a letter of August 16, 1985. Wayne represented that it would be unable to present a full statement of its position on September 4, 1985, because it would have inadequate time to analyze the information upon which the agency based its initial determination of noncompliance, as the months of August and September are traditionally the time that the corporation completes its manufacture and delivery of school buses on order for the school year that begins in September 1985; and the original date would be unduly burdensome for its personnel.

The agency believes that the public interest will best be served by a brief postponement of the hearing. Allowing Wayne additional time to make a complete presentation at the time of their hearing will facilitate the ability of the public to obtain a clear understanding of Wayne's position in this matter. The agency believes that a brief postponement will not significantly compromise the public's interest in safety.

Therefore, in light of the foregoing, the public hearing relating to the intitial determination on noncompliance with Standard No. 221 in the 1977-85 Wayne school buses will be held at 10:00 a.m. on October 1, 1985, in Room 2230, Department of Transportation Headquarters Building, 400 Seventh Street SW., Washington, D.C. 20590.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Ms. Gail Willis, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, Room 6113, 400 Seventh Street SW., Washington, D.C. 20590, telephone 202-426-2832, before close of business on September 24, 1985.

The agency's investigative file in this matter is available for public inspection during working hours (7:45 a.m. to 4:15 p.m.) in the Technical Reference Library, Room 5108, 400 Seventh Street SW., Washington, D.C. 20590.

Issued on August 23, 1985.

George L. Parker,

Associate Administrator for Enforcement.

[FR Doc. 85-20618 Filed 8-28-85; 11:42 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Advisory Committee to the National Center for State and Local Law Enforcement Training Meeting

Name: Advisory Committee to the National Center for State and Local Law Enforcement Training.

ACTION: Notice of meeting.

SUMMARY: The agenda for the meeting includes opening remarks by the Director of FLETC and Committee Co-Chairman; administrative matters; summary of training activities; program development status; new training concepts for consideration; and new business.

DATE: September 10-11, 1985; 9:00 a.m.-5:00 p.m.

ADDRESS: Building 262, Room N-5; Federal Law Enforcement Training Center, Glynco, Georgia 31524.

E.T. Stevenson,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-20649 Filed 8-28-85; 8:45 am]

BILLING CODE 4810-25-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administraion has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) how often the form must be filled out, (5) who will be required or asked to report, (6) an estimate of the number of responses, (7) an estimate of the total number of hours needed to fill out the form, and (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 389–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Dick Eisinger, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: August 26, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

Extension

1. Department of Veterans Benefits
2. Compliance Report of Proprietary Institutions
3. VA Form 27–4274
4. On occasion
5. Small Businesses for profit
6. 359 responses
7. 359 hours
8. Not applicable.

[FR Doc. 85–20660 Filed 8–28–85; 8:45 am]

BILLING CODE 8320–01–M

Cooperative Studies Evaluation Committee; Meeting

The Veterans Administration gives notice under Pub. L. 92–463 that a meeting of the Cooperative Studies Evaluation Committee, authorized by 38 U.S.C. 4101, will be held at the Old Colony Inn, 1st and N. Washington Street, Alexandria, Virginia, 22313, on November 13 and 14, 1985. The meeting will be for the purpose of reviewing proposed cooperative studies and advising the Veterans Administration on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects. The Committee advises the Director, Medical Research Service, through the Chief of the Cooperative Studies Program, on its findings.

The meeting will be open to the public up to the seating capacity of the room from 7:30 to 8 a.m., on November 13, and 14, to discuss the general status of the program. To asure adequate accommodations, those who plan to attend should contact Dr. Ping C. Huang, Coordinator, Cooperative Studies Evaluation Committee, Veterans Administration Central Office, Washington, DC (202–389–3702), prior to November 9, 1985.

The meeting will be closed from 8 a.m. to 5 p.m. on November 13, and from 8 a.m. to 12 noon on November 14, for consideration of specific proposals in accordance with provisions set forth in subsection 10(d) of Pub. L. 92–463, as amended by section 5(c) of Pub. L. 94–409, and subsection (c)(6) and (c)(9)(B) of § 552b, title 5, United States Code. During its portion of the meeting, discussions and decisions will deal with qualifications of personnel conducting the studies and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Additionally, premature disclosure of the Committee's recommendations would likely frustrate implementation of final proposed actions.

Dated: August 21, 1985.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 85–20661 Filed 8–28–85; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 168
Thursday, August 29, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMODITY CREDIT CORPORATION

TIME AND DATE: 3:00 p.m., September 6, 1985.

PLACE: Room 104A-Administration Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda to be announced.

CONTACT PERSON FOR MORE INFORMATION: George E. Rippel, Deputy Secretary, Commodity Credit Corporation, Room 5714 South Building, U.S. Department of Agriculture, Post Office Box 2415, Washington, D.C. 20013; telephone (202) 447-4785.

Dated: August 26, 1985.

George E. Rippel,

Deputy Secretary, Commodity Credit Corporation.

[FR Doc. 85-20760 Filed 8-27-85; 11:34 am]

BILLING CODE 3410-05-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 10:00 a.m. on Monday, August 26, 1985, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Georgetown Savings Bank, an operating noninsured savings bank located at 7 North Street, Georgetown, Massachusetts, for Federal deposit insurance.

Application of National Bank of Commerce, Memphis, Tennessee, for consent to purchase certain assets of and assume the liability to pay deposits made in the Germantown, Tennessee, Branch, and the Raleigh and Whitehaven Branches located in Memphis, Tennessee, of Home Federal Savings and Loan Association of Memphis, Memphis, Tennessee, a non-FDIC-insured institution.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,305-NR
Penn Square Bank, National Association, Oklahoma City, Oklahoma

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable.

Dated: August 26, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-20751 Filed 8-27-85; 11:14 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, September 3, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to purchase assets and assume liabilities and to establish one branch:

The Bank of Massachusetts, Chelsea, Massachusetts, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in Social Services Credit Union, Boston, Massachusetts, a non-FDIC-insured institution, and for consent to establish the sole office of Social Services Credit Union as a branch of the Bank of Massachusetts.

Application for consent to purchase assets and assume liabilities and establish two branches:

Mid-State Bank and Trust Company, Altoona, Pennsylvania, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in the New Enterprise Bank, New Enterprise, Pennsylvania, and to establish the two offices of the New Enterprise Bank as branches of Mid-State Bank and Trust Company.

Application for consent to consolidate and establish seven branches:

Northampton Institution for Savings, Northampton, Massachusetts, an insured mutual savings bank, for consent to consolidate, under its charter and with the title "Heritage/NIS Bank for Savings," with Heritage Bank for Savings, Amherst, Massachusetts, and for consent to establish the seven offices of Heritage Bank for Savings as branches of the resultant bank.

Memorandum and resolution re: Notice of application of Cape Cod Bank and Trust Company, Hyannis, Massachusetts to withdraw securities from listing with the Boston Stock Exchange.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,299-SR
The Citizens State Bank Viola, Kansas
Case No. 46,300-SR
Franklin Bank Houston, Texas
Case No. 46,301-L
The First National Bank of Midland Midland, Texas

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC

Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: August 27, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–20795 Filed 8–27–85; 2:53 pm]

BILLING CODE 6714–01–M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 522b), notice is hereby given that at 2:30 p.m. on Tuesday, September 3, 1985, the Federal Deposit Insurance Corportation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Request for reconsideration of a previous denial of an application for Federal deposit insurance:

Anchor Thrift & Loan Association, an operating noninsured industrial bank located at 1029 Pacific Coast Highway, Seal Beach, California.

Recommendation regarding the liquidation of bank's assets acquired by the Corporation its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,835–L (Amendment)
The First National Bank of Midland, Midland, Texas

Personnal actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, ets.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation , at (202) 389–4425.

Dated: August 27, 1985.

Federl Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–20796 Filed 8–27–85; 2:52 pm]

BILLING CODE 6714–01–M

5

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Thursday, September 5, 1985.

PLACE: 1776 G Street, NW., Washington, D.C. 20456, Filene Board Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Review of Central Liquidity Facility Lending Rate.
3. Insurance Fund Report.
4. Proposed Rule: Credit Union Service Organizations, Part 701.27, NCUA Rules and Regulations.
5. Proposed Revision to Part 748, NCUA Rules and Regulations, Report of Crime and Catastrophic Acts.
6. Operating Income for Calendar Year 1986.

RECESS: 10:20 a.m.

TIME AND DATE: 10:30 a.m., Thursday, September 5, 1985.

PLACE: 1776 G Street, NW., Washington, D.C. 20456, Filene Board Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Central Liquidity Facility Lines of Credit for State Credit Union Share Insurance Corporations. Closed pursuant to exemption (8).
3. Special Assistance to Prevent Liquidation Under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Administrative Action Under Section 116(3)(b) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
5. Appeal of Preliminary Share Insurance Determination. Closed pursuant to exemptions (8) and (9)(A)(ii).
6. Appeal of Government Priority Claim Determination. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
7. Reports to the Board. Closed pursuant to exemptions (8) and (9)(A)(ii).
8. Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85–20794 Filed 8–27–85; 2:40 pm]

BILLING CODE 7535–01–M

6

NATIONAL TRANSPORTATION SAFETY BOARD

[NM–85–10]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 33888, August 21, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9 a.m., Tuesday, August 27, 1985.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Borad required changing the date of this meeting to Thursday, August 29, in order to obtain a quorum and that no earlier announcement was possible.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa.

Catherine T. Kaputa,

Alternate Federal Register Liaison Officer.

June 13, 1985.

[FR Doc. 85–20820 Filed 8–27–85; 3:52 pm]

BILLING CODE 7533–01–M

7

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 3, 1985.

A closed meeting will be held on Wednesday, September 4, 1985, at 2:30

p.m. Open meetings will be held on Thursday, September 5, 1985, at 9:30 a.m. and on Wednesday, September 11, 1985, at 9:30 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Wednesday, September 4, 1985, at 2:30 p.m., will be:

Withdrawal of authorization for administrative proceeding of an enforcement nature.

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceedings of an enforcement nature.

Institution of injunctive action.

The subject matter of the open meetings scheduled for Thursday, September 5, 1985, and Wednesday, September 11, 1985 from 9:30 a.m. to 5:00 p.m., will be:

The Commission will meet with representatives of the legal, financial, and business communities to discuss major issues of mutual interest and concern, including, but not limited to, tender offer regulation, internationalization of the securities markets, currency and interest rate swaps, and new financial products and services. For further information please contact Alan L. Dye at (202) 272-2014.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Alan L. Dye at (202) 272-2014.

John Wheeler,

Secretary.

August 27, 1985.

[FR Doc. 85-20826 Filed 8-27-85; 4:01 pm]

BILLING CODE 8010-01-M

federal register

Thursday
August 29, 1985

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 61

Certification of Student Recreational, Recreational, Student Private, and Private Pilots; Proposed Rule

DEPARTMENT OF TRANSPORTATION
Federal Aviation Administration
14 CFR Part 61
[Docket No. 24695; Notice No. 85-13A]

Certification of Student Recreational, Recreational, Student Private, and Private Pilots

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM); extension of comment period.

SUMMARY: This notice announces the extension of the comment period for Notice of Proposed Rulemaking No. 85-13, which invites comments relative to amending the regulations to establish recreational pilot certificates, introduce new concepts in pilot certification, add a 2-hour annual training requirement for recreational and private pilots, and establish annual review and recent flight experience requirements for recreational and private pilots with less than 400 hours of flight time. The intent of this proposal is to introduce training techniques that involve a more basic approach to flight fundmentals as well as training and testing to a standard in lieu of traditional aeronautical experience requirements. This extension is necessary to afford all interested parties an opportunity to present their views on the proposed rulemaking.

DATE: Comments must be received on or before October 24, 1985.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention, Rules Docket (AGC-204), Docket No. 24695, 800 Independence Avenue SW., Washington, DC 20591; or delivered in duplicate to: Room 916, 800 Independence Avenue SW., Washington, DC 20591. All comments must be marked: Docket No. 24695. Comments may be inspected in Room 916 weekdays, except Federal holidays between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: James F. Byers, Certification Branch, AFO-840, General Aviation and Commercial Division, Office of Flight Operations, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 426-8196.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking action by submitting written data, views, or arguments as they may desire. Communications should identify the docket number and be submitted in duplicate to the address indicated above. All communications received on or before the closing date for comments will be considered by the Administrator before taking final action on this proposed rulemaking. The proposals contained in Notice 85-13 may be changed in light of comments received. All comments submitted will be available in the rules docket for examination by interested parties both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 24695." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of Notice 85-13 by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify Notice 85-13.

Persons interested in being placed on the mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

On June 25, 1985, the FAA published Notice 85-13 (50 FR 26286), which provided for a 90-day comment period, closing on September 24, 1985. In that notice, the FAA proposed many changes that would have considerable effect on recreational and private pilots. It proposed to amend the regulations to establish a new kind of pilot certificate, a recreational pilot certificate. The notice proposed changes in the process by which private pilots must quality for pilot certificates. The notice also proposed increased periodic training requirements and review requirements for private pilots. The intent of this proposal is to introduce training techniques that involve a more basic approach to flight fundamentals as well as training to a standard in lieu of traditional experience requirements.

The FAA invited interested persons to submit comments and suggestions as to future action regarding this rulemaking. Since Notice 85-13 was published, several requests have been received for extension of the comment period from persons wishing more time in which to study the proposal and to prepare comments.

This is one of the largest single proposals affecting general aviation pilots issued by the FAA in years. The FAA considers it vital to obtain the comments of all interested persons concerning the potential safety and economic impact of the proposal and to obtain suggestions for improving it.

The proposal has received intense interest from the general aviation community. One large organization requested 500 additional copies to distribute among its membership.

Conclusion

This document extends the comment period on an NPRM to afford the public and industry with additional time in which to review and respond to this notice. For reasons discussed in Notice 85-13, the FAA has determined the notice involves a proposed regulation which is considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and that the notice is not major as defined in Executive Order 12291. In addition, for the above reasons, the FAA certifies that the regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Extension of Comment Period

A major general aviation organization with more than 100,000 members and representing a category of pilots who would be most affected by the proposed rule change to Part 61 has requested that the FAA extend the comment period to allow its members and affected pilots to become familiar with the proposal.

The FAA has become aware that many individuals in industry have not received this notice and may not have had an opportunity to comment on its contents within the original comment period. The FAA recognizes that disseminating material such as Notice 85-13 to all interested persons takes time. In addition, it takes time to fully analyze the proposals so that all potential problem areas are identified and brought to the agency's attention. For this reason, the FAA does not wish to unduly rush this important process.

In consideration of the above, the FAA concludes that the comment period should be extended. Accordingly, the comment period for Notice 85-13 is extended to October 24, 1985.

List of Subjects in 14 CFR Part 61

Aviation safety, Student private pilots, Private pilots, Eligibility requirements, Aeronautical knowledge, Operational experience, Cross country flight privileges, Limitations.

Authority: 49 U.S.C. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983).

Issued in Washington, DC, on August 26, 1985.

William T. Brennan,

Acting Director of Flight Operations.

[FR Doc. 85-20632 Filed 8-26-85; 12:26 pm]

BILLING CODE 4910-13-M

federal register

Thursday
August 29, 1985

Part III

Environmental Protection Agency

40 CFR Part 761

Response to Exemption Petitions; Proposed Rule and Response to Ward Transformer Company Petition for Exemption; Denial of Exemption Petition

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS-66008C; TSH FRL 2889-3]

Response to Exemption Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This rule proposes action on 22 petitions for exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. In this rule, EPA proposes to: grant eight individual exemption petitions; grant a class exemption including six individual exemption petitions; deny six individual exemption petitions; and dismiss two individual exemption petitions.

DATES: An informal hearing, if requested, will be held in Washington, D.C. approximately October 28, 1985. The exact time and location of the hearing will be available by calling EPA's TSCA Assistance Office listed under **"FOR FURTHER INFORMATION CONTACT."** Comments on the proposed rule and requests to participate in the informal hearing must be submitted by October 15, 1985. Reply comments made in response to issues raised at the hearing must be submitted no later than 1 week after the date of that hearing.

See Unit I of **SUPPLEMENTARY INFORMATION** for EPA's procedures for conducting rulemaking on these exemption petitions.

ADDRESS: Since some comments are expected to contain confidential business information, all comments should be sent in triplicate to:

Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Room E-209, 401 M St., SW., Washington, DC 20460.

Comments should include the docket number OPTS-66008C. Comments received on this proposed rule will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. E-107 at the address given above.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room E-543, 401 M St., SW., Washington, DC 20460. Toll free: (800-424-9065). In Washington, D.C.: (554-1404). Outside the USA: (Operator-202-554-1404).

Copies of this proposed rule and its support documents can be obtained from the TSCA Assistance Office listed above.

SUPPLEMENTARY INFORMATION:

I. Comments and Rulemaking Procedures

A. Confidential Business Information

EPA encourages the submission of nonconfidential information. However, commenters who believe that they can state their position only by using information claimed confidential may submit it in accordance with the requirements of 40 CFR 750.16 (for manufacturing exemptions) and 40 CFR 750.36 (for processing and distribution in commerce exemptions). Commenters who submit confidential information must, at the same time, submit a nonconfidential summary of the information claimed to be confidential for inclusion in the public record. Please mark information claimed confidential "CONFIDENTIAL" and send it via certified mail to the Document Control Officer (see address listed under **"ADDRESS"**). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. Information not marked "CONFIDENTIAL" will be placed in the public record and may be disclosed publicly by EPA without prior notice.

B. Hearing

EPA will conduct the hearing in accordance with EPA's "Procedures for Conducting Rulemaking Under section 6 of the Toxic Substances Control Act" under 40 CFR Part 750. Persons who want to participate in the informal hearing must write to EPA's TSCA Assistance Office (see address under **"FOR FURTHER INFORMATION CONTACT"**). All requests to participate must include an outline of topics to be addressed, the amount of time requested for the opening statement, and the names of participants. The informal hearing is meant to provide an opportunity for petitioners and other interested parties to present additional information or to discuss new issues, not to repeat information already presented in written comments.

II. Background

A. Statutory Authority

Section 6(e) of the Toxic Substances Control Act (TSCA) 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, and the processing and distribution in commerce of PCBs after July 1, 1979.

Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that "(i) an unreasonable risk injury to health or environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." The Administrator may set terms and conditions for an exemption and may grant an exemption for not more than 1 year.

EPA's Interim Procedural Rules for PCB Manufacturing Exemptions describe the required content of manufacturing exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the **Federal Register** of November 1, 1978 (43 FR 50905) and are codified at 40 CFR 750.10 through 750.21.

EPA's Interim Procedural Rules for Processing and Distribution in Commerce Exemptions describe the required content of processing and distribution in commerce exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the **Federal Register** of May 31, 1979 (44 FR 31560) and are codified at 40 CFR 750.30 through 750.41.

B. History of This Rulemaking

In the **Federal Register** of July 10, 1984 (49 FR 28172), EPA promulgated the final PCBs Exclusions, Exemptions, and Use Authorizations Rule (hereinafter referred to as the Uncontrolled PCB Rule) addressing the manufacture, processing, distribution in commerce, and use of certain inadvertently generated and recycled PCBs in low level concentrations. That rule amends the PCB rule published in the **Federal Register** of October 21, 1982 (47 FR 46980) (the Closed and Controlled Waste Manufacturing Processes Rule) by excluding additional processes from regulation.

In the same issue of the **Federal Register**, the Final PCB Exemptions Rule (49 FR 28154) acted on 109 of the pending exemption petitions and deferred action on the Ward Transformer petition and on 49 petitions for exemption to manufacture, process, and distribute in commerce inadvertently generated PCBs. EPA believed that many petitions may have been made unnecessary by the Uncontrolled PCBs Rule. A notice of final action addressing the Ward

Transformer petition is published elsewhere in this issue of the **Federal Register.**

In the July 10, 1984 proposed rule-related notice (49 FR 28203), EPA requested that the 49 petitioners affected by the Uncontrolled PCB Rule evaluate that rule and determine whether they still need an exemption. Any petitioner still needing an exemption was to submit written comments renewing its petition by October 1, 1984. EPA stated that the Agency would issue a notice of proposed rulemaking on renewed petitions. Eight of the 49 petitions were renewed. The other 41 petitioners either withdrew their petitions or failed to renew their petitions by the end of the comment period.

After promulgation of the Final PCB Exemptions Rule, EPA received and accepted for consideration 14 new exemption petitions. Thus, this rule proposes action on 22 petitions for exemption from the prohibitions on the manufacture, processing, and distribution in commerce of PCBs. The November 1, 1983 Proposed PCB Exemptions rule describes in detail the history of PCB regulations. Specific PCB regulations and their history are discussed in later units of this rule where applicable to the disposition of exemption petitions.

C. Effect of This Rule on Previous Policy Statements

In the **Federal Register** of January 2, 1979 (44 FR 108), EPA announced that petitioners who had previously filed manufacturing exemption petitions could continue the activities for which they sought exemption until EPA acted on their petitions. In the **Federal Register** of March 5, 1980 (45 FR 14247), EPA extended this policy to allow all petitioners to continue the activities for which they sought exemption until EPA acted on their petitions, as long as activities were underway before January 1, 1979 (for manufacturing) or July 1, 1979 (for processing and distribution in commerce).

The following exemption petitions are for activities which were not underway prior to the appropriate dates: the Mobay petition to distribute in commerce or export PCBs; the Dainichiseika petition to export PCBs; the Supelco petition to export PCBs; the Radian petition to export PCBs; and the ALCOA petitions to distribute in commerce, import and export PCBs. Petitioners have not been allowed to pursue PCB activities under those petitions until EPA takes final action.

Once EPA has acted to grant or deny an exemption petition, EPA's policy of permitting activities to continue will become unnecessary. In the final PCB Exemptions Rule published in the **Federal Register** of July 10, 1984 (49 FR 28154), EPA revoked the policy for those pre-1979 petitions on which final action was taken. EPA will revoke the policy for all exemption petitions included in this rulemaking as of the effective date of the final rule.

A petitioner whose exemption is granted will be allowed to manufacture, process or distribute in commerce PCBs only for the period of time granted in the final rule. When the exemption expires, a petitioner will not be permitted to engage in such activities, even if it renews its exemption request, until EPA has acted on that request. This limitation does not apply to manufacturers, processors, and distributors of PCBs in "small quantities for research and development" for whom EPA is proposing to grant exemption in Unit V.D of this proposed rule.

EPA will continue its policy of requiring petitioners who file late exemption petitions to show "good cause" why EPA should accept the petition as described in the notice published in the **Federal Register** of March 5, 1980 (45 FR 14247). New exemption petitions submitted by petitioners denied exemptions in this rulemaking will be considered as late petitions.

III. Unreasonable Risk Finding

Section 6(e)(3)(B)(i) of TSCA requires a petitioner to show that granting an exemption would not result in an unreasonable risk of injury to health or the environment.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur against the benefits to society from granting an exemption. Specifically, EPA considers the following factors:

1. The effect of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment.

2. The benefits to society of granting an exemption and the reasonably ascertainable economic consequences of denying an exemption petition.

These are essentially the same factors that EPA considers under TSCA section 6(c) in deciding whether a chemical substance or mixture presents an unreasonble risk of injury to health or the environment under TSCA section 6(a), and in evaluating uses of PCBs under TSCA section 6(e).

A. Effects on Human Health and the Environment

In deciding whether to grant an exemption, EPA considers the effects of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment. The effects of PCBs are described in various documents that are part of the rulemaking record for the PCB Ban Rule published in the **Federal Register** of May 31, 1979 (44 FR 31514). Before the proposed PCB Exemption Rule was published, EPA evaluated this information along with new information submitted to the Agency and other recent literature. The results are presented in EPA's "Response to Comments on the Health Effects of PCBs" (August 19, 1982). During the proposed PCB Exemptions Rule, two commenters presented additional information on the adverse health effects of PCBs. EPA evaluated this information as well as other recent literature, and has determined that none of the information submitted changes EPA's conclusions about the health effects of PCBs. The results are presented in EPA's "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984) and "Response to Comments on the Uncontrolled PCB Rule" (June 1984). All of these documents are included in the rulemaking record and are summarized below. Copies of these documents are available from EPA's TSCA Assistance Office (see address listed under **FOR FURTHER INFORMATION CONTACT).**

1. *Health effects.* EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin, circulate throughout the body, and be stored in the fatty tissue.

Available animal studies indicate an oncogenic potential, the degree to which would depend on exposure. Available epidemiologic data are not adequate to confirm or negate oncogenic potential in humans at this time. Further epidemiological research is needed to correlate human and animal data, but EPA finds no evidence to suggest that the animal data would not predict an oncogenic potential in humans.

In addition, EPA finds that PCBs may cause reproductive effects, developmental toxicity, and oncogenicity in humans exposed to PCBs. Available data show that some PCBs have the ability to alter reproductive processes in mammalian species, sometimes even at doses that do not cause other signs of toxicity. Animal data and limited available

human data indicate that prenatal exposure to PCBs can result in various degrees of developmental toxic effects. Postnatal effects have been demonstrated in immature animals, following exposure to PCBs prenatally and via breast milk.

In some cases chloracne may occur in humans exposed to PCBs. Severe cases of chloracne are painful and disfiguring, and symptoms may persist for an extended time. Although the effects of chloracne are reversible, EPA considers these effects to be significant.

2. *Environmental effects.* Certain PCB congeners are among the most stable chemicals known and decompose very slowly once they are in the environment. They remain in the environment and are taken up and stored in the fatty tissue of organisms. EPA has concluded that PCBs can be concentrated in fresh water and marine organisms. The transfer of PCBs up the food chain from phytoplankton to invertebrates, fish, and mammals can result ultimately in human exposure through consumption of food sources containing PCBs. Available data show that PCBs affect the productivity of phytoplankton and the composition of phytoplankton communities; cause deleterious effects on environmentally important freshwater invertebrates; and impair reproductive success in birds and mammals.

PCBs also are toxic to mammals at very low exposure levels. The survival rate and reproductive success of fish can be adversely affected in the presence of PCBs. Various sublethal physiological effects attributed to PCBs have been recorded in the literature. Abnormalities in bone development and reproductive organs have also been demonstrated.

3. *Risks.* Toxicity and exposure are the two basic components of risk. Based on animal data, EPA concluded that in addition to chloracne, there is the potential for reproductive effects, developmental toxicity, and oncogenicity in humans. EPA also concluded that PCBs present a hazard to the environment.

Minimizing exposure to PCBs should minimize any potential risk. EPA takes exposure into consideration in evaluating exemption petitions.

B. Benefits and Costs

The benefits to society of granting an exemption and the reasonably ascertainable costs of denying a petition vary depending on the petitioner and the activity for which exemption is requested. EPA has taken the benefits and costs into consideration when evaluating each exemption petition. The specific benefits and costs of denying each petition are discussed in later units of this proposed rule.

IV. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA requires petitioners to make good faith efforts to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs before EPA can grant an exemption. EPA considers several factors in determining whether a petitioner has made good faith efforts. For each exemption petition, EPA considers the kind of exemption which the petitioner is requesting, whether substitutes exist, and whether the petitioner expended time and money to develop or search for a substitute. In each case the burden is on the petitioner to show specifically what it does to substitute non-PCBs for PCBs or to show why it does not seek to substitute non-PCBs for PCBs. EPA's evaluation of each petitioner's attempt to demonstrate a good faith effort is discussed in later units of this proposed rule.

V. Disposition of Exemption Petitions

A. Inadvertently Generated PCBs

The Uncontrolled PCB Rule excluded from the prohibition on the manufacture, processing, distribution in commerce, and use of PCBs those PCBs inadvertently generated in an "excluded manufacturing process." An "excluded manufacturing process" as defined at 40 CFR 761.3 is a manufacturing process or importation in which the concentration of inadvertently generated PCBs in the product is limited to an annual average of less than 25 ppm, with a 50 ppm maximum, except that the concentration of inadvertently generated PCBs in the components of detergent bars must be less than 5 ppm. Limits are also placed on the concentration of PCBs discharged to air and water from an excluded manufacturing site.

The following eight petitions for exemption to manufacture, process, and distribute in commerce inadvertently generated PCBs above allowable concentation levels for "excluded manufacturing processes" were renewed. EPA is proposing to dismiss two of these exemption petitions, grant three exemptions, and deny three exemption petitions.

1. *Reed Plastics, and U.S. Printing Ink Corporation.* EPA received two petitions from processors of pigments containing inadvertently generated PCBs. Reed Plastics (Reed), Holden, MA 01520, and U.S. Printing Ink Corporation (USPI), East Rutherford, NJ 07073, each petitioned for individual exemption to process pigments containing PCBs at concentrations greater than regulatory limits. These companies currently have to inventories of pigment containing PCBs above regulatory limits. However, they requested exemption to process pigments containing PCBs above regulatory limits in the event that their suppliers exceed regulatory limits. EPA proposes to dismiss both the Reed and USPI petitions. Processors, distributors, and users of inadvertently generated PCBs do not need exemptions, for the reasons discussed below.

The Uncontrolled PCB Rule published in the **Federal Register** of July 10, 1984 (49 FR 28172), placed limits on the concentration of PCBs leaving the site of processes which generate PCBs as inadvertent byproducts. EPA also placed limits on the concentration of inadvertently generated PCBs in products imported into the United States. The processing, distribution in commerce, and use of products of "excluded manufacturing processes" are excluded from the prohibitions on the processing, distribution in commerce, and use of PCBs. Thus, the intent of the Uncontrolled PCB Rule is to limit the addition of PCBs into the environment by regulating the concentration of inadvertently generated PCBs in products at the point where the PCBs are introduced into commerce.

Processors and distributors of products containing inadvertently generated PCBs have the responsibility of determining that their suppliers' processes qualify as "excluded manufacturing processes," or that their suppliers have exemptions to manufacture or import, and distribute PCBs over regulatory limits. However, manufacturer or importer cannot assign its duty to comply with limits on the concentration of PCBs in products. Thus, EPA will not accept for consideration exemption petitions from processors and distributors of inadvertently generated PCBs except where the petition is for an exemption to process or distribute inadvertently generated PCBs in inventories accumulated prior to the effective date of the Uncontrolled PCB Rule (October 1, 1984).

In considering petitions for exemption to manufacture, import, or distribute in commerce inventories of inadvertently generated PCBs above allowable levels, EPA will evaluate the exposures and risks associated with the further processing, distribution and use of the PCBs. EPA considered such exposure issues when it established average and maximum concentration levels for inadvertently generated PCBs at the point of their introduction into

commerce, and excluded the further processing, distribution and use of those PCBs in the Uncontrolled PCB Rule.

2. *Aluminum Company of America (ALCOA).* The Aluminum Company of America, Pittsburgh, PA 15219, renewed its petitions for exemption (a) to manufacture anhydrous aluminum chloride ($AlCl_3$) contaminated with inadvertently generated decachlorobiphenyl above allowable levels; and (b) to distribute in commerce $AlCl_3$ containing inadvertently generated PCBs above allowable levels.

ALCOA's Anderson County Works produces $AlCl_3$ and converts 90 percent of the $AlCl_3$ to aluminum metal. According to information provided by ALCOA, there are no PCBs in the aluminum metal and all PCBs are concentrated in process wastes which are disposed of in accordance with EPA regulations. Thus, the 90 percent of the $AlCl_3$ which is converted to metallic aluminum is part of an "excluded manufacturing process" since EPA considers a manufacturing process to be all of a series of unit operations at one site resulting in the production of a product. Thus, ALCOA does not need an exemption to manufacture $AlCl_3$ for use in the production of aluminum metal.

Of the $AlCl_3$ produced by ALCOA, 10 percent is not converted to aluminum metal. ALCOA petitioned for exemptions to manufacture and distribute in commerce that 10 percent of $AlCl_3$ as a product as well as the substantial amount of $AlCl_3$ in inventory which will be distributed in commerce if an exemption is granted. Although the Anderson County Works is currently not in operation, the petitioner requested that it be allowed to manufacture and distribute in commerce 10 percent of its $AlCl_3$ production capacity as a product in the event that the plant is to be reopened within the exemption period. The existing inventory $AlCl_3$ will be distributed in commerce, should the exemptions be granted, whether or not the plant is reopened.

EPA proposes to deny both of the ALCOA exemption petitions because granting the exemptions would result in an unreasonable risk of injury to health or the environment and because the petitioner has failed to demonstrate good faith efforts. ALCOA provided no information on the downstream uses of the $AlCl_3$ although ALCOA did state that customers have been notified of the PCB content in the $AlCl_3$. EPA has received information indicating that $AlCl_3$ is commonly used in the manufacture of products such as deodorants, blood coagulants and dermatological antacids. EPA has concluded that the use of $AlCl_3$ containing PCBs over regulatory limits in such products would result in some additional risk of consumer exposure to PCBs.

Furthermore, the amount of existing inventory which would be distributed in commerce for these uses under an exemption is large. Several times the amount of ALCOA's existing inventory would be distributed in commerce under an exemption if the plant were to become operational for a substantial portion of the 1-year exemption period.

ALCOA estimated that the economic consequences of denying the petitions would involve the costs of shutdown of the plant, the resulting loss of employment in the area, and the cost of conversion to a conventional metallic aluminum production process. EPA does not consider it reasonable to include in the estimated costs of denial the cost of shutting down a plant which is (i) currently not in operation, and (ii) primarily involved in an "excluded manufacturing process" which will not be affected by denial of the petitions.

EPA has estimated the economic impact of denial of the petitions, assuming that the plant will be operational for the entire exemption period. EPA estimated the worst-case incremental cost of denying the petitions, assuming that ALCOA must shut down 10 percent of its $AlCl_3$ production capacity, to be in the range of $28,926 to $31,519 per lb of PCBs prevented from distribution in commerce. Should ALCOA be able to convert all of the $AlCl_3$ to aluminum metal, EPA estimated the costs of denying the petitions to be $2,985 to $2,995 per lb of PCBs prevented from distribution, plus the costs of any necessary modifications to the process. EPA believes the actual cost per lb of PCBs will be closer to the lower-cost estimate.

EPA has determined that the potential risks posed by the large amount of PCBs which would be distributed in commerce under an exemption, the high concentrations of PCBs in the $AlCl_3$, and the use of the $AlCl_3$ in dermatological products outweigh the relatively low incremental costs of denying the ALCOA exemption petitions.

Although the proposed denial of ALCOA's petitions is based on EPA's conclusion that granting the exemptions would result in an unreasonable risk, EPA has also concluded that the Agency can not make a determination of good faith efforts on the part of the petitioner. Although ALCOA has indicated that it has conducted research and development to reduce the PCB concentration in the $AlCl_3$, ALCOA has provided no information on the amount of time or money expended in these efforts. The information submitted by ALCOA over the past 5 years shows no significant reduction in the level of PCBs in the $AlCl_3$. Additionally, there are alternative supplies of $AlCl_3$ which do not contain PCBs above regulatory limits.

3. *American Hoechst Corporation (Hoechst).* The American Hoechst Corporation, Somerville, NJ 08876, renewed its petitions for exemption (a) to import diarylide pigment containing inadvertently generated PCBs over allowable levels, and (b) to distribute in commerce pigment containing PCBs above regulatory limits. EPA proposes to grant for a period of 1 year both of the Hoechst petitions because granting an exemption would not result in an unreasonable risk of injury to health or the environment, and the petitioner has demonstrated good faith efforts. EPA proposes, as a condition of the exemption, a requirement that Hoechst notify its customers that the concentration of PCBs in the pigment may exceed the regulatory maximum of 50 ppm.

a. *Unreasonable risk finding.* The concentrations of PCBs in the pigment, submitted as proprietary information, are only slightly above the regulatory limits. The total amount of PCBs imported and distributed in commerce would be less than 2.5 lbs during the exemption period. The pigment would be distributed in commerce for use as a colorant in automotive paints, plastics, and wallpaper. EPA has previously determined that pigments generally compose no more than 20 percent of final products.

American Hoechst estimated the reasonably ascertainable costs of denial to be equal to the lost value of potential sales of the imported pigment. Based on information submitted by Hoechst, EPA has determined that the costs of denial of the petitions will be substantial given the small quantity of PCBs involved. The incremental costs of denying the petitions are estimated to be in the range of $160,000 to $580,000 per lb of PCBs in the pigments, less the acquisition cost of the pigment. EPA believes the actual incremental costs to fall in the high end of the range, less acquisition costs, because of the low concentration of PCBs involved. In addition, denial of the petition may result in societal costs due to the use of inferior pigments.

b. *Good faith efforts finding.* American Hoechst has demonstrated good faith efforts (i) to develop a substitute for the pigment, and (ii) to reduce the concentration of PCBs in the

pigment. Since the submission of its original 1978 petition, Hoechst has expended substantial sums in the search for a substitute and in research to reduce the PCB concentration in the pigment. Hoechst maintains that it has thus far found no adequate substitutes. Information submitted by Hoechst since 1978 indicates that the concentration of PCBs in the product has decreased over that time. In proposing to grant the Hoechst exemption petitions, EPA presumes the petitioner's continued good faith efforts. If Hoechst is granted an exemption in the final rule, Hoechst will have a substantial burden of proof should it apply for renewal at the end of the exemption period.

4. *Dainichiseika Color & Chemicals America, Incorporated.* Dainichiseika Color and Chemicals America (Dainichiseika), Clifton, NJ 07012, imported phthalocyanine blue crude from Taiwan in 1982 under a petition for exemption to import crude colorants containing PCBs at concentrations of 50 ppm or greater. EPA policy allowed the petitioner to continue activities until EPA acted on that petition. (See Unit II.C of his preamble.) Before EPA acted, Dainichiseika's U.S. customer withdrew its petition for exemption to process and distribute pigments containing greater than 50 ppm PCBs, leaving Dainichiseika without a domestic buyer.

Dainichiseika withdrew its pending petition for exemption to import PCBs and renewed its exemption petition to distribute its remaining inventory of 62,400 lbs of blue crude containing inadvertently generated PCBs at 80 ppm. The petitioner also requested that should EPA deny its petition for exemption to distribute the crude within the U.S., EPA consider a new Dainichiseika petition for exemption to (a) export the PCBs to a foreign buyer, or (b) reexport the PCBs to the original manufacturer in Taiwan.

EPA proposes to grant Dainichiseika a 1-year exemption to distribute in commerce its existing inventory of 62,400 lbs of phthalocyanine crude contaminated with PCBs at 80 ppm, provided that Dainichiseika notifies its customers of the PCB concentration in the crude. In proposing to grant the exemption, EPA has determined that no unreasonable risk of injury to health or the environment will result, and that the petitioner has demonstrated good faith efforts to comply with the letter and spirit of the PCB regulations.

In proposing to grant the Dainichiseika petition to distribute in commerce its existing inventory of blue crude containing 80 ppm PCBs, EPA also proposes to exempt from the prohibitions on the processing, distribution in commerce and use of PCBs, the further processing and distribution in commerce of these PCBs. Accordingly processors and distributors of Dainichiseika's inventory of phthalocyanine blue crude would not have to apply for exemptions.

a. *Unreasonable risk finding.* In making the unreasonable risk finding for this petition, EPA has considered the exposures and associated risks involved in the further processing, distribution in commerce and use of the pigment. EPA previously considered these exposure issues when it excluded certain post manufacture activities involving inadvertently generated PCBs from the section 6(e) prohibitions (see Unit V.A.1).

The exposures, and associated risks involved in the distribution in commerce of this crude, as well as the further processing, distribution in commerce and use of the crude are estimated to be on the same order of magnitude as the concentration levels allowed for "excluded manufacturing processes" in the Uncontrolled PCB Rule. The crude will be processed into pigment for use in the manufacture of plastics, paints and printing inks. The rulemaking record in that rule shows that downstream processing of pigments results in the reduction of PCB concentration in consumer products. Pigments generally compose no more than 20 percent of the final paint and printing ink products, and no more than 2 percent of final plastic products. The total amount of PCBs that will be distributed in commerce under this exemption is less than 5 lbs.

Granting this exemption is consistent with the purpose of the Uncontrolled PCB Rule which is to limit the addition of PCBs into the environment by regulating the concentration of inadvertently generated PCBs in products at the point where the PCBs are introduced into commerce. No additional PCBs will be generated and introduced into commerce if this petition is granted. Less than 5 lbs of already existing PCBs will be distributed in commerce under this exemption.

EPA has determined that no unreasonable risk will result from the distribution in commerce of Dainichiseika's inventory of 62,400 lbs of phthalocyanine blue crude containing 80 ppm PCBs, or from the further processing, distribution in commerce and use of this pigment. These determinations are consistent with the unreasonable risk determination made in issuing the Uncontrolled PCB Rule. The economic consequences of denying the Dainichiseika petition, including the lost sale value of the pigment and the costs of disposal in accordance with EPA regulations at 40 CFR 761.60, would be in the range of $141,024 to $162,864.

b. *Good faith efforts finding.* The petitioner imported the pigment under an exemption petition with the reasonable expectation that its U.S. customer could and would legally process and distribute the pigment. Dainichiseika no longer intends to import pigments containing inadvertently generated PCBs above the levels established in the Uncontrolled PCB Rule. The exemption provision at section 6(e)(3)(B) was intended to allow additional time for businesses to comply with PCB regulations under TSCA section 6(e). EPA concludes that Dainichiseika has made and is making good faith efforts to comply with the PCB regulations.

The good faith efforts finding relies heavily on the fact that EPA policy allowed the petitioner to import the existing inventory under a pending petition, as well as the petitioner's intent to comply with EPA regulations issued since the import of the PCBs. Due to these circumstances, EPA is proposing to grant a 1-time exemption, after finding that the concentrations and quantity of PCBs in the blue crude will not pose an unreasonable risk. EPA does not anticipate that any similar exemption petitions will be filed. Any person or company filing a new exemption petition to distribute in commerce inadvertently generated PCBs over regulatory limits will have a substantial burden of proof in demonstrating good faith efforts within the historical context of the PCB regulations.

5. *Mobay Chemicals Corporation.* Mobay (previously Harmon Colors Corporation), Union, NJ 07083, petitioned for exemption to distribute in commerce its inventory of phthalocyanine pigment containing inadvertently generated PCBs at 150 to 210 ppm. The import of pigments containing greater than 50 ppm PCBs was prohibited at that time. Mobay contends that it had previously obtained assurances from the supplier that the pigment would not be contaminated above the 50 ppm cutoff level. Mobay then submitted a new petiton for exemption to distribute in commerce its inventory of this pigment. Mobay requested that, should EPA deny its petition for exemption to distribute in commerce its inventory within the United States, it be granted a 1-time exemption to return the pigments to the original manufacturer in Germany.

EPA proposes to deny the Mobay petition for exemption to distribute in

commerce pigment containing inadvertently generated PCBs above allowable levels, as well as the alternate petition for exemption to reexport the pigment to the original manufacturer in Germany. The Agency can not make the necessary findings of "no unreasonable risk" and "good faith efforts" for either the distribution in commerce petition or the reexport request.

In evaluating this petition, EPA has carefully considered the statutory requirements for evaluation of exemption petitions, Agency policy on exemption petitions for export of PCBs, and what impact the economic consequences of private business transactions should have on Agency decisions concerning exemption petitions. EPA has determined that the Agency will only consider terms of business agreements insofar as they clarify the circumstances involved. It is not the Agency's role to take action merely to redress the economic consequences of business decisions made by petitioners. Any proposed or final action on PCB exemption petitions, must be based on the requirements for exercising the Agency's statutory authority to grant exemption petitions as discussed in Units II, III, and IV of this preamble. Furthermore, Agency action on PCB exemption petitions must be consistent with prior policies on exemption petitions, until and unless those policies are changed or amended.

a. *Distribution in commerce.* EPA proposes to deny the Mobay petition for exemption to distribute in commerce its inventory of pigment containing PCBs over allowable levels because the Agency cannot find that the petitioner has made "good faith efforts" to comply with the limits on inadvertently generated PCBs. The pigments contained PCBs well over the 50 ppm level in effect at the time and the petitioner did not have an exemption to import PCBs above allowable concentration levels. Importers of PCB products are responsible for complying with the PCB regulations.

While the proposed denial is based primarily on the petitioners failure to demonstrate "good faith efforts," the Agency also can not make a finding of "no unreasonable risk." While only a small amount of PCBs would be distributed in commerce under the exemption, the concentrations of PCBs in the pigment are an order of magnitude higher than levels established in the Uncontrolled PCB Rule. EPA estimates that the exposures associated with the distribution in commerce, as well as further processing and use, of the pigment may pose an unreasonable risk of injury to health or the environment. While the possibility of additional risk is high the economic consequences of denying the petition are relatively low. Denial of the petition will result in costs to Mobay of disposing of the pigment in accordance with the regulations at 40 CFR 761.60. Based or proprietary information submitted by the petitioner, EPA estimated the economic consequences of denying the petition to be in the range of $74,524 to $306,000 per lb of PCBs. However, EPA concludes that the cost of denying the petitions will be on the low end of the range because of the relatively high concentration of PCBs in the pigment. Further, the bulk of the cost estimate reflects the lost sale value of the pigment, which is a cost resulting from the business transaction between Mobay and its supplier rather than the consequence of the proposed denial or of a change in the regulatory status of the PCBs.

b. *Export.* In considering Mobay's request for an alternate exemption to distribute in commerce PCBs for purposes of reexport to the foreign manufacturer, EPA considered whether the return of PCBs to a manufacturer constitutes export, and should be treated in accordance with EPA policy on exemption petitions for export of PCBs. In a policy published in the **Federal Register** of May 1, 1980 (45 FR 29115), EPA specified what petitioners who want to export PCBs must demonstrate to meet the statutory requirements of section 6(e)(3)(B) of TSCA:

i. EPA will not grant an exemption unless the nation to which export is destined has proper facilities for ultimate disposal.

ii. EPA will not grant an exemption for an export for a use which is not authorized within the United States.

iii. In the context of export, good faith efforts to find a substitute means that the burden is on the petitioner to show that there are no substitutes for the PCBs, produced either by the petitioner or a competitor, and that the petitioner proves it has expended time and money searching for a substitute.

Based on consideration of EPA's intent in issuing the above policy, the Agency has determined that petitions for exemption to reexport to a foreign supplier should be evaluated by the same criteria as petitions for exemption to export PCBs for distribution in commerce and use. The Agency treats petitions for export of PCBs more stringently than petitions for exemption to distribute the PCBs within the United States because EPA will have no control over the distribution, use, and disposal of PCBs once the PCBs have been exported. Whether exported to a foreign customer, or reexported to a foreign supplier, the concern over the ultimate distribution, use and disposal of PCBs remains.

Pigments containing greater than the maximum concentration of 50 ppm are not authorized for use within the United States. The Agency does not know of, and the petitioner has not demonstrated, the existence of proper PCB disposal facilities within Germany. The petitioner did not legally import the PCBs into the United States. In accordance with the discussion of good faith efforts above, EPA must place the responsibility for compliance with import regulations on the importer. The petitioners have, thus, failed to demonstrate "no unreasonable risk" and "good faith efforts" in accordance with the policy for EPA evaluation of exemption petitions to export PCBs.

B. Processing, Distribution in Commerce, Import, and Export of Equipment Containing PCBs, and Equipment Contaminated With PCBs

EPA received from the Aluminum Company of America (ALCOA) three petitions for exemption to (1) process and distribute in commerce within the U.S. hydraulic and heat transfer systems containing PCBs and other equipment contaminated with PCBs; (2) export hydraulic and heat transfer systems containing PCBs and other equipment contaminated with PCBs; and (3) import hydraulic and heat transfer systems containing PCBs, and other equipment contaminated with PCBs. EPA proposes to deny all three ALCOA petitions. The factors EPA considered in evaluating the ALCOA exemption petitions, and EPA's statutory findings on these petitions are discussed below by category of equipment.

1. *ALCOA heat transfer and hydraulic systems.* On May 31, 1979, the Agency authorized the non-totally enclosed use of PCBs at concentrations above 50 ppm in heat transfer and hydraulic systems. A condition of the use authorization was that all systems that ever contained PCBs at concentrations above 50 ppm were to be tested, flushed, and refilled with fluid containing less than 50 ppm PCBs at least annually until the PCB concentration in the system fell below 50 ppm. All heat transfer and hydraulic systems were to have less than 50 ppm PCBs by July 1, 1984. In the **Federal Register** of July 10, 1984 (49 FR 28172), EPA continued the use authorization for heat transfer and hydraulic systems containing less than 50 ppm PCBs. EPA

did not authorize the continued use of hydraulic systems containing 50 ppm PCBs or greater.

ALCOA has undetermined quantities of heat transfer and hydraulic systems placed in storage for salvage prior to July 1, 1979. Many of these systems contain greater than 50 ppm PCBs, some greater than 1,000 ppm PCBs. ALCOA also owns an undetermined quantity of heat transfer and hydraulic systems currently in operation containing less than 50 ppm PCBs. ALCOA requested exemptions to distribute in commerce, export, and import these systems as salvage.

ALCOA intends to drain all systems containing between 50 and 1,000 ppm PCBs prior to sale. Equipment with greater than 1,000 ppm PCBs will also be flushed with a non-PCB solvent. Outside surfaces of all equipment will be scraped, and steam or solvent cleaned. These activities are authorized under 40 CFR 761.60 for heat transfer and hydraulic systems prior to disposal, or for servicing and maintenance by the owner, but not for purposes of processing these systems for distribution in commerce, export, or import.

EPA has concluded that the petitioner has failed to demonstrate good faith efforts in its handling of heat transfer and hydraulic equipment containing PCBs. EPA is particularly concerned about the equipment placed in storage prior to July 1, 1979. Most of this equipment contains PCBs at 50 ppm or greater, with some containing more than 1,000 ppm PCBs. If this equipment was placed in storage for disposal, 40 CFR 761.65(a) required disposal of the equipment before July 1, 1984. If the equipment was placed in storage for reuse, the systems should all contain less than 50 ppm PCBs if ALCOA was in compliance with the conditions of the use authorization.

Furthermore, EPA has concluded that granting exemptions to ALCOA to process, distribute in commerce, import, and export the heat transfer and hydraulic systems would pose an unreasonable risk of injury to health or the environment due to the high concentrations of PCBs involved and the normal leaks and spills associated with the handling of this equipment. Without specific information on the concentrations of PCBs, the number of systems, or on the amount of PCB waste that would be generated during the exemption period, EPA cannot estimate the costs of denying the ALCOA petitions. Thus, EPA cannot make the statutory finding that granting there exemptions would not result in an unreasonable risk.

2. *ALCOA equipment contaminated with PCBs.* Under current EPA regulations and policies, no non-PCB equipment or material contaminated with PCBs may be processed, distributed in commerce, or used. However, EPA recognizes the tremendous economic and societal costs or requiring the disposal of all equipment and materials contaminated with PCBs. Therefore, EPA maintained the policy of allowing the owners of such items to work with the EPA Regional Offices in decontaminating the equipment or materials. When the Regional Office determines the decontamination to be adequate, the items are allowed to be used and distributed in commerce. EPA is currently drafting a national clean-up policy to provide a framework for consistent Regional clean-up efforts.

ALCOA has undermined quantities and types of non-PCB equipment which are contaminated with PCBs, and anticipates that additional equipment may be found to be contaminated with PCBs during the exemption period. ALCOA requests exemptions to process, distribute in commerce, export, and import this equipment after decontamination to 50 $\mu g/100\ cm^2$. ALCOA has provided little or no information on the types and quantities of equipment contaminated with PCBs and the levels at which the equipment is contaminated. After additional communications with the petitioner, EPA concluded that the petitioner itself has no real knowledge of the magnitude of the contamination problem. Without more specific information, EPA cannot determine reasonably ascertainable costs of denying an exemption to sell this equipment. Therefore, EPA cannot find that granting exemptions to distribute, export, and import this equipment will pose an unreasonable risk of injury to health and the environment.

EPA also finds that the petitioner has not demonstrated good cause for requesting an exemption to distribute equipment contaminated with PCBs when there exists an alternative mechanism for the petitioner to decontaminate the equipment and receive approval for the sale of that equipment. The petitioner did comment that without an exemption, it would be forced to deal with authorities in several different Regions. As indicated above, EPA is developing a national clean-up policy to standardize the policies of the Regions as much as possible. Even in the absence of a national policy, EPA cannot fully evaluate blanket exemption petitions for activities involving contaminated equipment under the section 6(e)(3)(B) exemptions process.

3. *Benefits and costs.* ALCOA estimated the reasonably ascertainable costs of denying the petitions based on past sales of salvage equipment. ALCOA's petitions stated that the value of equipment sold for reuse in 1982–83 totalled $2.5 million. ALCOA estimated that the value of salvage equipment sold for reuse in the first 10 months of 1984 totalled $3.5 million. EPA cannot reasonably estimate the economic consequences to ALCOA of denying the petitions without information on the types of equipment involved, the quantity of equipment involved, and the proportion of ALCOA's business which would be derived from the sales of PCB and PCB-contaminated equipment during the exemption period. Given adequate information, EPA would calculate the economic costs of denial as the sales value of the equipment less the costs to ALCOA of processing the equipment and disposing of the PCB and PCB-contaminated fluids and other wastes. A reasonable estimate of the cost of denial would be further mitigated should the petitioner be able to decontaminate the equipment to the satisfaction of the appropriate EPA Regional Offices and obtain permission to sell the equipment.

Thus, EPA has concluded that the costs of denial are not likely to be of such a magnitude to outweigh the potential risk of injury to health and the environment which would result from granting the petitions.

C. Research and Development

In the **Federal Register** of July 10, 1984, (49 FR 28193), EPA authorized indefinitely the use of PCBs in "small quantities for research and development." "Small quantities for research and development" is defined at 40 CFR 761.3 as "any quantity of PCBs (1) that is originally packaged in one or more hermetically sealed containers of a volume of no more than five (5.0) milliliters, and (2) that is used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of, PCBs, but not for research or analysis for the development of a PCB product." EPA concluded that authorizing this use of PCBs does not present an unreasonable risk of injury to health or the environment, considering the effects on human health and the environment; the potential for exposure to PCBs; the benefits of using PCBs and the availability of substitutes; and the economic impact of various regulatory options.

In the Final PCB Exemptions Rule (49 FR 28154) EPA determined that there are no substitutes for PCBs for the continuation of important health, environmental, and analytical research, and that substitutes for PCBs in such applications will not be developed in the future. In this regard, there is a unique need for exemptions to manufacture, process, distribute in commerce, and export PCBs in small quantities for research and development. EPA determined that the manufacture, processing, distribution in commerce, export, and use of PCBs in small quantities for research and development will not pose an unreasonable risk of injury to health or the environment because of the small quantities involved and the procedures used to minimize human and environmental exposure to PCBs.

Based upon these prior EPA conclusions and specific information submitted by petitioners, EPA proposes to grant three individual exemptions to manufacture PCBs in small quantities for research and development, two individual exemptions to export PCBs in small quantities for research and development, and a class exemption for processors and distributors of PCBs in small quantities for research and development.

In general, the goal of section 6(e) is to phase out the manufacture, processing, distribution in commerce, and use of PCBs. EPA believes that this goal does not apply to critical health, environmental, and scientific research on PCBs. In fact, PCBs will always be needed to ensure that the goal of TSCA section 6(e) is being met. In the Final PCB Exemptions Rule, EPA stated that the exemptions granted in that Rule for the manufacture, processing, distribution in commerce, and export of PCBs in small quantities for research and development would be automatically renewed at the end of each year unless the petitioner changes the quantity of PCBs or manner of manufacturing, processing, distributing in commerce, or exporting PCBs.

EPA intends to continue this policy. EPA would also automatically renew the manufacturing and export petitions which it proposes below to grant unless the petitioner notifies EPA of a change in the quantity of PCBs manufactured or exported, or in the manner of manufacturing or exporting the PCBs. Each year, EPA would automatically renew the class exemption for processing and distributing PCBs in commerce in small quantities for research and development until such time as EPA receives information affecting EPA's conclusion that granting the exemption will not result in an unreasonable risk of injury to health or the environment. EPA would also reserve the authority to exclude any processor or distributor from the class exemption upon determining that maintaining its exemption will pose an unreasonable risk of injury to health or the environment. Any changes in the disposition of individual exemptions, the class exemption, or exemptions for individuals within the class exemption would be published in a notice of proposed rulemaking. The petitioner would be allowed to continue its activities until a final rule is promulgated.

1. *Manufacture and export.* EPA received three petitions for exemption to manufacture small quantities of PCBs for research and development and two petitions for exemption to export small quantities of PCBs for research and development.

The Midwest Research Institute, Kansas City, MO 64110, the Radian Corporation, Austin TX 78766, and Wellington Science USA, College Station, TX 77840, petitioned for exemptions to manufacture PCBs in small quantities for research and development. Two of these petitioners want to manufacture less than 100 grams of PCBs per year. Radian Corporation will manufacture less than 500 grams in 1 year. EPA proposes to grant all three petitions for exemption to manufacture PCBs in small quantities for research and development based on the determinations discussed below in Units V.C.1.a and V.C.1.b.

The Radian Corporation and Supelco, Inc., Bellefonte, PA 16823, petitioned for exemptions to export PCBs in small quantities for research and development. Radian will export less than 500 grams of PCBs in 1 year. Supelco will export less than 5 grams of PCBs in 1 year. EPA proposes to grant both petitions for exemption to export PCBs in small quantities for research and development for reasons discussed below.

In Unit V.B.3 of this proposed rule, EPA described the Agency's criteria for the statutory determination of no unreasonable risk for exemption petitions to export PCBs. EPA treats petitions for exemption to export PCBs more stringently than petitions for exemption to distribute PCBs in commerce within the United States because EPA will have no control over the distribution, use, and disposal of the PCBs once the PCBs have been exported. Those concerns are mitigated in the export of PCBs for research and development by the viscosity, quantity, and packaging of the PCBs as well as the careful handling of the PCBs by trained personnel.

a. *Unreasonable risk finding.* EPA concluded that granting exemptions to manufacture and export PCBs in small quantities for research and development would not present an unreasonable risk of injury to health or the environment. All of these petitioners want to manufacture or export less than 500 grams of PCBs. The PCBs are manufactured using laboratory practices that are designed to minimize human and environmental exposure to hazardous substances. The risk of exposure to PCBs during the storage and shipment of PCBs is small because the PCBs are packaged in hermetically sealed containers, and are properly marked with warning labels. The risk of exposure to humans and the environment in the ultimate use of these PCBs is minimized by the small quantities of PCBs used in each application, the viscosity of the PCBs, and the careful handling procedures typical of laboratory work. Finally, granting these exemptions will benefit society by allowing important health, environmental, and analytical research to continue.

b. *Good faith efforts finding.* EPA determined in the Final PCB Exemptions Rule that the good faith efforts finding is not relevant to petitions to manufacture or export PCBs in small quantities for research and development because there are no substitutes for PCBs in health and environmental research. Pure PCBs are needed for this research because commercial PCBs contain a mixture of isomers and contaminants which may adversely effect experimental results.

2. *Processing and distribution in commerce.* EPA received six petitions for exemptions to process and distribute in commerce PCBs in small quantities for research and development. In addition, EPA received comments on the need for a class exemption to process and distribute PCBs in small quantities for research and development.

EPA proposes to grant a class exemption for the processing and distribution in commerce of PCBs in small quantities for research and development. The class exemption will include all persons or business entities which process and distribute in commerce PCBs in accordance with the definition of "small quantities for research and development" as specified at 40 CFR 761.3. EPA proposes to place the following terms and conditions on the class exemption: (a) That all

processors and distributors maintain records of their PCB activities for a period of 5 years; and (b) that any person or company which expects to process or distribute in commerce 100 grams (.22 lb) or more PCBs for research and development in 1 year report to EPA and identify the sites of PCB activities and the quantity of PCBs to be processes or distributed in commerce.

The following six companies which submitted individual petitions for exemption to process and distribute in commerce PCBs in small quantities for research and development would be included in the class exemption: Alltech Applied Sciences; Midwest Research Institute; Pathfinder Laboratories; Radian Corporation; Supelco Incorporated; and Wellington Sciences USA. EPA would reserve the right to exclude any individual from the class petition by rulemaking.

EPA has determined that there is a unique need for exemptions to process and distribute in commerce PCBs in small quantities for research and development. EPA believes that this need can best be met by granting a class exemption to all processors and distributors of PCBs in small quantities for research and development. Based on information submitted in, and pertaining to, petitions for processing and distribution in commerce of PCBs in small quantities for research and development, EPA has concluded that all processing and distribution in commerce exemption petitions would be granted provided that the definition of "small quantities for research and development" is met.

Because of the nature of research and development activities, the absence of a class exemption causes special difficulties, and places substantial burdens on EPA as well as on processors and distributors. EPA has determined that petitions to process and distribute in commerce PCBs in small quantities for research and development which provide sufficient data on handling procedures would be granted by EPA. This proposed class petition would eliminate the unnecessary use of resources in filing, evaluating and acting on those petitions.

EPA is proposing the reporting requirement on processors and distributors of 100 grams or more PCBs to ensure that unreasonable risks to health or the environment will not be posed by commercial processors and distributors handling large quantities of PCBs per year. However, EPA is not proposing to place a reporting requirement on processors and distributors handling less than 100 grams per year because the Agency has concluded that the lack of a reporting requirement does not pose an unreasonable risk in situations such as those discussed below.

Many users of PCBs who wish to return analytical standards to the supplier because of over-shipment or the delivery of incorrect standards, must petition for exemption and wait for a minimum of 1 year due to the lengthy exemption process, or dispose of the PCBs. These standards, if returned, can be used by another company. EPA has also received comments indicating that if used standards could be returned to processors (repackaged in hermetically sealed containers of a volume of no more than 5 ml), many could be reprocessed under controlled conditions and reused. Thus, this class exemption would potentially reduce the need to manufacture and dispose of PCBs used in research and development.

In addition, many users of PCBs in research and development are involved, in the course of their work, in activities technically classified as processing and distribution in commerce. These users are currently processing and distributing in commerce, without an exemption, under the assumption that these activities are functions of use and thus authorized as use.

a. *Unreasonable risk finding.* EPA has previously determined that the processing and distribution of PCBs in small quantities for research and development do not pose unreasonable risk of injury to health and the environment. Most of the processors and distributors included in this exemption would be handling less than 100 grams of PCBs per year. Commercial distributors of analytical standards for research and development who would process 100 grams or more of PCBs in one year would be required to report to EPA. The PCBs will be processed using laboratory standards designed to minimize human and environmental exposure to hazardous substances. They will be packaged and distributed in hermetically sealed containers in quantities no larger than 5 ml.

Granting the exemption will benefit society by allowing health, environmental and analytical research to continue. Granting the exemption will encourage the recycling and reuse of CBs in controlled laboratory settings and discourage manufacture and import of PCBs for research and development. Furthermore, substantial numbers of petitions for exemption which would otherwise be filed, processed, and ultimately granted, will be avoided by granting the class exemption. EPA has estimated the incremental costs of filing one exemption petition to be $17,383. The incremental cost to EPA of processing an exemption petition is estimated to be $7,742.

b. *Good faith efforts finding.* EPA has determined that the good faith efforts finding is not relevant here, because there are no substitutes for PCBs in health and environmental research. Pure PCBs are needed for this research because commercial PCBs contain a mixture of isomers and contaminants which may adversely affect experimental results.

VI. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and therefore subject to the requirement that a regulatory impact analysis be prepared. EPA has determined that this proposed rule is not a "major rule" as that term is defined in section 1(b) of the Executive Order because (a) the annual effect on the economy will be an order of magnitude less than $100 million; (b) it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region; and (c) it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets.

Although this proposed rule is not a major rule, EPA has assessed the economic impact of the rule using guidance in the Executive Order to the extent possible. This proposed rule was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by the Executive Order.

VII. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexibility analysis in connection with any rulemaking for which EPA must issue a general notice of proposed rulemaking. The initial regulatory flexibility analysis must describe the effect of a rule on small business entities.

Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA proposes to deny no exemption petitions submitted by small businesses. Therefore, in accordance with section

605(b) of the Act and the authority delegated to me to act on petitions submitted under TSCA section 6(e)(3)(B), I certify that this rule will not have a significant impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* An Information Collection Request document (ICR #0857) has been prepared by EPA and a copy may be obtained from: Control Officer, Information Management Branch; EPA; 401 M St., S.W. (PM-223); Washington, D.C. 20460 or by calling (202) 382-2742. Submit comments on these requirements to EPA and: Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, N.W., Washington, D.C. 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB comments or public comments on the information collection request.

IX. Official Rulemaking Record

For the convenience of the public and EPA, all of the information originally submitted in docket number OPTS-66001 (manufacturing exemptions) and OPTS-66002 (processing and distribution in commerce exemptions) was consolidated into docket number OPTS-66008. Information and comments submitted in response to the July 10, 1984 proposed rule related notice (49 FR 28203) were filed in docket number OPTS-66008B.

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents which constitutes the record of this proposed rulemaking. A supplementary list or lists may be published any time on or before the date the final rule is issued. However, public comments, the transcript of the rulemaking hearing, or submissions made at the rulemaking hearing or in connection with it will not be listed, because these documents are exempt from **Federal Register** listing under section 19(a)(3). However, these documents will be included in the public record, and a full list of these materials will be available upon request from EPA's TSCA Assistance Office listed under FOR FURTHER INFORMATION CONTACT.

A. Previous Rulemaking Records

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Disposal and Marking Rule," Docket No. OPTS-66005, 43 FR 7150, February 17, 1978.

(2) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31, 1979.

(3) Official Rulemaking Record from Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions," Docket No. OPTS-66001, 44 FR 31564, May 31, 1979.

(4) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment," Docket No. OPTS-62015, 47 FR 37342, August 25, 1982.

(5) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Closed and Controlled Waste Manufacturing Processes," Docket No. OPTS-62017, 47 FR 46980, October 21, 1982.

(6) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Amendment to Use Authorization for PCB Railroad Transformers," Docket No. OPTS-62020, 48 FR 124, January 3, 1983.

(7) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Response to Individual and Class Petitions for Exemptions," Docket No. OPTS-66008A, 49 FR 28154, July 10, 1984.

(8) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Exclusions, Exemptions, and Use Authorizations," Docket No. OPTS-62032A, 49 FR 28172, July 10, 1984.

(9) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce and Use Prohibitions: Use in Microscopy and Research and Development," Docket No. OPTS-62031A, 49 FR 28193, July 10, 1984.

B. Federal Register Notices

(10) 43 FR 50905, November 1, 1978, USEPA, "Procedures for Rulemaking under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Polychlorinated Biphenyls (PCBs); Ban Exemption."

(11) 44 FR 108, January 2, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Policy for Implementation and Enforcement."

(12) 44 FR 31558, May 31, 1979, USEPA, "Procedures for Rulemaking Under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Exemptions from the Polychlorinated Biphenyls (PCBs) Processing and Distribution in Commerce Prohibitions."

(13) 44 FR 31564, May 31, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Proposed Rulemaking for PCB Manufacturing Exemptions."

(14) 44 FR 42727, July 20, 1979, USEPA, "Proposed Rulemaking for Polychlorinated Biphenyls (PCBs); Manufacturing Exemptions; Notice of Receipt of Additional Manufacturing Petitions and Extension of Reply Comment Period."

(15) 45 FR 14247, March 5, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Statement of Policy on All Future Exemption Petitions."

(16) 45 FR 29115, May 1, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Expiration of Open Border Policy for PCB Disposal."

(17) 48 FR 50486, November 1, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce Exemptions; Proposed Rule," Docket No. OPTS 66008.

(18) 48 FR 52402, November 17, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Microscopy and Research and Development; Proposed Rule," Docket No. OPTS-62031.

(19) 48 FR 55076, December 8, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions and Use Authorizations; Proposed Rule," Docket No. OPTS-62032.

(20) 49 FR 28203, July 10, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Request for Additional Comments on Certain Individual and Class Petitions for Exemption," Docket No. OPTS-66008B.

(21) 49 FR 39966, October 11, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Transformers; Proposed Rule," Docket No. 62035A.

C. Support Documents

(22) USEPA, OPTS, EED, "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984).

(23) USEPA, OPTS, ETD, "PCB Exemption Petitions Economic Impact Analysis" (April 1984).

(24) USEPA, OPTS, ETD, "PCB Exemption Petitions Economic Impact Analysis" (May 1985).

(25) USEPA, OPTS, HERD, "Response to Comments on the Health Effects of PCBs" (August 1982).

(26) USEPA, OPTS, "Support Document/Voluntary Environmental Impact Statement and PCB Manufacturing, Processing, Distribution in Commerce, and Use in Ban Regulation: Economic Impact Analysis" (April 1979).

D. Other References

(27) Manufacturing Exemption Petitions and Related Communications in Docket No. OPTS–66001.

(28) Processing and Distribution in Commerce Exemption Petitions and Related Communications in Docket No. OPTS–66002.

(29) PCB Exemption Petitions, Additional Data and Related Communications in Docket No. OPTS–66008B.

List of Subjects in 40 CFR Part 761

Hazardous substances, Labeling, Polychlorinated biphenyls, Recordkeeping and reporting requirements, Environmental protection.

Dated: August 16, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

Therefore, it is proposed that 40 CFR Part 761 be amended as follows:

1. The authority citation for Part 761 continues to read as follows:

PART 761—[AMENDED]

Authority: 15 U.S.C. 2605, 2607, and 2611.

2. In § 761.80 by adding paragraphs (f) (4), (5), and (6), (m) (5) and (6), and (o), (p), and (q), and revising paragraphs (g) and (n) to read as follows:

§ 761.80 Manufacturing, processing, and distribution in commerce exemptions.

* * * * *

(f) * * *

(4) Midwest Research Institute, Kansas City, MO 64110 (ME–3.1).

(5) Radian Corp., Austin, TX 78766 (ME–81.2).

(6) Wellington Sciences USA, College Station, TX 77840 (ME–104.1).

(g) The Administrator grants a class exemption to all processors and distributors of PCBs in small quantities for research and development provided that the following conditions are met:

(1) All processors and distributors must maintain records of their PCB activities for a period of 5 years.

(2) Any person or company which expects to process or distribute in commerce 100 grams (.22 lb) or more PCBs in 1 year must report to EPA identifying the sites of PCB activities and the quantity of PCBs to be processed or distributed in commerce.

* * * * *

(m) * * *

(5) Supelco, Inc., Bellefonte, PA 16823–0048 (PDE–41.2).

(6) Radian Corp., Austin, TX 78766 (PDE–182.1).

(n) The 1-year exemption granted to petitioners in paragraphs (f), (l), and (m) of this section shall be renewed automatically unless a petitioner notifies EPA of any increase in the amount of PCBs to be manufactured, imported, or exported or any change in the manner of manufacture, import, or export of PCBs. EPA will consider the submission of such information to be a renewed petition for exemption. EPA will evaluate the information in the renewed exemption petition, issue a proposed rule for public comment, and issue either a final rule granting the exemption or a notice denying the exemption. Until EPA acts on the petition, the petitioner will be allowed to continue the activities for which it requests exemption.

(o) The 1-year class exemption granted to all processors and distributors of PCBs in small quantities for research and development in paragraph (g) of this section shall be renewed automatically unless information is submitted affecting EPA's conclusion that the class exemption, or the activities of any individual or company included in the exemption, will not pose an unreasonable risk of injury to health or the environment. EPA will evaluate the information, issue a proposed rule for public comment, and issue a final rule affecting the class exemption or individuals or companies included in the class exemption. Until EPA issues a final rule, individuals and companies included in the class exemption will be allowed to continue processing and distributing PCBs in small quantities for research and development.

(p) The Administrator grants the following petitioners an exemption for 1 year to import inadvertently generated PCBs at concentrations above those specified for "excluded manufacturing processes" at § 761.3:

(1) American Hoechst Corp., Somerville, NJ 08876 (ME–5).

(i) The exemption is limited to the pigment specified in the American Hoechst petition.

(ii) [Reserved]

(2) [Reserved]

(q) The Administrator grants the following petitioners, and their customers, an exemption for 1 year to process and distribute in commerce inadvertently generated PCBs at concentration above those specified for "excluded manufacturing processes" at § 761.3 provided that the conditions for each exemption are met:

(1) American Hoechst Corp., Somerville, NJ 08876 (PDE–13).

(i) The petitioner must notify customers that the product may contain PCBs over the 50 ppm maximum concentration level for inadvertently generated PCBs.

(ii) The exemption is limited to the pigment specified in the American Hoechst petition.

(2) Dainichiseika Color & Chemicals America, Inc., Clifton, NJ 07012 (PDE–58).

(i) The petitioners must notify customers that the product contains PCBs over the 50 ppm maximum concentration level for inadvertently generated PCBs.

(ii) The exemption is limited to the 62,400 lbs of phthalocyanine blue crude in Dainichiseika's inventory.

[FR Doc. 85–20662 Filed 8–28–85; 8:45 am]

BILLING CODE 6560–50

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40 CFR Part 761

[OPTS–66008D; TSH FRL 2864–4]

Response to Ward Transformer Company Petition for Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of Exemption Petition.

SUMMARY: In this notice of denial, EPA is denying the Ward Transformer Company, Incorporated, petition for an exemption to buy and sell used PCB-contaminated transformers.

DATE: This petition denial shall become effective on August 29, 1985.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room E–543, 401 M St., SW., Washington, DC 20460. Toll free: (800–424–9065). In Washington, DC (554–1404). Outside the USA: (Operator–202–554–1404).

Copies of this rule and its support documents can be obtained from the TSCA Assistance Office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

Section 6(e) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, and the

processing and distribution in commerce of PCBs after July 1, 1979.

Section 6(e)(3)(B) of TSCA provides that any person may petition the Administrator for an exemption from the prohibition against the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that "(i) an unreasonable risk of injury to health or environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." The Administrator may set terms and conditions for an exemption and may grant an exemption for not more than 1 year.

EPA's Interim Procedural Rules for Processing and Distribution in Commerce Exemptions describe the required content of processing and distribution in commerce exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules were published in the **Federal Register** of May 31, 1979 (44 FR 31560) under 40 CFR 750.30 through 750.41.

B. History of this Rulemaking

In the **Federal Register** of January 2, 1979 (44 FR 108), EPA announced that petitioners who had previously filed manufacturing exemption petitions could continue the activities for which they sought exemption until EPA acted on their petitions. In the **Federal Register** of March 5, 1980 (45 FR 14247), EPA extended this policy to allow all petitioners to continue the activities for which they sought exemption until EPA acted on their petitions, as long as activities were underway before January 1, 1979 (for manufacturing) or July 1, 1979 (for processing and distribution in commerce). Ward Transformer Company, Inc. (hereafter, Ward Transformer) has been allowed to continue buying and selling PCB-contaminated transformers until the issuance of this final rule.

In the proposed PCB Exemptions Rule published in the **Federal Register** of November 1, 1983 (48 FR 50468), EPA proposed to deny the Ward Transformer petition for exemption to process and distribute in commerce PCBs in buying and selling PCB-contaminated transformers.

On July 10, 1984, EPA issued, as published in the **Federal Register** (49 FR 28154), the Final PCB Exemptions Rule acting on 109 petitions for exemption from the prohibition on the manufacture, processing and distribution in commerce of PCBs. That rule also deferred action on 50 exemption petitions, including the Ward Transformer petition. In the same issue of the **Federal Register** EPA issued a proposed rule-related notice soliciting comments on Ward Transformer petitions and the 49 other petitions on which action was deferred. A proposed rule addressing those 49 petitions and 14 new exemption petitions is published elsewhere in this issue of the **Federal Register.**

In the proposed rule-related notice published in the **Federal Register** of July 10, 1984 (49 FR 28203), EPA raised a new issue about whether granting the Ward Transformer petition would result in an unreasonable risk to health or the environment and requested comments by August 23, 1984. This issue and the comments are discussed in detail in Unit V of this decision.

EPA stated in the July 10, 1984 proposed rule-related notice that the Agency would issue a final decision to grant or deny the Ward Transformer petition upon evaluation of the comments and allowed the petitioner to continue buying and selling used PCB-contaminated transformers until this decision. In the interest of fairness, EPA stated in the proposed rule-related notice that should EPA grant Ward Transformer's petition, the exemption would expire on the same day (August 22, 1985) as the exemptions granted to other petitioners in the July 10, 1984 final PCB Exemptions Rule.

EPA is now denying Ward Transformer's petition for an exemption. Ward Transformer must, on the effective date of this decision cease all activities for which exemption is denied. Of course, Ward Transformer may submit a new exemption petition. The March 5, 1980 policy statement also announced EPA's intention to require petitioners who file late petitions (after January 1, 1979, for manufacturing, and July 1, 1979 for processing and distribution in commerce) to show "good cause" why EPA should accept the petition for consideration. Should Ward Transformer submit a new exemption petition, it will be required to show "good cause" in accordance with that policy on late petitions. Ward Transformer will not be permitted to continue activities under a new petition until EPA acts on the exemption request.

II. Unreasonable Risk Finding

Section 6(e)(3)(B)(i) of TSCA requires a petitioner to show that granting an exemption would not result in an unreasonable risk of injury to health or the environment.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur against the benefits to society from granting an exemption. Specifically EPA considers the following factors:

1. The effect of PCBs on human health and the environment, including the magnitude of PCB exposure to humans and the environment.

2. The benefits to society of granting an exemption and the reasonably ascertainable economic consequences of denying an exemption petition.

These are essentially the same factors that EPA considers under TSCA section 6(c) in deciding whether a chemical substance or mixture presents an unreasonable risk of injury to health or the environment under TSCA section 6(a), and in evaluating uses of PCBs under TSCA section 6(e).

EPA's conclusions on the health effects and environmental effects of PCBs which are discussed in detail in the proposed PCB Exemptions Rule published elsewhere in this issue of the **Federal Register** are also applicable here.

III. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA requires petitioners to make good faith efforts to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for PCBs before EPA grants an exemption. EPA considers several factors in determining whether a petitioner has made good faith efforts. For each exemption petition, EPA considers the kind of exemption which the petitioner is requesting, whether substitutes exist, and whether the petitioner expended time and money to develop or search for a substitute. In each case the burden is on the petitioner to show specifically what it does to substitute non-PCBs for PCBs or to show why it does not seek to substitute non-PCBs for PCBs. EPA's denial of the Ward Transformer Co., Inc. petition is not based on Ward Transformer's failure to meet the good faith efforts criteria.

IV. Ward Transformer

Ward Transformer Co., Inc., Raleigh, NC 27622 (PDE-294), submitted a petition for exemption to process and distribute in commerce PCBs in buying and selling used PCB-contaminated transformers (i.e., containing PCBs at concentrations of 50 ppm (parts per million) or more but less than 500 ppm). Since the requested exemption is for an activity which was underway prior to July 1, 1979, the petitioner has been

allowed to continue the activities for which it requested exemption until EPA acts on the petition, in accordance with the EPA policy described in Unit II.B of this decision.

The petitioner is engaged in the following activities for which an exemption is required: (1) Buying and selling PCB-contaminated transformers; and (2) buying PCB-contaminated transforms, introducing non-PCB (containing less than 50 ppm PCBs) fluid into these transformers, and then selling them before they have been reclassified as non-PCB transformers in accordance with the provisions of 40 CFR 761.30(a)(2)(v). The petitioner needs an exemption because it is distributing in commerce PCBs, as defined in section 3(4) of TSCA and 40 CFR 761.3. Although EPA has previously stated that PCBs can be distributed in commerce in transformers without an exemption under specified conditions, Ward Transformer cannot meet those conditions because it is buying PCB-contaminated transformers for resale prior to reclassification as non-PCB transformers.

A. Background

EPA originally proposed to deny Ward Transformer's exemption petition because the petitioner did not show that granting an exemption would not result in an unreasonable risk of exposure to humans or the environment. EPA determined that granting an exemption would result in some additional risk of exposure to humans or the environment due to the normal leaks and spills in handling liquid PCBs and transformers containing PCBs.

During the comment period on the proposed rule, EPA received comments from Ward Transformer. EPA also received comments from the Electrical Apparatus Servicing Association (EASA) in support of a class petition including Ward Transformer and 264 other companies EASA represents. Both Ward Transformer and EASA also participated in the hearing on the November 1, 1983 Proposed PCB Exemptions Rule.

Both Ward Transformer and EASA commented at the hearing that it would be prohibitively expensive and not technically feasible to reclassify PCB-contaminated transformers to non-PCB transformers by energizing and placing them "in service" for 90 days before selling them.

Ward Transformer further commented that (1) granting an exemption would not result in an unreasonable risk of injury to health or the environment because Ward Transformer's storage and handling procedures for PCB fluids meet all applicable disposal and storage for disposal requirements; (2) Ward uses only non-PCB fluid (less than 50 ppm) to refill the transformers that it buys and sells; (3) denying an exemption would cause Ward Transformer to go out of business since buying and selling used transformers represented 33 percent of its business in 1982, and 30 percent of its business in 1983.

In considering Ward Transformer's petition for exemption, EPA was aware that Robert Ward, Jr., an officer of Ward Transformer, was convicted of knowingly or willfully causing the unlawful disposal of PCBs. Ward Transformer was the only EASA company known to have been convicted of such a violation. Throughout the original PCB Exemptions rulemaking, neither EPA nor Ward Transformer raised the issue of Mr. Ward's PCB-related conviction as a factor in deciding whether to grant an exemption to Ward Transformer. EPA did not raise the issue as a determining factor because the case remained in litigation. However, in developing the July 10, 1984 Final PCB Exemptions Rule, EPA determined that in the absence of information to the contrary Mr. Ward's conduct creates cause for concern that granting an exemption to Ward Transformer may result in an unreasonable risk of injury to health or the environment.

In the July 10, 1984 Final PCB Exemptions Rule, EPA granted, in part, the EASA class petition to distribute in commerce PCBs in buying and selling used transformers. EPA granted the class exemption to all other members of EASA and deferred action on the Ward Transformer petition.

In the July 10, 1984 proposed rule-related notice, EPA requested comments on the Ward Transformer petition by August 23, 1984. EPA stated in that notice that Ward Transformer could allay EPA's concern that granting the Ward Transformer petition could result in an unreasonable risk of injury to health or the environment by submitting clear and convincing evidence to the contrary.

In particular, EPA requested information on the following:

1. A description of the methods Ward Transformer uses to protect workers during the buying, servicing, and selling of PCB transformers and PCB-contaminated transformers.

2. Records of the amount of PCB-fluid and PCB-contaminated fluid Ward Transformer collected and disposed of since July 1, 1982.

3. Records of the PCB disposal sites and the owners and operators of those sites where Ward Transformer disposed of PCB fluid and PCB-contaminated fluid since July 1, 1982.

4. Records of how many PCB transformers and PCB-contaminated transformers Ward Transformer purchased and from whom since July 1, 1982.

5. Records of how many PCB transformers and PCB-contaminated transformers Ward Transformer has sold and to whom since July 1, 1982.

6. The amount of Ward Transformer's total sales (in dollars) since July 1, 1982.

7. The reasonably ascertainable loss of sales (in dollars) if EPA were to deny an exemption to buy and sell used PCB-contaminated transformers.

In addition, EPA requested that Ward Transformer provide an affirmation that it has acted since July 1, 1982, in a manner that indicates good faith compliance with all applicable Federal, State, and local laws and regulations for the protection of human health or the environment.

During the comment period on the proposed rule-related notice, Ward Transformer submitted the following response to the specific information requested above:

1. Workers are protected through the proper handling and storage of PCB-contaminated transformers and PCB-contaminated fluids. PCB-contaminated fluids are stored in a yard with a complete retaining wall. When the transformers are serviced all fluids are pumped in a totally enclosed manner.

2. Ward Transformer has accumulated 18,000 to 20,000 gallons of PCB-contaminated fluid which is being stored in bulk storage containers for reuse after treatment to reduce the PCB concentration in the fluid to below 50 ppm. The collection and storage of the PCB-contaminated fluid began before July 1, 1982. Since July 1, 1982, no PCB fluid has been collected. On December 22, 1983, Ward Transformer contracted for the disposal of 1,815 gallons of PCB fluid collected prior to July 1, ,982, and 1,265 gallons of PCB-contaminated solids.

3. Ward Transformer submitted a copy of the contractual agreement for disposal of the 1,815 gallons of PCB fluid and 1,265 gallons of PCB-contaminated solids.

4,5. Records of transformers bought and sold by Ward Transformer since July 1, 1982 were provided and will be discussed elsewhere in this notice when applicable.

6,7. Since July 1, 1982, Ward Transformer's total transformer sales amounted to $3,608,180. The sale of PCB-contaminated transformers accounted for $980,225, or 27 percent, of the total

sales. Ward Transformer anticipates the economic costs of denial of the petition to have an impact on approximately 27 percent of transformer sales in the future.

An affirmation that Ward Transformer has, since July 1, 1982, "met or exceeded all required environmental standards" was provided by Robert Ward III, who succeeded Robert Ward Jr. as president of Ward Transformer after the latter's criminal conviction under TSCA section 16(b) in 1982.

B. Petition Denied

EPA is denying the Ward Transformer petition for exemption to process and distribute in commerce PCBs in buying and selling used PCB-contaminated transformers. EPA evaluated the information submitted by the petitioner in response to the proposed rule-related notice and determined that Ward Transformer has failed to provide clear and convincing evidence that granting the exemption would not result in an unreasonable risk of injury to health or the environment.

The information submitted by the petitioner reguarding the storage and disposal of PCB and PCB-contaminated fluids since July 1, 1982, cause EPA to question Ward Transformer's compliance with storage for disposal requirements under 40 CFR 761.65(a). Since Ward Transformer would handle, store and dispose of PCB-contaminated fluid if the exemption were granted, the petitioner's compliance with disposal and storage for disposal regulations is a significant factor in determining whether granting the exemption will result in an unreasonable risk of injury to health or the environment. In particular, EPA is concerned by the following information submitted by the petitioner:

1. 1,815 gallons of PCB fluid placed in storage for disposal prior to July 1, 1982, were not contracted for disposal until December, 1983. EPA asked Ward Transformer when disposal of the PCB fluid actually occurred. Ward Transformer replied that the PCB fluid was disposed of in the spring of 1984. EPA regulations on the storage of PCBs for disposal at 40 CFR 761.65(a) require that all items stored for disposal prior to January 1, 1983 be disposed of before January 1, 1984.

2. While Ward Transformer maintains that it does not and will not use PCB-contaminated fluid in servicing transformers, it has collected and placed in storage, prior to and since July 1, 1982, 18,000 to 20,000 gallons of PCB-contaminated fluid which it maintains is being stored for reuse after treatment to reduce the PCB concentration in the fluid to below 50 ppm. EPA requested clarification from the petitioner of the apparent inconsistency between its assertion that PCB-contaminated fluid will not be used while at the same time it is storing 18,000 to 20,000 gallons of PCB-contaminate fluid for reuse. EPA also cautioned the petitioner that if the fluid is treated, under 40 CFR 761.60(e) it must be treated to reduce the PCB concentration to below 2 ppm by an EPA-approved disposal method and that such treatment constitutes the disposal of PCBs. Treatment of the PCBs to reduce the PCB concentration to below 50 ppm but above 2 ppm, or treatment by a non-approved method or disposer not permitted by EPA would be considered to be illegal dilution of PCBs. Ward Transformer replied that it plans to contract with an EPA-approved disposer to reduce the concentration of PCBs in the fluid to below 2 ppm and will not use the fluid until such treatment occurs. However, Ward Transformer continues to maintain that the fluid is being stored for reuse and that the storage of the PCB-contaminated fluid need not meet the requirements for storage for disposal. EPA has determined that since the petitioner states that the PCB-contaminated fluid is being stored for treatment to below 2 ppm and since such treatment constitutes the disposal of PCBs, the storage of the PCB-contaminate fluid is subject to storage for disposal requirements. The continued storage of the PCB-contaminated fluid in bulk storage tanks beginning before July 1, 1982, is not in compliance with the requirement that all PCBs stored prior to Junuary 1, 1983, be disposed of by January 1, 1984.

Further, in telephone communications with Ward Transformer's counsel, EPA was informed that an additional 4,600 gallons of PCB-fluid, collected and stored for disposal prior to July 1, 1982, was disposed of on March 18, 1985. This storage of PCB fluid also fails to comply with the requirement that all PCBs stored prior to January 1, 1983 be disposed of before January 1, 1984.

The Agency cannot determine that granting an exemption to Ward Tranformer would not result in an unreasonable risk of injury to health or the environment. While Ward Transformer will not be using PCB or PCB-contaminated fluid in servicing transformers, the petitioner would handle, store and dispose of PCB-contaminated fluid collected in servicing transformers under an exemption. Failure to comply with PCB storage requirements increases the risk of exposure to humans and the environment. The information provided by the petitioner indicates a continuing failure to act in good faith compliance with applicable regulations on the storage of PCBs for disposal.

The cost of denying Ward Transformer's petition for an exemption to buy and sell used PCB-contaminated transformers would be equal to the lost value of future sales of PCB-contaminated transformers which are currently in inventory and which Ward would have purchased for resale in the exemption period. The cost of denying the petition does not include the cost of disposal of PCB-contaminated fluid in storage or PCB-contaminated transformers in inventory. Since Ward Transformer drains all PCB-contaminated transformers prior to resale and does not reuse PCB-contaminated transformers, the petitioner would have disposed of PCB-contaminated fluid even if an exemption were granted. The disposal of drained PCB-contaminated transformers is not regulated.

Ward Transformer's estimate of the economic consequences of the petition's denial is based on its sales in the period between July 1, 1982 and August 13, 1984. During that period, the Ward's total sales of transformers amounted to $3,608,180. The sale of 157 PCB-contaminated transformers accounted for $980,225, or 27 percent, of total sales. Ward Transformer maintains that denial of its petition would have an impact on a similar proportion of its business in the future and that such a loss would endanger the viability of the company.

Ward Transformer has not provided sufficient information on its existing inventory of PCB-contaminated transformers, or on the price of used transformers for EPA to quantify the costs of denying its petition. However, EPA believes that the costs of denial will be significantly lower than the estimate supplied by Ward Transformer for the following reasons:

a. In the period between July 1, 1982 and August 13, 1984, Ward Transformer decreased its inventory of PCB-contaminated transformers by selling 157 while purchasing only 61.

b. The cost to Ward Transformer of buying used PCB-contaminated transformers is probably a significant percentage of the price at which it sells those transformers.

c. Information supplied by the petitioner shows that since July 1, 1982, the buying and selling of PCB-contaminated tranformers have declined, both in the number of transformers bought and sold and as a percentage of Ward Transformer's buying and selling activities.

d. While Ward Transformer has been permitted to continue buying and selling PCB-contaminated transformers until EPA acts on its petition, the exemption, if granted, would have expired on August 22, 1985 for reasons discussed in Unit II.C of this notice.

EPA has concluded that the costs of denying the Ward Transformer petition are not sufficient to outweigh the potential risks of injury to health or the environment which would result from granting the exemption. Therefore, EPA is unable to make the statutory finding of no unreasonable risk, and cannot grant an exemption under the provisions of TSCA section 6(e)(3)(B).

V. Official Rulemaking Record

For the convenience of the public and EPA, all of the information originally submitted in docket number OPTS-66001 (manufacturing exemptions) and OPTS-66002 (processing and distribution in commerce exemptions) were consolidated into docket number OPTS-66008. Information and comments submitted in response to the July 10, 1984 proposed rule-related notice (49 FR 28203) were filed in docket number OPTS-66008B.

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is publishing the following list of documents which constitutes the record of this decision to deny the Ward Transformer exemption petition. Public comments, the transcript of the rulemaking hearing, and submissions made at the rulemaking hearing or in connection with it are not listed because these documents are exempt from **Federal Register** listing under section 19(a)(3). However, these documents are included in the public record, and a full list of these materials is available on request from EPA's TSCA Assistance Office listed under **FOR FURTHER INFORMATION CONTACT.**

A. Previous Rulemaking Records

(1) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Disposal and Marking Rule," Docket No. OPTS-66005, 43 FR 7150, February 17, 1978.

(2) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule," 44 FR 31514, May 31, 1979.

(3) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment," Docket No. OPTS-62015, 47 FR 37342, August 25, 1982.

(4) Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Amendment to Use Authorization for PCB Railroad Transformers," Docket No. OPTS-62020, 48 FR 124, January 3, 1983.

(5) "Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Response to Individual and Class Petitions for Exemptions," Docket No. OPTS-66008A, 49 FR 28154, July 10, 1984.

(6) "Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions, and Use Prohibitions; Exclusions, Exemptions, and Use Authorization," Docket No. OPTS-62032A, 49 FR 28172, July 10, 1984.

B. Federal Register Notices

(7) 43 FR 50905, November 1, 1978, USEPA, "Procedures for Rulemaking under Section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Polychlorinated Biphenyls (PCBs); Ban Exemption."

(8) 44 FR 108, January 2, 1979, USEPA, "Polychlorinated Biphenyls (PCBs); Policy for Implementation and Enforcement."

(9) 44 FR 31558, May 31, 1979, USEPA, "Procedures for Rulemaking Under section 6 of the Toxic Substances Control Act; Interim Procedural Rules for Exemptions from the Polychlorinated Biphenyls (PCBs) Processing and Distribution in Commerce Prohibitions."

(10) 45 FR 14247, March 5, 1980, USEPA, "Polychlorinated Biphenyls (PCBs); Statement of Policy on all Future Exemption Petitions."

(11) 48 FR 50486, November 1, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce Exemptions; Proposed Rule," Docket No. OPTS 66008.

(12) 48 FR 55076, December 8, 1983, USEPA, "Polychlorinated Biphenyls (PCBs); Exclusions, Exemptions and Use Authorizations; Proposed Rule," Docket No. OPTS-62032.

(13) 49 FR 28203, July 10, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Request for Additional Comments on Certain Individual and Class Petition for Exemption," Docket No. OPTS-66008B.

(14) 49 FR 39966, October 11, 1984, USEPA, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Use in Electrical Transformers; Proposed Rule," Docket No. 62035A.

C. Support Documents

(15) USEPA, OPTS, EED, "Response to Comments on the Proposed PCB Exemptions Rule" (June 1984).

(16) USEPA, OPTS, ETD, "PCB Exemption Petition Economic Impact Analysis" (April 1984).

(17) USEPA, OPTS, ETD, "Ward Transformer Exemption Petition Economic Impact Analysis" (May 1985).

(18) USEPA, OPTS, HERD, "Response to Comments on the Health Effects of PCBs" (August 1982).

(19) USEPA, OTS, "Support Document/Voluntary Environmental Impact Statement and PCB Manufacturing, Processing, Distribution in Commerce, and Use in Ban Regulation: Economic Impact Analysis" (April 1979).

D. Other Support Documents

(20) Processing and Distribution in Commerce Exemption Petitions and Related Communication in Docket No. OPTS-66002.

(21) Ward Transformer Petition, Additional Data and Related Communications in Docket No. OPTS-66008B.

VI. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is a "major rule" and therefore subject to the requirement that a regulatory impact analysis be prepared. EPA has determined that this action is not a "major rule" as that term is defined in section 1(b) of the Executive Order because (1) the annual effect on the economy will be orders of magnitude less than $100 million, (2) it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region, and (3) it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets.

Although this action is not a major rule, EPA has analyzed the economic impact to the extent possible. This final decision was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by the Executive Order.

VII. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibilty Act (the Act), 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexbility analysis in connection with any rulemaking for

which EPA must issue for publication a general notice of proposed rulemaking. The initial regulatory flexibility analysis must describe the effect of a rule on small business entities.

Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

Ward Transformer Co., Inc. is the only small business entity affected by this denial of petition. Ward Transformer estimated the reasonably ascertainable costs of the petition's denial to be $980,225, or 27 percent of their total annual transformer sales. However, EPA believes the costs of denial to be significantly less than that estimate because buying and selling used PCB-contaminated transformers is decreasing as a percentage of Ward Transformer's total business, and because an exemption, if granted, would have expired on August 22, 1985. EPA's conclusions on the economic consequences of denying the Ward Transformer petition are discussed in detail in Unit IV.

Therefore, in accordance with section 605(b) of the Act and authority delegated to me to act on petitions submitted under TSCA section 6(e)(3)(B), I certify that this action will not have a significant impact on a substantial number of small entities.

EPA further notes that section 606 of the Act states that the requirements of section 603 do not alter in any manner standards otherwise applicable by law to Agency action. In general, the manufacture, processing, and distribution in commerce of PCBs are prohibited by section 6(e)(3)(A) of TSCA and the PCB regulations under 40 CFR Part 761. Section 6(e)(3)(B) permits the EPA to grant exemptions from these prohibitions, if the Administrator finds that a petitioner has shown that granting an exemption will not result in an unreasonable risk of injury to health or the environment and that it has made good faith efforts to develop substitutes for PCBs. Both small and large companies must meet the same statutory standard. Thus, even if EPA believed that it was economically or socially desirable policy to grant an exemption to a small business, it could do so only if the small business met the requirements set forth in TSCA.

Accordingly, the Ward Transformer Company, Incorporated, petition for an exemption to buy and sell used PCB-contaminated transformers is denied.

(15 U.S.C. 2606(e))

Dated: August 16, 1985.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 85-20663 Filed 8-28-85; 8:45 am]

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Federal Register

Thursday
August 29, 1985

Part IV

Environmental Protection Agency

40 CFR Part 122

National Pollutant Discharge Elimination System Permit Regulations; Modification of Application Deadline for Storm Water Point Sources; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 122

[OW-FRL-2871-9]

National Pollutant Discharge Elimination System Permit Regulations; Modification of Application Deadline for Storm Water Point Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 26, 1984, the Environmental Protection Agency published final regulations (49 FR 37998) that addressed several issues concerning the National Pollutant Discharge Elimination System (NPDES) program administered under the Clean Water Act. One aspect of those amended rules concerned the regulation of point source discharges of storm water. The final rule defined the scope of NPDES permit program coverage of storm water discharges and adopted a two-tiered application process for storm water point sources.

The final storm water regulations generated considerable post-promulgation comment. The major concerns raised were the difficulty of complying with the April 26, 1985 deadline for application submittals due to winter weather conditions and the size of the task of identifying, sampling and testing storm water point sources.

In response to these concerns, on March 7, 1985 (50 FR 9362), EPA proposed two changes in the application process, neither of which affected the substantive coverage of the September 26 regulation. First, EPA proposed to extend the deadline for submission of NPDES applications for all storm water point sources to December 31, 1985. This final rule extends that deadline to December 31, 1987 for Group I point sources and June 30, 1989 for Group II point sources. Second, EPA proposed to modify certain testing requirements for Group I storm water point sources. This final rule does not address this issue, which was the subject of a recent **Federal Register** Notice.

DATES: This regulation is effective August 29, 1985.

In accordance with 40 CFR Part 23 (50 FR 7268, February 21, 1985), these regulations shall be considered final agency action for purposes of judicial review at 1:00 p.m. eastern time on September 12, 1985. Under section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be made only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

In order to assist EPA to correct any typographical errors, incorrect cross references, and similar technical errors, comments of a technical and nonsubstantive nature on the final regulations may be submitted on or before October 28, 1985. The effective date of these regulations will not be delayed by consideration of such comments.

ADDRESS: Comments of a technical and nonsubstantive nature should be addressed to: Cathy O'Connell, Permit Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Tom Laverty, Permits Division (EN-336), Office of Water Enforcement and Permits, U.S. Environmental Protection Agency, Washington, D.C. 20460. Telephone (202) 426-7035.

SUPPLEMENTARY INFORMATION:

I. Background

The appropriate means of regulating storm water discharges has been a major issue for over 12 years. Storm water regulation has been the subject of a number of **Federal Register** documents. This Preamble addresses only the issue subject to today's action: the deadline for submitting applications for storm water permits. For more detailed background and discussion on storm water regulation in general, see 44 FR 32854 (July 7, 1979), 45 FR 33290 (May 19, 1980), 45 FR 52073 (November 18, 1982), 49 FR 37998 (September 26, 1984), and 50 FR 9362 (March 7, 1985).

The September 1984 rule set out two categories of storm water point sources with different application requirements for each. Group I storm water dischargers are those subject to effluent limitations guidelines, located in an industrial plant or plant associated area, or designated by the Director. All other storm water point sources are classified as Group II. The September 1984 regulations set a deadline of six months from their effective date for submission of all storm water permit applications. (Due to a technical error, the rule as published stated that March 26, 1985 was the deadline. However, the preamble stated that these applications were not required until six months after the effective date of the rule, April 26, 1985, and this was the correct deadline for submission of applications under the September 1984 regulation. A technical correction to the regulations recognizing the April 26, 1985 deadline was published in the **Federal Register** on February 19, 1985 [50 FR 6939])

II. Reaction to the September 1984 Rule

The September 1984 rule produced considerable post-promulgation comment on all of the central issues concerning storm water regulation. With respect to the deadline for submission of permit applications, various industries and trade associations claimed that the April 26 application deadline would be impossible for many dischargers to meet. One reason given was that many dischargers were located in areas where testing during the winter months would not be feasible. It was also argued that the intermittent and unpredictable nature of storm water dischargers would result in difficult and time-consuming data gathering because laboratories doing the sampling would have to be on stand-by waiting for a representative rainfall event to test the discharge, and the regulation did not provide sufficient time to undertake this effort.

Some commenters asserted that six months was an insufficient amount of time to locate, identify, sample and test the thousands of storm water point sources which were estimated to exist. They also argued that the magnitude of the task for permit authorities meant that the data would be stale by the time permits were to be issued. Finally, some dischargers claimed that there would be insufficient laboratory facilities to do the required analysis within so short a time period. The September 1984 rule also generated comment from environmental groups, who expressed reservations that any change or delay would exacerbate EPA's failure to regulate this source of pollutants.

III. The March 1985 Proposal

After considering all these comments EPA proposed to extend the application deadline from April 26, 1985 to December 31, 1985 for all storm water dischargers. The Agency also specifically asked for comments on whether to postpone the application deadline for Group II storm water point sources another year, until December 31, 1986, in order to allow EPA and the NPDES States to initially focus their efforts on the Group I point sources, which are more likely to be environmentally significant. The Agency acknowledged that the magnitude of

post-promulgation comments indicated data collection and analysis by April 26, 1985 would be difficult and perhaps impossible for some dischargers.

IV. Summary of Comments

EPA received approximately 130 comments on the proposed rule, many of which commented directly on the deadline issue.

One commenter opposed any extension of the deadline. This commenter noted that storm water point source dischargers have been required for ten years to obtain NPDES permits, and that further postponement of application requirements was therefore unreasonable. This commenter also asserted that there was little basis for the claim that inadequate laboratory capacity was a problem which would justify an extension. In addition, the commenter stated that resource problems experienced by permit writing authorities would not be solved by an extension. Finally, this commenter stated that it was important for application data to be submitted soon, even where the permit writing authority might not be able to act on it promptly, since such data could nonetheless be available for citizens groups which may choose to file a citizen suit enforcement action. Another commenter, while not responding directly to the deadline issue, stated its belief that storm water dischargers were a significant source of pollution requiring an active and strong regulatory and enforcement program.

The Agency agrees that an effective, manageable and environmentally sound program for regulation of storm water dischargers is necessary. These commenters are also correct in their statement that storm water point source dischargers have required NPDES permits for some years. Although some dischargers have already applied for and received permits for storm water discharges, the vast majority of such dischargers have not applied for permits. However, there has been some uncertainty in recent years concerning permit application requirements, particularly in those States in which EPA administers the NPDES program. Moreover, some owners and operators have hundreds of potential point sources which can require considerable time to identify, analyze, and submit applications. This creates a tremendous practical problem for the hundreds of thousands of unpermitted storm water discharges, regardless of whether laboratory capacity is a problem for any particular discharger. The Agency's and the public's interest in a sound storm water program and the development of a useful data base on these sources is best served by establishing an application deadline which will allow sufficient time to gather, analyze, and submit meaningful applications. Moreover, postponement of the deadline clearly would not preclude requiring a permit application or issuance of a permit in the interim on a case-by-case basis as appropriate if a problem is identified. Finally, citizens remain free to initiate private enforcement actions, and to bring to the attention of permit writing authorities any specific situation that warrants review.

The overwhelming majority of comments supported some sort of extension of the application deadline. Over 100 comments supported extending the deadline for Group I dischargers until at least December 31, 1985 and approximately 65 supported extending the deadline for Group II dischargers until at least December 31, 1986.

Commenters supporting extension of the deadline cited many of the same reasons as in the post-promulgation comments and noted in the proposal, including: (1) The large number of sources involved; (2) the extensive time and resources necessary to identify sources and gather and analyze data; (3) the desire to avoid submitting data which might become "stale" before permit writers could act thus necessitating additional duplicative testing at the same time of permit issuance; (4) the current uncertainty as to what information must be submitted in an application; (5) the need for sufficient time after issuance of final substantive application requirements to conduct the work needed; (6) the resources involved in preparing applications; (7) the problems posed by unpredictable weather conditions in gathering data; and (8) the need for adequate time to obtain necessary laboratory resources.

More specifically, a number of commenters supporting the proposed extension for Group I dischargers suggested that a longer extension would be appropriate unless final application requirements and/or more detailed guidance were forthcoming in the near future. One of these commenters requested the maximum period possible after issuance of a final rule; another suggested a minimum of one year after issuance of a final rule. A third, a municipality, suggested a deadline of 1990.

Several comments received from States expressed concerns about the State's ability to process the thousands of applications which would be received in the relatively near future. Similarly, commenters urged that deadlines realistically reflect the ability of EPA and NPDES States to process applications.

With respect to the deadline for Group II dischargers, as noted above, there was strong support for deadline extension. Many commenters noted the need to deal first with Group I dischargers, which appear to be more environmentally significant. These commenters feared that permit writing authorities would be flooded with applications that could not be processed in a timely manner. Commenters believed that it would take years to identify all Group II sources, and to gather, analyze, and submit the information. Finally, these commenters expressed the belief that final application requirements and further guidance were needed before proceeding further. On the basis of these beliefs, one State commenter suggested that the deadline for Group II applications be set at least one year after the deadline for Group I applications; another stated that as much as five years would be necessary to complete Group II applications; a third commenter suggested postponing the Group II deadline indefinitely.

V. Agency Action

EPA is persuaded that the comments make a strong case for an extension of the application deadline. An extension of the deadline will give those storm water point source dischargers in States where EPA is the permitting authority additional time to identify their sources, gather and analyze required data, and prepare applications. Many factors have contributed to difficulties in complying with the existing April 26, 1985 deadline for application submission. These included the task of identifying the large number of storm water point source discharges covered by the regulation, determining which Category (Group I or II) each fits within, collecting necessary data, including toxic testing where required, seasonal factors which prohibited sampling in some locales during the winter months, and the fact that the intermittent nature of storm water discharges complicates the ability to gather representative samples. Further, the uncertainty surrounding the precise application requirements has been heightened by EPA's March 7, proposal to change both the existing deadline for applications and the specific requirements defining the information which must be submitted with such applications.

For these reasons EPA has determined that dischargers should be given additional time to submit applications.

In the March 7, Federal Register notice EPA proposed to extend the deadline for submission of applications until December 31, 1985 for Group I and suggested the possibility of delaying submission of Group II applications until 1 year beyond that. These dates were chosen because EPA believed at that time that final regulations identifying the information which would be required of applicants would soon be in place and that applicants would, therefore, be able to conduct necessary sampling during the summer and fall months and prepare complete permit applications by the end of this year. However, the substantive requirements proposed on March 7 are not yet published in final form.

The Agency is currently reconsidering the type and amount of substantive information which must be submitted in an application. As a result of comments received on the March 7 proposal and further consideration of the issue by the Agency, this aspect of the March 7 proposal has been renoticed to allow additional public comment. The notice specifically sought comment on a more effective administrative process that is also less burdensome to the regulated community. Thus, as with the proposed deadlines, EPA is today establishing new deadlines for submission which take into account the time necessary to issue final regulations establishing substantive application requirements and the time needed to gather and analyze data and prepare an application once these requirements are established. Today's final rule extends the deadline for submission of applications by Group I dischargers to December 31, 1987. This new deadline should allow sufficient time for additional public comment and final issuance of substantive requirements, and also will provide additional time for applicants to identify and categorize their sources of discharge, gather and analyze data, and prepare applications. This added time should help eliminate the difficulties in complying with current deadlines.

This new deadline also responds to commenters' concerns that the deadline more realistically reflect the permit writing authorities' ability to process applications. As EPA has indicated on numerous occasions in past Federal Register notices, neither EPA nor the States are currently able to process promptly the large number of permit applications which are expected to be filed for storm water discharges. EPA and many States are still working to reduce and eliminate the current permit issuance backlog for major industrial facilities, which has resulted from many factors, including the complex nature of developing permits limitations to control toxic pollutants, as well as the lack, until recently, of national effluent limitation guidelines establishing BAT requirements. The next priority for EPA and State permit writers will be to address the backlog of significant minor dischargers, especially those causing water quality problems. Although an extension of the deadline will not eliminate the fact the permit issuing authorities will still receive a large number of lower priority permit applications at one time (just later, as pointed out by one commenter), it is more likely that the permit backlog problems associated with BAT limitations will have been reduced by that time. In addition, this extension will provide sufficient time for EPA to prepare guidance on questions concerning various aspects of storm water regulation. The added time also will allow EPA and the permit writing authorities to develop a realistic strategy for the issuance of storm water permits. For example, model general permit terms may be developed by then, and additional States may have established authority to issue general permits. Finally, the new deadline may minimize the potential of stale data.

EPA believes that a two-phased application approach calling for information to be submitted from Group I in advance of that for Group II is the more reasonable and realistic means of gathering useful information in a time frame that is manageable for the regulated community and the permitting agencies. This responds to the previously identified problems with preparing storm water applications as they relate to Group II sources and allows priority to be given to the sources which are expected to pose the more significant environmental problems. Thus, the deadline for submission of applications from Group II storm water dischargers is June 30, 1989.

Although these deadlines are later than those proposed, they are consistent with the purposes of that proposal and with the numerous comments which urged an orderly application process with due attention to priorities and with EPA's stated purposes to develop more realistic deadlines which respond to the identified difficulties with preparing storm water applications. The deadlines also acknowledge that revised substantive requirements are not yet promulgated.

It should be re-emphasized that these deadline extensions do not relieve point source dischargers from the requirement to obtain NPDES permits. EPA regional offices have been directed to respond to inquiries and petitions concerning specific storm water discharges which may pose problems. The extension does not preclude issuance of permits where a problem is identified, nor does it affect citizens rights under section 505 of the Act. States authorized to administer the NPDES program remain free to require permit applications at earlier dates.

VI. Recent Related Developments

Persons interested in the appropriate means to regulate storm water dischargers should be aware that the issue is receiving renewed attention by Congress. On June 13, 1985, the Senate passed an amendment to the CWA which would, if enacted, affect regulation of Group II dischargers. Essentially, the amendment would remove the requirement for Group II dischargers to obtain permits until 1992. The Administrator would be required to prepare and submit to Congress a study on the nature and extent of pollutants in Group II discharges before this date. Subsequently, EPA would be required to submit a report to Congress setting forth procedures and methods to control storm water dischargers "to the extent necessary to attain and maintain water quality standards." On July 23, 1985, the House of Representatives also passed an amendment that would affect EPA's regulation of storm water discharges.

Although these changes are not yet part of the applicable law, it appears that Congress will continue to review the issue of storm water regulation. Interested persons should be aware that future Congressional action could alter the Agency's authority and strategy for regulating storm water dischargers.

VII. Effective Date

Section 553(d) of the Administrative Procedure Act (APA) generally requires publication of a substantive rule not less than 30 days before its effective date. The APA also recognizes an exemption to this requirement, and authorizes an Agency to make a final rule effective immediately upon promulgation if the rule "grants or recognizes an exemption or relieves a restriction". EPA believes this rule "relieves a restriction" in that it extends a regulatory deadline which has already passed. Accordingly, this rule is effective today.

VIII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is major and therefore subject to the requirement of a Regulatory Impact Analysis. These amendments generally make the regulations more flexible and less

burdensome for affected parties. These regulations do not satisfy any of the criteria specified in section 1(b) of the Executive Order and, as such, do not constitute major rulemakings. This regulation was submitted to OMB for review.

IX. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. No regulatory flexibility analysis is required, however, where the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Today's amendments to the regulations generally make the regulations more flexible and less burdensome for permittees. Accordingly, I hereby certify, pursuant to 5 U.S.C. 605(b), that these amendments will not have a significant impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 122

Administrative practice and procedure, Reporting and Recordkeeping requirements, Water pollution control.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: August 21, 1985.

Lee M. Thomas,

Administrator.

PART 122—EPA ADMINISTERED PERMITS PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart B—Permit Application and Special NPDES Program Requirements

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.21 is amended by revising paragraph (c)(2) to read as follows:

§ 122.21 Application for a permit (applicable to State NPDES programs, see § 123.25)

* * * * *

(c) * * *

(2) Any existing Group I storm water discharge (as defined in § 122.26(b)(2)) that does not have an effective permit shall submit an application by December 31, 1987. Any existing Group II storm water discharge (as defined in § 122.26(b)(3)) that does not have an effective permit shall submit an application by June 30, 1989. Any discharger designated under § 122.26(c) shall submit an application within 6 months of notification of its designation.

* * * * *

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