11-26-80
Vol. 45 No. 230
Pages 78615-78994

# federal register

Wednesday
November 26, 1980

## Highlights

**Briefings on How To Use the Federal Register**—For details on briefings in Washington, D.C., see announcement in the Reader Aids section at the end of this issue.

78615 **Death of John W. McCormack** Executive Order

76617 **Upland cotton impact quota** Presidential Proclamation

78962 **Education** ED proposes amending regulations for the Bilingual Education Training Projects Program and gives notice of closing date for new projects under the Bilingual Education Act; comments by 1-12-81, various closing dates (Part IV of this issue) (4 documents)

78918 **Improving Government Regulations** Commerce publishes semiannual agenda of significant regulations (Part III of this issue)

78755 **Grant Programs—Education** ED extends closing dates for the fund for the Improvement of Postsecondary Education Program; new dates 12-2-80 and 1-21-81

78798 **Clean Air** EPA publishes notice regarding motor vehicle recall

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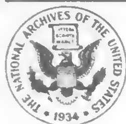


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Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

# Highlights

78700 **Grant Programs—Energy** DOE/SOLAR extends comment period to 12-8-80 on energy audit training and certification grants

78624 **Credit Unions** NCUA publishes proposal regarding State chartered Federally insured credit unions as most favored lenders; effective 11-19-80

78980 **Environmental Protection** EPA proposes standards limiting emissions of volatile organic compounds from new, modified, and reconstructed beverage can surface coating operations; comments by 2-5-81 (Part VI of this issue)

78726 **Old-age, Survivors and Disability Insurance** HHS/SSA proposes continued payment of benefits to individuals under Vocational Rehabilitation plans

78735 **Grant Programs—Withdrawal** HHS/PHS withdraws notice of decision to develop regulations to cover formula grants for preventive health service programs; effective 11-26-80

78630 **Safety** CPSC exempts child-protection packaging requirements for sodium fluoride drug preparations, including liquid and tablet forms; exemption effective 11-26-80

78624 **Banking** FRS publishes regulations regarding changes in discount rates

78689 **Television** FCC publishes regulations regarding type acceptance of broadcasting equipment; effective various dates

78633 **Income Tax** Treasury/IRS provides regulations relating to definition of "land used in farming" for purpose of determining whether soil and water conservation expenditures are deductible; effective taxable years beginning after 1953

78902 **Surface Mining** Interior/BLM publishes regulations regarding surface management of Public Lands under U.S. Mining Laws; effective 1-1-81 (Part II of this issue)

78727, 78747-78749 **Privacy Act Documents** DOD (5 documents)

78851 **Sunshine Act Meetings**

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78918 **Part III, Commerce**
78962 **Part IV, ED**
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# Presidential Documents

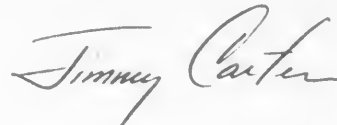
Title 3—

The President

Executive Order 12252 of November 24, 1980

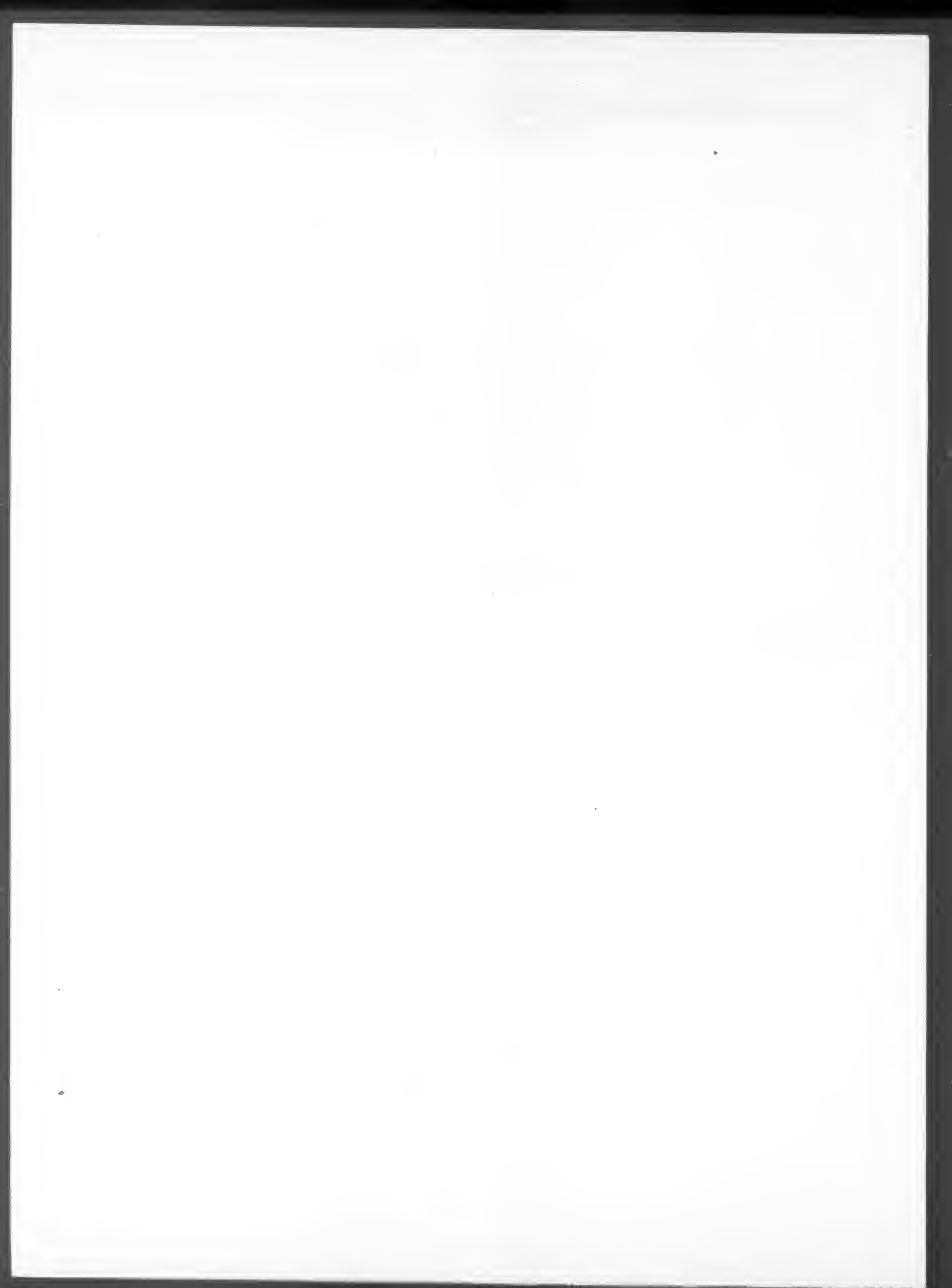
## The Honorable John William McCormack

As a mark of respect to the memory of the Honorable John William McCormack, former Speaker of the United States House of Representatives and a Representative of the State of Massachusetts, it is hereby ordered, pursuant to the provisions of Section 4 of Proclamation 3044 of March 1, 1954, as amended, that until interment, the flag of the United States shall be flown at half-staff on all buildings, grounds and naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.



THE WHITE HOUSE,
*November 24, 1980.*

[FR Doc. 80-37047
Filed 11-24-80; 2:55 pm]
Billing code 3195-01-M



# Presidential Documents

Proclamation 4805 of November 24, 1980

## Special Limited Global Import Quota for Upland Cotton

By the President of the United States of America

A Proclamation

1. Section 103(f)(1) of the Agricultural Act of 1949, as added by Section 602 of the Food and Agriculture Act of 1977 (the Act) (91 Stat. 913, 934; 7 U.S.C. 1444(f)(1)), provides that whenever the Secretary of Agriculture determines that the average price of Strict Low Middling one and one-sixteenth inch cotton (micronaire 3.5 through 4.9), hereinafter referred to as "Strict Low Middling Cotton," in the designated United States spot markets for a month exceeded 130 per centum of the average price of such quality of cotton in such markets for the preceding thirty-six months, notwithstanding any other provisions of law, the President shall immediately establish and proclaim a special limited global import quota for upland cotton. A quota, effective from April 3 through July 2, 1980, was placed in effect by Proclamation No. 4742.

2. When a special quota has been established during the preceding twelve months, the amount of the next quota is to be the smaller of twenty-one days of domestic mill consumption of upland cotton at the seasonally adjusted average rate of the most recent three months for which data are available or the amount required to increase the supply to 130 percent of the demand. The quota is to remain in effect for a ninety-day period.

3. The Secretary of Agriculture has informed me that he has determined that the average price of Strict Low Middling Cotton in the designated spot markets for the month of September 1980 has exceeded 130 per centum of the average price of such cotton in such markets for the preceding thirty-six months. The Secretary's determination was based upon the following data:

(a) The average price of Strict Low Middling Cotton in the designated spot markets for the month of September 1980 was 87.1 cents per pound.

(b) The average price of Strict Low Middling Cotton in the designated spot markets for the thirty-six months preceding the month of September 1980 (September 1977 through August 1980) was 62.85 cents per pound.

4. Twenty-one days of domestic mill consumption of upland cotton, which is any variety of the Gossypium hirsutum species of cotton, at the seasonally adjusted rate of the most recent three months for which data are available (June 1980 through August 1980) is 238,633,920 pounds.

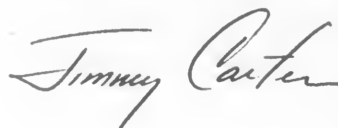
5. On the basis of computations made in accordance with Section 103(f)(1) of the Act, a quantity of 261,757,920 pounds of upland cotton is required to increase the supply of such cotton to 130 percent of the demand therefor.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, by the authority vested in me by the Constitution and Statutes of the United States of America, including Section 103(f)(1) of the Agricultural Act of

1949, as added by Section 602 of the Food and Agriculture Act of 1977, and in order to establish a special ninety-day limited global import quota for 238,633,920 pounds of upland cotton, do proclaim that the temporary provision set forth in item 955.07 of Part 3 of the Appendix to the Tariff Schedules of the United States is hereby amended to read as follows:

| *"Item* | *Article* | *Quota Quantity (in pounds)* |
| --- | --- | --- |
| 955.07 | Notwithstanding any other quantitative limitations on the importation of cotton, upland cotton, if accompanied by an original certificate of an official of a government agency of the country in which the cotton was produced attesting to the fact that cotton is a variety of the Gossypium hirsutum species of cotton, may be entered during the 90-day period November 28, 1980 through February 25, 1981 .......... | 238,633,920 pounds". |

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of November, in the year of our Lord nineteen hundred and eighty, and of the Independence of the United States of America the two hundred and fifth.



[FR Doc. 80-37129
Filed 11-25-80; 10:39 am]
Billing code 3195-01-M

# Rules and Regulations

Federal Register
Vol. 45, No. 230
Wednesday, November 26, 1980

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 930

### Cherries Grown in Michigan, New York, Wisconsin, Pennsylvania, Ohio, Virginia, West Virginia, and Maryland; Revision of Interest Rate

**AGENCY:** Agricultural Marketing Service, USDA

**ACTION:** Final rule.

**SUMMARY:** This action changes the interest rate charged on delinquent assessments from one percent to one and one-half percent per month. The action is necessary to bring the interest rate more into line with current comparable rates.

**EFFECTIVE DATE:** January 1, 1981.

**FOR FURTHER INFORMATION CONTACT:** Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975. The Final Impact Analysis relative to this action is available on request from the above named individual.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and is classified "not significant." Notice was published in the October 29, 1980, issue of the **Federal Register** (45 F.R. 71571) that the Department was considering a proposal to change the interest rate charged handlers for delinquent assessments from one percent to one and one-half percent per month. A 15-day comment period was provided. No comments were received.

This action was unanimously recommended by the Cherry Administrative Board under § 930.41(b) of marketing Order No. 930 (7 CFR Part 930). The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Board is the agency established under the order to administer its terms and conditions. Under the marketing order, the Board may charge interest on assessments not paid by handlers within a prescribed time after billing. The current interest charge of one percent per month on the unpaid balance has been in effect since 1972. This action will revise the charge to one and one-half percent per month to reflect a rate more in line with current comparable rates.

It is hereby found that this action will tend to effectuate the declared policy of the act. Therefore, paragraph (b) of § 930.107 Subpart—Rules and Regulations (7 CFR 930.101–930.591) is revised to read as follows:

**§ 930.107 Assessment procedure.**

* * * * *

(b) Each handler shall pay interest of one and one-half percent per month on any unpaid balance beginning 30 days after date of billing.

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

Dated: November 21, 1980, to become effective January 1, 1981.

**D. S. Kuryloski,**
*Deputy Director Fruit and Vegetable Division, Agricultural Marketing Service.*

[FR Doc. 80–36938 Filed 11–25–80; 8:45 am]
BILLING CODE 3410-02-M

### 7 CFR Part 966

### Tomatoes Grown in Florida; Approval of Amendment No. 1 to Handling Regulation

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This amendment extends through June 13, 1981, the minimum grade, size, pack, container, marking and inspection requirements effective from October 12 through November 30, 1980, for tomatoes grown in certain counties in Florida. It promotes orderly marketing of such tomatoes and keeps less desirable sizes and qualities from being shipped to consumers.

**EFFECTIVE DATE:** December 1, 1980.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Porter, Chief, Vegetable Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–2615. The Final Impact Statement relative to this final rule is available on request from Mr. Porter.

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

Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR Part 966) regulate the handling of tomatoes grown in designated counties of Florida. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The Florida Tomato Committee, established under the order, is responsible for its local administration.

Notice of proposed rulemaking was published in the October 20, 1980, **Federal Register** (45 FR 69245) inviting comments by November 19, 1980. None was filed.

The amendment is based upon recommendations made by the committee at its public meeting in Palm Beach, Florida, on September 5, 1980.

The recommendations of the committee reflect its appraisal of the composition of the 1980-81 crop of Florida Tomatoes and the marketing prospects for this season. The regulation

is similar to those issued during past seasons and to the temporary regulation in effect during October 12 through November 30, 1980. The grade and size requirements are necessary to prevent tomatoes of lower quality and undesirable size from being distributed in fresh market channels. Such tomatoes are usually of negligible economic value to producers. This will provide consumers with tomatoes of good quality and size throughout the season consistent with the overall quality of the crop. During past seasons, some problems were encountered in properly sizing varieties that have a tendency towards an oblong shape when grown under unfavorable weather conditions. This season, as in the previous one, a 2/32 inch overlap of sizes is permitted to help alleviate the problem. The requirements, including those of containers, container net weights, and size classifications, are intended to standardize shipments in the interest of orderly marketing and to improve returns to growers.

Exceptions are provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable. Shipments may be allowed to certain special purpose outlets without regard to minimum grade, size, container or inspection requirements provided that safeguards are used to prevent such tomatoes from reaching unauthorized outlets. Tomatoes for canning are exempt under the legislative authority for this part. Since no purpose would be served by regulating tomatoes used for relief, experimental or charity purposes such shipments are also exempt. Because export requirements differ materially, on occasion, from domestic market requirements such shipments are exempt.

The following types of tomatoes are exempt from these regulations: elongated types commonly referred to as pear shaped or paste tomatoes, cerasiform type tomatoes commonly referred to as cherry tomatoes, hydroponic tomatoes and greenhouse tomatoes. Such types are generally of good quality, readily identifiable either by their distinctive shapes or container markings and usually comprise a very small part of the total crop. Only tomatoes shipped outside the regulated area are being regulated because of an increase in the U-pick type of harvest in Florida production areas close to urban areas and resulting difficulty in obtaining compliance with regulations. The minimum quantity exemption permits persons to handle up to 60 pounds of tomatoes per day without regard to the requirements of this part. This reduces the problem of enforcement on small shipments of essentially noncommercial nature. The requirements concerning special pack shipments are intended to help handlers in the production area compete on an equal basis with those outside the area by not requiring reinspection of previously inspected and certified tomatoes when repacked in consumer size packages.

Occasionally individual fruit of several new varieties, including Flora-Dade, may be elongated in shape. This characteristic may be exaggerated by adverse growing conditions. It is anticipated that handlers packing these varieties usually will be able to comply with all provisions of the regulation. However, if situations arise in which the incidence of tomatoes not of the normal globular shape makes sizing in accordance with present grade standards infeasible, the affected varieties may be exempted from the size requirements of the regulation.

*Findings.* After consideration of all relevant matters presented, including the above proposal recommended by the Florida Tomato Committee, established pursuant to said marketing agreement and order, it is hereby found and determined that the amendment to the handling regulation, as hereinafter set forth, will tend to effectuate the declared policy of the act.

It is hereby further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (5 U.S.C. 553) and that (1) shipments of the 1980–81 crop tomatoes grown in the production area have begun and the regulation should become effective on the effective date herein to maximize benefits to producers; (2) information regarding the provisions of the recommendation by the committee has been disseminated among the growers and handlers of tomatoes in the production area; (3) a temporary regulation with identical requirements is effective for the period October 12 through November 30, 1980; and (4)

compliance with this section should not require any special preparation on the part of handlers subject thereto which cannot be completed by such effective date.

Section 966.319 (45 FR 67298, October 10, 1980) is amended as follows:

**§ 966.319 Handling regulation.**

During the period December 1, 1980, through June 13, 1981, no person shall handle any lot of tomatoes for shipment outside the regulated area unless they meet the requirements of paragraph (a) of this section or are exempted by paragraphs (b) or (d) of this section.

(a) *Grade, size, container and inspection requirements.*—(1) *Grade.* Tomatoes shall be graded and meet the requirements specified for U.S. No. 1, U.S. Combination, U.S. No. 2, or U.S. No. 3, of the U.S. Standards for Grades of Fresh Tomatoes. When not more than 15 percent of tomatoes in any lot fail to meet the requirements of U.S. No. 1 grade and not more than one-third of this 15 percent (or 5 percent) are comprised of defects causing very serious damage including not more than one percent of tomatoes which are soft or affected by decay, such tomatoes may be shipped and designated as at least 85 percent U.S. No. 1 grade.

(2) *Size.* (i) Tomatoes shall be at least $2\frac{3}{32}$ inches in diameter and be sized in one or more of the following ranges of diameters. Measurement of diameters shall be in accordance with the methods prescribed in § 2851.1859 of the U.S. Standards for Grades of Fresh Tomatoes.

| Size Classification | Inches | |
|---|---|---|
| | Minimum diameter | Maximum diameter |
| 7x7 | $2\frac{3}{32}$ | $2\frac{9}{32}$ |
| 6x7 | $2\frac{7}{32}$ | $2\frac{17}{32}$ |
| 6x6 | $2\frac{15}{32}$ | $2\frac{28}{32}$ |
| 5x6 and larger | $2\frac{26}{32}$ | |

(ii) Tomatoes of designated sizes may not be commingled unless they are over $2\frac{15}{32}$ inches in diameter and each container shall be marked to indicate the designated size.

(iii) Only numerical terms may be used to indicate the above listed size designations on containers of tomatoes, except when tomatoes are commingled the containers can be marked 6x6 & Lgr. or 5x6 & Lgr.

(iv) To allow for variations incident to proper sizing, not more than a total of ten (10) percent, by count, of the tomatoes in any lot may be smaller than the specified minimum diameter or larger than the maximum diameter.

(3) *Containers.* (i) Tomatoes shall be packed in containers of 20, 30 or 40 pounds designated net weights and comply with the requirements of § 2851.1863 of the U.S. tomato standards.

(ii) Each container shall be marked to indicate the designated net weight and must show the name and address of the shipper in letters at least one-fourth (¼) inch high.

(iii) If the container in which the tomatoes are packed is not clean and bright in appearance without marks, stains, or other evidence of previous use, the lid of such container shall be marked in a principal display area at least 2½ inches high and 4¼ inches long with the words "USED BOX" in letters not less than 1¼ inches high and the name of the shipper and point of origin in letters not less than ⅜ inch high.

(4) *Inspection.* Tomatoes shall be inspected and certified pursuant to the provisions of § 966.60. Each handler who applies for inspection shall register with the committee pursuant to § 966.113. Handlers shall pay assessments as provided in § 966.42. Evidence of inspection must accompany truck shipments.

(b) *Special purpose shipments.* The requirements of paragraph (a) of this section shall not be applicable to shipments of tomatoes for canning, experimental purposes, relief, charity or export if the handler thereof complies with the safeguard requirements of paragraph (c) of this section. Shipments for canning are also exempt from the assessment requirements of this part.

(c) *Safeguards.* Each handler making shipments of tomatoes for canning, experimental purposes, relief, charity or export in accordance with paragraph (b) of this section shall:

(1) Apply to the committee and obtain a Certificate of Privilege to make such shipments.

(2) Prepare on forms furnished by the committee a report in quadruplicate on such shipments authorized in paragraph (b) of this section.

(3) Bill or consign each shipment directly to the designated applicable receiver.

(4) Forward one copy of such report to the committee office and two copies to the receiver for signing and returning one copy to the committee office. Failure of the handler or receiver to report such shipments by signing and returning the applicable report to the committee office within ten days after shipment may be cause for cancellation of such handler's certificate and/or receiver's eligibility to receive further shipments pursuant to such certificate. Upon cancellation of any such certificate, the handler may appeal to the committee for reconsideration.

(d) *Exemption*—(1) *For types.* The following types of tomatoes are exempt from this regulation: Elongated types commonly referred to as pear shaped or paste tomatoes and including but not limited to San Marzano, Red Top and Roma varieties; cerasiform type tomatoes commonly referred to as cherry tomatoes; hydroponic tomatoes; and greenhouse tomatoes.

(2) *For minimum quantity.* For purposes of this regulation each person subject thereto may handle up to but not to exceed 60 pounds of tomatoes per day without regard to the requirements of this regulation but this exemption shall not apply to any shipment or any portion thereof of over 60 pounds of tomatoes.

(3) *For special packed tomatoes.* Tomatoes which met the inspection requirements of paragraph (a)(4) of this section which are resorted, regraded and repacked by a handler who has been designated as a "Certified Tomato Repacker" by the committee are exempt from (i) the tomato grade classifications of paragraph (a)(1), (ii) the size classifications of paragraph (a)(2) except that the tomatoes shall be at least $2\frac{3}{32}$ inches in diameter and (iii) the container weight requirements of paragraph (a)(3).

(4) *For varieties.* Upon recommendation of the committee, varieties of tomatoes that are elongated or otherwise misshapen due to adverse growing conditions may be exempt by the Secretary from the provisions of paragraph (a)(2) *Size.*

(e) *Definitions.* "Hydroponic tomatoes" means tomatoes grown in solution without soil; "greenhouse tomatoes" means tomatoes grown indoors. A "Certified Tomato Repacker" is a repacker of tomatoes in the regulated area who has the facilities for handling, regrading, resorting and repacking tomatoes into consumer size packages and has been certified as such by the committee. "U.S. tomato standards" means the revised United States Standards for Grades of Fresh Tomatoes (7 CFR 2851.1855–2851.1877), effective December 1, 1973, as amended, or variations thereof specified in this section. Other terms in this section shall have the same meaning as when used in Marketing Agreement No. 125, as amended, and this part, and the U.S. tomato standards.

(f) *Applicability to imports.* Under Section 8e of the act and Section 980.212 "Import regulations" (7 CFR 980.212) tomatoes imported during the effective period of this section shall be at least U.S. No. 3 grade and at least $2\frac{3}{32}$ inches in diameter. Not more than 10 percent,

by count, in any lot may be smaller than the minimum specified diameter.

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

Dated November 21, 1980 to become effective December 1, 1980.

**D. S. Kuryloski,**

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

[FR Doc. 80-36939 Filed 11-25-80; 8:45 am]

BILLING CODE 3410-02-M

## Commodity Credit Corporation

## 7 CFR Part 1493

[Amdt. 1]

## Export Credit Guarantee Program (GSM-102); Guaranteeing Against Defaults by Foreign Banks

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the CCC Export Credit Guarantee Program—Subpart A—Guaranteeing Against Defaults by Foreign Banks (7 CFR Part 1493) to make it clear that (1) CCC will not, for any actions, omissions or statements made by an exporter over which the assignee has not control, reduce its liability or annul its coverage under a payment guarantee to an assignee for any commodities shipped, and (2) CCC will not withhold any portion of the proceeds that may become due and payable to the assignee under the payment guarantee even if an exporter has obtained other coverage for such loss.

**EFFECTIVE DATE:** November 25, 1980. Comments by January 26, 1981.

**FOR FURTHER INFORMATION CONTACT:** L. T. McElvain or Thomas Pomeroy, Export Credits, Foreign Agricultural Service, U.S. Department of Agriculture, 14th Street and Independence Avenue SW, Washington, D.C. 20250, telephone (202) 447–3224. Actions of this kind were anticipated under the provisions of 7 CFR Part 1493 and are specifically considered in the Final Impact Statement prepared for that part. That Final Impact Statement which describes the options considered in developing this final rule and the impact of implementing each option is available on request from the above named individuals.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 120446, and has been classified as "not significant".

Kelly M. Harrison, General Sales Manager, FAS has determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this final action because CCC has received a number of inquiries from state and national banks concerning the assignee's protection under the CCC Export Guarantee Program.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedures with respect to this emergency final action are impracticable and contrary to the public interest, and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the **Federal Register.** Comments have been solicited for 60 days after publication of this document, and this emergency final action will be scheduled for review so that a final document discussing comments received and any amendment required can be published in the **Federal Register** as soon as possible.

The amendment will make clear to assignees of payment guarantees that, where commodities have been exported, CCC does not intend to hold them responsible or take any action or raise any defense against any assignee for any action, omission or statement made by an exporter, over which the assignee has no control, provided the exporter submits the report required under 7 CFR 1493.7 and the exporter or the assignee provides the statements and documents specified in Section 1493.8. However, CCC still retains its rights to annul the payment guarantee with respect to commodities which have not been shipped in the situation above-described.

The amendment will also assure that CCC will not withhold any portion of the amount due from CCC to the assignees under CCC's payment guarantee where the exporter has obtained other coverage for the same loss. CCC's rights are protected in this regard since the exporter is required under Section 1493.10 to turn over to CCC any monies received from any source for the defaulted payment.

Accordingly, 7 CFR Part 1493, CCC Export Credit Guarantee Program (GSM-102), Subpart A—Guaranteeing Against Defaults by Foreign Banks, is amended as follows:

Section 1493.9 is amended by revising paragraph (b) and adding a new paragraph (d) to read as follows:

**§ 1493.9 Payment of loss.**

* * * * *

(b) CCC's maximum liability will be limited to the lesser of (1) the guaranteed value as shown in the payment guarantee plus eligible interest or (2) the percentage of the exported value as specified in the payment guarantee plus eligible interest.

* * * * *

(d) Notwithstanding any other provision of the regulations set forth in this Subpart to the contrary, with regard to commodities shipped to which the payment guarantee is applicable CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission or statement by the exporter over which the assignee has no control provided that (1) the exporter complies with the reporting requirements under § 1493.7 and (2) the exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.8.

(Sec. 5(f), 62 Stat. 1072 (15 U.S.C. 714c(f)))

Signed at Washington, D.C. on November 18, 1980.

**Fred C. Welz,**

*Acting Vice President, Commodity Credit Corporation and General Sales Manager, Foreign Agricultural Service.*

[FR Doc. 80-36891 Filed 11-25-80; 8:45 am]

BILLING CODE 3410-10-M

## Animal and Plant Health Inspection Service

## 9 CFR Part 82

## Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Area Released From Quarantine

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this amendment is to release a portion of Harris County in Texas, from areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the area quarantined.

**EFFECTIVE DATE:** November 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

**SUPPLEMENTARY INFORMATION:** This amendment excludes a portion of Harris County in Texas, from the areas quarantined because of exotic Newcastle disease under the regulations

in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect.

In § 82.3(a)(3), relating to the State of Texas, paragraph (v) relating to the premises of Exotex, Inc., (David Allen), 5720 Bingle Road, Houston, Harris County is deleted.

* * * * *

(Secs. 4–7. 23 Stat. 32, as amended; secs. 1 and 2, 32 stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

This amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the Federal Register.

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by E. C. Sharman, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C. this 20th day of November, 1980.

**Norvan L. Meyer,**

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 36868 Filed 11–25–80; 8:45 am]

BILLING CODE 3410-34-M

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## 9 CFR Part 82

### Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Area Relased From Quarantine

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of this amendment is to release a portion of Hawaii County in Hawaii, from areas quarantined because of exotic Newcastle disease. Surveillance activity indicates that exotic Newcastle disease no longer exists in the area quarantined.

**EFFECTIVE DATE:** November 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301–436–8073.

**SUPPLEMENTARY INFORMATION:** This amendment excludes a portion of Hawaii County in Hawaii, from the areas quarantined because of exotic Newcastle disease under the regulations in 9 CFR Part 82, as amended. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah and psittacine birds, and birds of all other species under any form of confinement, and their carcasses and parts thereof, and certain other articles from quarantined areas, as contained in 9 CFR Part 82, as amended, will not apply to the excluded area.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respect.

In § 82.3(a)(13), relating to the State of Hawaii, paragraph (i) relating to the premises of Avian Distributions, Inc., (John L. Sobel), Makuu Road, Keaau, Hawaii County is deleted.

* * * * *

(Secs. 4–7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; secs. 1–4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111–113, 115, 117, 120, 123–126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

This amendment relieves certain restrictions no longer deemed necessary to prevent the spread of exotic Newcastle disease, and must be made effective immediately to be of maximum benefit to affected persons. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the Federal Register.

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by E. C. Sharman, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 20th day of November 1980.

**Norvan L. Meyer,**

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 80–36739 Filed 11–25–80; 8:45 am]

BILLING CODE 3410-34-M

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## NUCLEAR REGULATORY COMMISSION

## 10 CFR Part 72

### Licensing Requirements for the Storage of Spent Fuel in an Independent Fuel Spent Storage Installation; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** In a Federal Register document published on November 12, 1980 (45 FR 74693), the NRC added a new Part 72 to its regulations to cover the specific licensing requirements for the storage of spent fuel in an independent spent fuel storage installation (ISFSI). The effective date was inadvertently printed as November 28, 1980. This document corrects the

error and publishes the effective date of December 12, 1980.

**DATE:** Part 72 is effective December 12, 1980.

**FOR FURTHER INFORMATION CONTACT:** John D. Philips, Chief, Rules and Procedures, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-7086.

Dated at Bethesda, Maryland this 20th day of November, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 80-36883 Filed 11-26-80; 8:45 am]

BILLING CODE 7590-01-M

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## FEDERAL RESERVE SYSTEM

### 12 CFR Part 201

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

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Final rule.

**SUMMARY:** The Board of Governors has amended its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of adjusting discount rates with a view to accommodating commerce and business in accordance with other related rates and the general credit situation of the country. In addition, the Board adopted a surcharge of 2 percentage points on frequent use of the discount window by large borrowers.

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

**FOR FURTHER INFORMATION CONTACT:** Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-3257).

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

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

1. Section 201.51 is revised to read as follows:

**§ 201.51 Short term adjustment credit for depository institutions.**

The rates for short term adjustment credit provided to depository institutions § 201.3(a) of Regulation A are:

| Federal Reserve Bank of— | Rate | Effective |
|---|---|---|
| Boston | 12 | Nov. 17, 1980. |
| New York | 12 | Nov. 17, 1980. |
| Philadelphia | 12 | Nov. 17, 1980. |
| Cleveland | 12 | Nov. 17, 1980. |
| Richmond | 12 | Nov. 17, 1980. |
| Atlanta | 12 | Nov. 17, 1980. |
| Chicago | 12 | Nov. 17, 1980. |
| St. Louis | 12 | Nov. 17, 1980. |
| Minneapolis | 12 | Nov. 17, 1980. |
| Kansas City | 12 | Nov. 17, 1980. |
| Dallas | 12 | Nov. 17, 1980. |
| San Francisco | 12 | Nov. 17, 1980. |

A 2 percent surcharge is imposed additionally on borrowings for short-term adjustment purposes of institutions with deposits of $500 million or more.

2. Section 201.52 is revised to read as follows:

**§ 201.52 Extended credit to depository institutions.**

(a) The rates for seasonal credit to depository institutions under § 201.3(b)(1) of Regulation A are:

| Federal Reserve Bank of— | Rate | Effective |
|---|---|---|
| Boston | 12 | Nov. 17, 1980. |
| New York | 12 | Nov. 17, 1980. |
| Philadelphia | 12 | Nov. 17, 1980. |
| Cleveland | 12 | Nov. 17, 1980. |
| Richmond | 12 | Nov. 17, 1980. |
| Atlanta | 12 | Nov. 17, 1980. |
| Chicago | 12 | Nov. 17, 1980. |
| St. Louis | 12 | Nov. 17, 1980. |
| Minneapolis | 12 | Nov. 17, 1980. |
| Kansas City | 12 | Nov. 17, 1980. |
| Dallas | 12 | Nov. 17, 1980. |
| San Francisco | 12 | Nov. 17, 1980. |

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

| Federal Reserve Bank of— | Rate | Effective |
|---|---|---|
| Boston | 13 | Nov. 17, 1980. |
| New York | 13 | Nov. 17, 1980. |
| Philadelphia | 13 | Nov. 17, 1980. |
| Cleveland | 13 | Nov. 17, 1980. |
| Richmond | 13 | Nov. 17, 1980. |
| Atlanta | 13 | Nov. 17, 1980. |
| Chicago | 13 | Nov. 17, 1980. |
| St. Louis | 13 | Nov. 17, 1980. |
| Minneapolis | 13 | Nov. 17, 1980. |
| Kansas City | 13 | Nov. 17, 1980. |
| Dallas | 13 | Nov. 17, 1980. |
| San Francisco | 13 | Nov. 17, 1980. |

3. Section 201.53 is revised to read as follows:

**§ 201.53 Emergency credit for other than depository institutions.**

The rates for emergency credit to individuals, partnerships, or corporations other than depository institutions under § 201.3(c) of Regulation A are:

| Federal Reserve Bank of— | Rate | Effective |
|---|---|---|
| Boston | 15 | Nov. 17, 1980. |
| New York | 15 | Nov. 17, 1980. |
| Philadelphia | 15 | Nov. 17, 1980. |
| Cleveland | 15 | Nov. 17, 1980. |
| Richmond | 15 | Nov. 17, 1980. |
| Atlanta | 15 | Nov. 17, 1980. |
| Chicago | 15 | Nov. 17, 1980. |
| St. Louis | 15 | Nov. 17, 1980. |
| Minneapolis | 15 | Nov. 17, 1980. |
| Kansas City | 15 | Nov. 17, 1980. |
| Dallas | 15 | Nov. 17, 1980. |
| San Francisco | 15 | Nov. 17, 1980. |

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

By order of the Board of Governors, November 19, 1980.

Jefferson A. Walker,

*Assistant Secretary of the Board.*

[FR Doc. 80-36894 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 741

[IRPS 80-11]

### Statement of Interpretation and Policy; State Chartered Federally Insured Credit Unions As Most Favored Lenders

**AGENCY:** National Credit Union Administration.

**ACTION:** Statement of interpretation and policy.

**SUMMARY:** This document states that Section 205(g)(1) of the Federal Credit Union Act grants most favored lender status to a state chartered federally insured credit union. It also states that Section 205(g)(1) applies only when a credit union is granting a loan other than a first mortgage loan, a business loan of $1,000 or more, or an agricultural loan of $1,000 or more. As a result, when the interest rate a credit union could normally charge on such a loan is less than one percent over the discount rate for 90-day commercial paper, the credit union can charge an interest rate of up to one percent plus the discount rate *or* it can charge any interest rate any other lender (such as a bank or a savings and loan association) could charge on the same loan under state law. This interpretation and policy statement is being issued in response to requests

from a credit union and a trade association.

**EFFECTIVE DATE:** November 19, 1980.

**ADDRESS:** National Credit Union Administration, 1776 G Street, NW., Washington, D.C. 20456.

**FOR FURTHER INFORMATION CONTACT:** John L. Culhane, Jr., Attorney Advisor, Office of General Counsel, at the above address. Telephone: (202) 357-1030.

**SUPPLEMENTARY INFORMATION:** Under the National Bank Act, a national bank is authorized to charge interest at the rate allowed by the laws of the state where it is located *or* 1 percent in excess of the discount rate on 90-day commercial paper in effect at the Federal reserve district where it is located, whichever is greater, 12 U.S.C. 85. Because national banks can under certain circumstances charge any rate allowed to any other lender under state law, they have been said to have most favored lender status.

Recently, the Office of General Counsel of the Federal Home Loan Bank Board ruled that Section 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 also grants most favored lender status to federally insured savings and loan associations. After this ruling was issued, a credit union and a trade association asked NCUA to review Section 205(g)(1) of the Federal Credit Union Act to determine if a state chartered federally insured credit union also has most favored lender status.

Section 205(g)(1) was added to the Federal Credit Union Act by Title V of the Depository Institutions Deregulation and Monetary Control Act of 1980. Title V contains three parts overriding state usury laws. Part A applies to first mortgage loans. As amended, Part B applies to business and agricultural loans on $1,000 or more. Part C applies to all other loans. Under Part C, Section 523 amended the Federal Credit Union Act by adding Section 205(g)(1). 12 U.S.C.A. 1785(g)(1).

Section 205(g)(1) reads as follows:

> If the applicable rate prescribed in this subsection exceeds the rate an insured credit union would be permitted to charge in the absence of this subsection, such credit union may, notwithstanding any State, constitution or statute which is hereby preempted for the purposes of this subsection, take, receive, reserve, and charge on any loan, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve District where such insured credit union is located or at the rate allowed by the laws of the State, territory, or district where such credit union is located, whichever may be greater.

The first question, then, is how should the phrase "the applicable rate prescribed in this subsection," be interpreted. Although the phrase is not entirely clear, NCUA believes the rate referred to is one percent over the discount rate for 90-day commercial paper. That rate is the only rate specifically set out in the Section 205(g)(1). As a result, if the interest rate a state chartered federally insured credit union could normally charge on a loan is *less* than one percent over the discount rate for 90-day commercial paper, then the credit union can either charge up to one percent over the discount rate *or* "the rate allowed by the laws of the State, territory, or district where the credit union is located."

The next question, then is how should the phrase "the rate allowed by the laws of the State . . . where the [financial institution] is located" be interpreted. Under the National Bank Act, such language has been interpreted as granting most favored lender status to the financial institution. *See Tiffany* v. *National Bank of Missouri,* 85 U.S. 409, 413 (1974), *cited with approval, Marquette National Bank* v. *First Omaha Corp.,* 439 U.S. 299, 314 (1978).

Another interpretation would be that the "rate allowed" is the same as the rate "permitted," i.e. the "rate allowed" is the interest rate that normally applies to loans made by a state chartered federally insured credit union under state law (for example, the interest rate set out in the state credit union act). Under this interpretation the credit union could charge either the interest rate it normally charges on loans under state law or up to one percent over the discount rate on 90-day commercial paper. However, NCUA believes that interpreting the phrase "rate allowed" to grant most favored lender status to state chartered federally insured credit unions is the better interpretation.

Under the most favored lender interpretation a credit union has the option to charge up to one percent over the discount rate or to charge the same rate any other lender (such as a bank or a savings and loan association) could charge on the loan under state law. Such an interpretation is more consistent with the language of Section 205(g)(1); it would give meaning to the final clause, "whichever may be greater." The different options are only triggered if the "rate permitted" is less than one percent over the discount rate, but this rate would always be the lesser if the "rate permitted" and the "rate allowed" are the same. The phrase "whichever may be greater" is redundant unless unless the "rate allowed" is different from the "rate permitted."

Not only does the statutory language support this interpretation, but so does the legislative history. Even though the legislative history of Section 205(g)(1) is sparse, there is some indication that Congress intended to grant most favored lender status to state chartered federally insured credit unions. In discussing the Conference Report on H.R. 4986, Senator Bumpers expressed his approval of the provisions permitting state chartered federally insured credit unions to charge either 1 percent over the discount rate or the rate permitted by state law (if that rate is higher), notwithstanding state usury laws. He indicated he supported the change because it would remove the competitive advantage National banks have by virtue of the most favored lender status they enjoy under 12 U.S.C. 85. 126 Cong. Rec. S 3177 (daily ed. March 27, 1980).

For these reasons, NCUA has determined to interpret Section 205(g)(1) to grant most favored lender status to state chartered federally insured credit unions. In reaching this decision NCUA is also mindful of the fact that as of August 1, 1980 one state had authorized an interest rate ceiling of 10 percent for its state chartered credit unions, at least ten states had authorized interest rate ceilings for state chartered credit unions of 15 percent or less, and one other state authorized an interest rate ceiling of 16 percent.

State chartered federally insured credit unions are cautioned that a different Section, Section 525 of the Depository Institutions Deregulation and Monetary Control Act of 1980, permits a state to elect not to have Section 205(g)(1) apply in that state. Before granting loans under the authority of this interpretive ruling, a state credit union should contact the state supervisory agency to determine whether or not Section 205(g)(1) has been superceded.

**Text of Statement of Interpretation and Policy [IRPS 80-11]**

Section 205(g)(1) of the Federal Credit Union Act states that:

> If the applicable rate prescribed in this subsection exceeds the rate an insured credit union would be permitted to charge in the absence of this subsection, such credit union may, notwithstanding any State constitution or statute which is hereby preempted for the purposes of this subsection, take, receive, reserve, and charge on any loan, interest at a rate of not more than 1 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve District where the insured credit union is located or at the rate allowed by the laws of the State,

territory, or district where such credit union is located, whichever may be greater.

NCUA interprets this Section to grant most favored lender status to state chartered federally insured credit unions. Whenever one per centum in excess of the discount rate on ninety-day commercial paper at the Federal Reserve bank in the Federal Reserve District where such credit union is located is higher than the interest rate the credit union could normally charge on any loan (other than a mortgage loan, a business loan of $1000 or more, or an agricultural loan of $1000 or more), then the credit union has two options. The credit union may charge either up to one per centum in excess of that discount rate *or* it may charge any rate any other lender could charge on that loan under state law, whichever is greater.

**Rosemary Brady,**
*Secretary, NCUA Board.*
November 21, 1980.

[FR Doc. 80-36890 Filed 11-25-80; 8:45 am]

BILLING CODE 7535-01-M

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## FEDERAL TRADE COMMISSION

### 16 CFR Part 1

### Oral Presentations Before the Commission and Communications With Commissioners and Their Staffs in Trade Regulation Rulemaking Proceedings

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rules.

**SUMMARY:** The Federal Trade Commission amends its procedures governing oral presentations before the Commission and communications with Commissioners and their staffs in trade regulation rulemaking proceedings in accordance with the provisions of section 18 of the FTC Act, as amended by section 12 of the FTC Improvements Act of 1980, Pub. L. No. 96-252.

**EFFECTIVE DATE:** These rules are effective on November 24, 1980.

**FOR FURTHER INFORMATION CONTACT:** Jerome Tintle, (202) 523-3487, Office of General Counsel, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

**SUPPLEMENTARY INFORMATION:** On July 31, 1980 (at 45 FR 50814), the Commission published for comment proposed amendments to Commission Rules 1.13(i) and 1.18 (a) and (c) implementing the provisions of Section 18 of the FTC Act, as amended by Section 12 of the FTC Improvements Act of 1980, Pub. L. No. 96-252. Interested parties were given until September 29, 1980, later extended to October 20, 1980 (45 FR 67359), to submit written comments. After reviewing the comments, the Commission has determined to promulgate as final rules the proposed amendments with a revision of Rule 1.18(a) as suggested by the comments.

#### Communications by Outside Parties

(1) Two comments object to the Commission's proposal to retain in Rule 1.18(c)(1) the provision requiring the placement of timely oral communications on the rulemaking record and untimely ones on the public record. The objection is based upon the language of subsection 18(j) of the FTC Act which states that transcriptions or summaries of meetings with outside parties "shall be * * * included in the rulemaking record."

In its July 31, 1980, Notice, the Commission noted that a literal interpretation of subsection 18(j) could result in the placement on the rulemaking record of communications which, if made in the course of the proceeding, would be untimely, thereby subverting the orderly rulemaking process. 45 FR at 50815. It further observed that the problem of untimely communications could be resolved by a rule limiting the period for meetings between Commissioners and outside parties to the initial comment period—an approach which would substantially reduce the period of time now available for such meetings. *Id.* One comment also objects to the latter approach on the grounds that it would conflict with Congress' intent "to encourage the Commissioners to meet with outside parties." Report of the Senate Committee on Commerce, Science, and Transportation on S. 1991, S. Rep. No. 96-500, 96th Cong., 1st Sess. 22 (1979) (hereinafter cited as "Senate Report").

The Commission continues to believe that the more reasonable alternative would be to interpret subsection 18(j) as requiring placement of communications from outside parties on the rulemaking record when appropriate. We find no indication in the legislative history that Congress intended subsection 18(j) to afford outside parties the opportunity to submit information for the record after established deadlines and thereby subvert the orderly rulemaking process and create a privileged status for meetings between Commissioners and outside parties. On the contrary, the legislative history of subsection 18(j) indicates that Congress intended to make the Commission's current rules governing *ex parte* contacts by outside parties "statutory." Senate Report at 4 and 22.[1] Accordingly, Rule 1.18(c)(1) retains the provisions specifying that oral communications will be placed on the rulemaking record only if they comply with the applicable requirements for written submissions at that stage of the proceeding, and that noncomplying oral communications will be placed on the public record.

(2) One comment suggests that the advance notice requirement of proposed Rule 1.18(c)(1)(ii) be restricted to face-to-face communications between a Commissioner and outside parties. The rationale given is that subsection 18(j) speaks only in terms of "meetings" between Commissioners and outside parties and that to impose the requirement upon other forms of oral communications (such as by telephone) would be contrary to Congress' intent. The Commission disagrees. The advance notice requirement of subsection 18(j) is intended to enable Commissioners to meet with outside parties "[w]ithout the fear that they may be susceptible to charges of improper ex parte *contacts.*" Senate Report at 22 (emphasis added). The Senate Report's reference to "contacts" clearly suggests that Congress intended subsection 18(j) to apply to any oral communication, whether face-to-face or otherwise. A restrictive interpretation of the term "meeting" would defeat the purpose for which Congress imposed the advance notice requirement.

(3) The comments concerning the alternative methods for recording meetings with outside parties vary. One recommends that all meetings be transcribed verbatim. Others favor summaries in all cases. One suggests that the rules be amended to provide for verbatim transcription only in exceptional cases and to require persons seeking contact with Commissioners to bring a summary with them. The Commission has determined to retain both options as proposed and not to amend the rules to limit verbatim transcription to exceptional cases. The Commission also believes that in cases where Commissioners determine to

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[1] The Senate Report at page 22 describes the Commission's rules which were in effect at that time as requiring meetings with outside parties to be "on the record." We assume, however, that when the Senate Committee on Commerce, Science, and Transportation wrote its report on S. 1991 in November 1979, it knew that the Commission's rules, which had been promulgated in March 1979 (44 FR 16366-68 (Mar. 19, 1979)), permitted only timely communications to be placed on the rulemaking record and required untimely ones to be placed on the public record. Hence, the Committee's use of the phrase "on the record" in that context must refer to the Commission's then existing practice of placing timely communications on the rulemaking record and untimely communications on the public record.

permit summaries, the substance of a meeting is best summarized after the meeting, although an individual Commissioner may at his or her discretion require a summary to be submitted by the outside party in advance of, or at the time of, the meeting.

(4) One comment recommends that the rules be amended to provide an exception to the notice and recordation requirements where an oral communication unexpectedly occurs in the course of a chance encounter (*e.g.*, at professional or social functions) and where the outside party does not intend to circumvent the rules. The Commission believes that the exception would be impractical to implement since its application would depend upon a Commissioner's knowing the intent of the outside party. The Commission acknowledges the possibility of chance encounters with persons who are unaware of the limitations on communications about a rulemaking proceeding and the possibility that such persons may say something of relevant substance before the Commissioner can alert him or her to the limitations. In such instances, the Commissioner will make every effort to cut off inadvertent oral communication and determine whether anything of relevance to the merits of the rulemaking proceeding was communicated and thus should be recorded.

**Communications by Commission Staff Members**

(1) Several comments suggest that proposed Rule 1.18(c)(2) be amended to require the disclosure of all *ex parte* communications from the rulemaking staff, charging either that proposed Rule 1.18(c)(2)'s adoption *in haec verba* of the language of subsection 18(k) defeats the purpose of the subsection or that the Commission's interpretation of subsection 18(k) is far more restrictive than Congress intended. Other comments support proposed Rule 1.18(c)(2) and suggest that the Commission expand and clarify its explanation for the proposed rule.

Comments opposed to proposed Rule 1.18(c)(2) rely upon certain statements contained in the Senate Report to the effect that S. 1991 would require "any" meeting between Commissioners and the rulemaking staff to be "on the record," Senate Report at 4, and that it was "intended to treat the staff and other persons equally for the purpose of ex parte contacts * * *." Senate Report at 23. However, those statements pertain to a provision of S. 1991 that was dropped by the Senate in favor of the much less restrictive provision of subsection 18(k). The statements therefore do not reflect the intent of Congress in adopting the latter.

The version of S. 1991 introduced by Senator Ford on November 8, 1979,[2] and reported out by the Senate Committee on Commerce, Science, and Transportation on November 20, 1979, included a provision which would have required the Commission to promulgate a rule prescribing disclosure of "any communication relevant to the merits" of a rulemaking proceeding from a member of the rulemaking staff to a Commissioner. 125 Cong. Rec. S16486 (daily ed. Nov. 9, 1979); S. 1991, 96th Cong., 1st Sess. § 11 (1979).

In December 1979, however, Senator Ribicoff introduced an amendment to S. 1991 which would substitute for the broad restriction on intra-agency communications a provision requiring disclosure only of a staff communication of "any fact relevant to the merits" of the rulemaking proceeding "that is not on the rulemaking record." 125 Cong. Rec. S19069 (daily ed. Dec. 18, 1979). During consideration of S. 1991 by the full Senate, Senator Ford on February 7, 1980, offered an amendment to S. 1991 that was substantially identical to Senator Ribicoff's and he explained that the amendment "would require that when the Commissioners communicate with the rulemaking staff *on matters not in the record* concerning a pending rulemaking that a summary of those conversations be kept." 126 Cong. Rec. S1231 (daily ed. Feb. 7, 1980) (emphasis added). Senator Ribicoff, noting that Senator Ford had agreed to his amendment, stated that the amendment would "[l]imit the ex parte restrictions on communications between Commissioners and staff *to those matters which are new and not already on the public record.*" 126 Cong. Rec. S1232 (daily ed. Feb. 7, 1980) (italic added).

The narrow restriction on intra-agency *ex parte* contacts was thereupon adopted by the Senate as part of its amendments to H.R. 2313.[3] *Id.* The provision as passed by the Senate was included in the conference substitute on H.R. 2313[4] and was enacted into law as subsection 18(k) of the FTC Act. The portion of the Conference Report which discusses that section states that the Senate amendment would require the FTC to promulgate rules providing "that contacts between the Commissioners and the rulemaking staff be 'on the record' *when discussing facts relevant to the rulemaking but which are not in the rulemaking record.*" H.R. Rep. No. 96–917, 96th Cong., 2d Sess. 32 (1980) (emphasis added). Thus, it is clear both from the language of subsection 18(k) and its legislative history that Congress intended to require the disclosure only of such communications from the rulemaking staff as discuss new facts which are not already on the rulemaking record.

(2) One comment, while acknowledging that subsection 18(k) imposes only a limited disclosure requirement as respects intraagency *ex parte* contacts, suggests that the Commission nevertheless take this opportunity to expand its regulations so as to provide for equal treatment of the rulemaking staff and outside parties (a) by requiring disclosure of all staff communications with the Commission, (b) by requiring all meetings between Commissioners and staff to be noticed in advance, (c) by establishing a cut off point on all *ex parte* contacts by the staff like that imposed on outside parties by Rule 1.18(c)(i)(ii), and (d) by limiting meetings between the Commission and staff to the same period provided for meetings between the Commission and outside parties under Rule 1.13(i). The rationale for the suggested changes is that FTC rulemaking is "hybrid" in form, incorporating many elements of APA adjudicatory procedures, that rulemaking staff members function as "advocates" in rulemaking proceedings, and that fairness requires that outside parties be given the opportunity to respond to the position taken by staff "advocates."

The fact that trade regulation rulemaking incorporates quasi-adjudicatory procedures "does not * * * convert rulemaking into quasi-adjudication." *Ass'n of Nat'l Advertisers, Inc.* v. *FTC*, No. 79–1117, slip op. at 18 (D.C. Cir. Dec. 27, 1979); *United Steelworkers of America* v. *Marshall*, No. 79–1048, slip op. at 29–30 (D.C. Cir. Aug. 15, 1980). Even if it is assumed for the sake of argument that a rulemaking staff member does function as an "advocate," as long as his conduct remains "within the general boundaries of the *deliberative* process" and his communications with the Commission "[remain] within the boundaries of *deliberative* material" and do not involve "new hard data off the record," his role as a staff advocate does not violate due process. *United Steelworkers of America* v. *Marshall*, *supra*, at 27. See also *Katharine Gibbs School (Inc.)* v. *FTC*, 612 F.2d 658 (2d

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[2] 125 Cong. Rec. S16297 (daily ed. Nov. 8, 1979).

[3] H.R. 2313 was considered by the Senate in lieu of S. 1991 and was amended by the Senate to be consistent with S. 1991. 126 Cong. Rec. S1241–42 (daily ed. Feb. 7, 1980).

[4] The House version of H.R. 2313 did not include a provision on *ex parte* contacts.

Cir. 1979); *Association of Nat'l Advertisers, Inc.* v. *FTC, CCH 1979-2 Trade Cas.* ¶ *62950 (D.C. Cir. 1979); Hercules, Inc.* v. *EPA*, 598 F.2d 91 (D.C. Cir. 1978); *Environmental Defense Fund* v. *EPA*, 598 F.2d 62 (D.C. Cir. 1978). The decision in *United Steelworkers of America, supra*, also reaffirmed the guidance first announced in *Hercules, supra*, that the question of separation of functions in rulemaking is "one for Congress or the agencies to resolve." Slip op. at 35. With respect to the Federal Trade Commission, Congress has, of course, resolved the issue by enacting subsection 18(k). Finally, in connection with the promulgation of its original version of Rule 1.18(c), the Commission set forth its reasons for allowing staff communications:

> Staff communications serve a positive function by allowing Commissioners, in reviewing what are often massive records that have not been shaped by a clearcut adversarial process, to receive assistance from those persons in the Commission who are most familiar with the record. To seek assistance from staff members who have not participated in the rulemaking proceeding, as some comments suggest, would result in a misallocation of resources by ignoring the people best-suited to aid the Commission. 42 FR at 60562 (Nov. 28, 1977).

Accordingly, the Commission has determined not to expand Rule 1.18(c)(2) beyond the requirements imposed by subsection 18(k).

(3) Some comments propose that Rule 1.18(c)(2) be expanded to include guidelines or criteria for use in determining whether a staff communication constitutes a factual communication within the meaning of subsection 18(k) and the Commission's rule. The determination whether or not a particular communication from the staff is subject to disclosure under subsection 18(k) and the Commission's rule will necessarily have to be made on a case-by-case basis. In general, however, the Commission interprets the phrase "any fact which is relevant to the merits of such proceeding and which is not on the rulemaking record" to include both specific, adjudicative-type facts and broad, legislative-type facts which are not already part of the rulemaking record. On the other hand, the Commission does not interpret the phrase as requiring the disclosure of communications from the staff which constitute advice on matters of law, strategy, policy, or procedure or which review, analyze, evaluate, or summarize the evidence in the record so long as such communications do not discuss facts, specific or general, that are not already on the rulemaking record.

(4) One comment suggests that communications from the rule-making staff be transcribed verbatim if the content of those communications is not already accurately reflected in the rulemaking record. The Commission believes that this suggestion would be costly and burdensome to implement because it would necessitate verbatim recordation of all communications from the rulemaking staff in order to assure the transcription of the limited category of communications required to be disclosed by subsection 18(k).

(5) Two comments recommend amendments to proposed Rule 1.18(a). One suggests that the rule be amended to include in the definition of "rulemaking record" a reference to staff communications required by subsection 18(k) to be placed on the rulemaking record. The Commission agrees with this suggestion and has amended Rule 1.18(a) to include a reference to communications placed on the rulemaking record pursuant to § 1.18(c). Another comment proposes: (1) that the phrase "summary and findings of the presiding officer" be substituted for the phrase "recommended decision of the presiding officer" which the comment claims causes uncertainty over whether the presiding officer's report would include his findings and conclusions; and (2) that the comma between the words "presiding officer" and "and the staff recommendations" be deleted so as to make clear that public comments on both the presiding officer's recommended decision and the staff recommendations would become part of the rulemaking record. The phrase "recommended decision of the presiding officer" was adopted on May 29, 1980 (45 FR at 36341), so as to conform the Commission's rules with subsection 18(c) of the Federal Trade Commission Act, as amended by section 9 of the FTC Improvements Act. Since Rule 1.13(g) as adopted on May 29, 1980 (45 FR at 36341), incorporates the language of new subsection 18(c)(1) requiring the presiding officer to make a "recommended decision based upon [his] findings and conclusions * * * as to all relevant and material evidence * * *," no uncertainty is caused by Rule 1.18(a)'s mere reference to "recommended decision." The Commission, however, does agree with the comment's second suggestion and has amended Rule 1.18(a) to delete the comma between "presiding officer" and "and the staff recommendations."

Accordingly, the Commission amends 16 CFR Chapter I as follows:

1. By revising § 1.13(i) to read as follows:

**§ 1.13 Rulemaking proceeding.**

* * * * *

(i) *Commission review of the rulemaking record.*—The Commission shall review the rulemaking record to determine what form of rule, if any, it should promulgate. During this review process, the Commission may allow persons who have previously participated in the proceeding to make oral presentations to the Commission, unless it determines with respect to that proceeding that such presentations would not significantly assist it in its deliberations. Presentations shall be confined to information already in the rulemaking record. Requests to participate in an oral presentation must be received by the Commission no later than the close of the comment period under § 1.13(h). The identity of the participants and the format of such presentations will be announced in advance by the Office of Public Information in the Commission's *Weekly Calendar and Notice of "Sunshine" Meetings* and in accordance with the applicable provisions of 5 U.S.C. 552(b) and § 4.15 of the Commission's Rules of Practice. Such presentations will be transcribed verbatim or summarized at the discretion of the Commission and a copy of the transcript or summary and copies of any written communications and summaries of any oral communications relating to such presentations shall be placed on the rulemaking record.

2. By revising §§ 1.18(a) and 1.18(c) in its entirety to read as follows:

**§ 1.18 Rulemaking record.**

(a) *Definition.*—For purposes of these rules the term "rulemaking record" includes the rule, its Statement of Basis and Purpose, the verbatim transcript of the informal hearing, written submissions, the recommended decision of the presiding officer and the staff recommendations as well as any public comment thereon, verbatim transcripts or summaries of oral presentations to the Commission, any communications placed on the rulemaking record pursuant to § 1.18(c), and any other information which the Commission considers relevant to the rule.

* * * * *

(c) *Communications to Commissioners and Commissioners' personal staffs.*—(1) *Communications by outside parties.*—Except as otherwise provided in this subpart or by the Commission, after the Commission votes to issue an initial notice of proposed rulemaking, comment on the proposed rule should be directed to the presiding officer pursuant to § 1.13.

Communications with respect to the merits of that proceeding from any outside party to any Commissioner or Commissioner advisor shall be subject to the following treatment:

(i) *Written communications.*—Written communications, including written communications from members of Congress, received within the period for acceptance of initial written comments shall be forwarded promptly to the presiding officer for placement on the rulemaking record. Written communications received after the time period for acceptance of initial written comments but prior to any other deadline for the acceptance of written submissions will be forwarded promptly to the presiding officer, who will determine whether such communications comply with the applicable requirements for written submissions at that stage of the proceeding. Communications that comply with such requirements will be promptly placed on the rulemaking record. Noncomplying communications and all communications received after the time periods for acceptance of written submissions will be placed promptly on the public record.

(ii) *Oral Communications.*—Oral communications are permitted only when advance notice of such oral communications is published by the Commission's Office of Public Information in its *Weekly Calendar and Notice of "Sunshine" Meetings* and when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner advisor to whom such oral communications are made and are promptly placed on the rulemaking record together with any written communications and summaries of any oral communications relating to such oral communications. Transcripts or summaries of oral communications which occur after the time period for acceptance of initial written comments but prior to any other deadline for the acceptance of written submissions will be forwarded promptly to the presiding officer together with any written communications and summaries of any oral communications relating to such oral communications. The presiding officer will determine whether such oral communications comply with the applicable requirements for written submissions at that stage of the proceeding. Transcripts or summaries of oral communications that comply with such requirements will be promptly placed on the rulemaking record together with any written communications and summaries of any oral communications relating to such oral communications. Transcripts or summaries of noncomplying oral communications will be promptly placed on the public record together with any written communications and summaries of any oral communications relating to such oral communications. No oral communications are permitted subsequent to the close of the postrecord comment period, except as provided in § 1.13(i). If an oral communication does otherwise occur, the Commissioner or Commissioner advisor will promptly place on the public record either a transcript of the communication or a memorandum setting forth the contents of the communication and the circumstances thereof; such transcript or memorandum will not be part of the rulemaking record.

(iii) *Congressional communications.*—The provisions of paragraph (c)(1)(ii) of this section do not apply to communications from members of Congress. Memoranda prepared by the Commissioner or Commissioner advisor setting forth the contents of any oral congressional communications will be placed on the public record. If the communication occurs within the initial comment period and is transcribed verbatim or summarized, the transcript or summary will be promptly placed on the rulemaking record. A transcript or summary of any oral communication which occurs after the time period for acceptance of initial written comments but prior to any other deadline for the acceptance of written submissions will be forwarded promptly to the presiding officer, who will determine whether such oral communication complies with the applicable requirements for written submissions at that stage of the proceeding. Transcripts or summaries of oral communications that comply with such requirements will be promptly placed on the rulemaking record. Transcripts or summaries of noncomplying oral communications will be placed promptly on the public record.

(2) *Communications by certain officers, employees, and agents of the Commission.*—Any officer, employee, or agent of the Commission with investigative or other responsibility relating to any rulemaking proceeding within any operating bureau of the Commission is prohibited from communicating or causing to be communicated to any Commissioner or to the personal staff of any Commissioner any fact which is relevant to the merits of such proceeding and which is not on the rulemaking record of such proceeding, unless such communication is made available to the public and is included in the rulemaking record. The provisions of this subsection shall not apply to any communication to the extent such communication is required for the disposition of *ex parte* matters as authorized by law. (Sec. 6(g), 38 Stat. 721 (15 U.S.C. 46); 80 Stat. 383, as amended (5 U.S.C. 552).)

By direction of the Commission, dated November 20, 1980. Chairman Pertschuk and Commissioner Pitofsky concurred and submitted a separate statement.

**Carol M. Thomas,**

*Secretary.*

**Statement of Chairman Pertschuk**

As Commissioner Pitofsky's concurring statement indicates, the Commission has already taken various steps to respond to concerns about fairness in our rulemaking proceedings. I support the measures that have been taken thus far. At the same time, I continue to believe that the rulemaking staff is capable of providing a balanced analysis of the record as well as its recommendations based on that analysis. The present procedures, in my opinion, safeguard against undue influence. Moreover, it is important to emphasize, as Commissioner Pitofsky does, that the rulemaking staff possesses a knowledge of the record that is absolutely vital to the Commission's understanding and resolution of issues presented in rulemaking proceedings. The Commission recognized this asset at its meeting last July when it made the decision not to alter the fundamental responsibility of the rulemaking staff for objectively analyzing and interpreting the record. I believe we must continue to have full and informal access to the rulemaking staff's valuable knowledge of the record, and should be cautious in considering changes that would reduce the rulemaking staff's involvement in our review process.

**Statement of Commissioner Robert Pitofsky**

Several comments urged that the Commission amend its proposed Rule 1.18(c)(2) so as to require that the Commission's rulemaking staff deal with the Commission only on an "on-the-record" basis. *Ex parte* communications between Commissioners and staff would be prevented not only with respect to a "fact which is relevant to the merits of [the] proceeding which is not on the rulemaking record"—a requirement now imposed by the FTC Improvements Act of 1980—but to all staff summaries and interpretations of the record and to policy advice. In effect, under their

proposal, the staff would be placed on the same *ex parte* footing as people outside the agency.

I agree that Congress did not require such treatment of staff in subsection 18(k) of the FTC Improvement Act of 1980. On the other hand, I have become increasingly concerned about the fairness of off-the-record staff communications with Commissioners in our rulemaking proceedings and the perception that such communications create.

The records in our rulemaking proceedings often have been of enormous length (averaging 50,000 pages and running up to 500,000 pages) and factual and policy issues are extremely complex. Staff members who have worked for years on these proceedings develop valuable knowledge about the record and sophisticated views about key policy questions. As a result, the staff is in a position to influence greatly the Commission's final proposals. The length of these records and the complexity of underlying issues create competing concerns. On the one hand, it would be extremely difficult for the Commission to address rulemaking questions in an informed way without the uninhibited and continuous assistance of the rulemaking staff. On the other hand, staff devotion to a single project over a period of years and the adversary clashes that often develop during the proceeding can generate in some rulemaking projects a will-to-win in the staff which influences their view of the record and their recommendations.

Rulemaking proposals by regulatory staffs usually do offer a balanced view of the issues, and, of course, Commissioners are not helpless even in the hands of a rulemaking staff committed to its own recommendations. Senior staff members at the Commission, Bureau of Economics personnel, the Presiding Officer, industry representatives, and the Commissioners' personal staffs all have an opportunity to review and comment upon staff proposals. In fact, I believe this multi-faceted review usually has enabled the Commission to have before it a full range of policy proposals and factual analysis.

I am convinced that the imposition of strict *ex parte* limitations on communications from agency staffs is not the best way to address this problem, but I believe the issue of a proper staff role in our rulemaking deserves our continuing attention. I can concur in today's Commission action, however, because of my understanding that the Commission, in future rulemaking, will make efforts through various procedural experiments to address the issue of the dual role of the staff as advocates and as advisors to the Commission. For example, at the Commission's July 1980 rulemaking policy review session, a consensus was reached that the Presiding Officer should play a more important role in assessing staff recommendations. The Commission has amended its rules to require that the staff report precede the Presiding Officer's report, and the Commission is committed to ensuring that the Presiding Officer's office has the necessary resources to carry out the expanded function of measuring staff conclusions against the record.

In addition to these changes, I hope that future consideration will be given on a rule by rule basis to segregating the staff, so that one group advocates the rule during the rulemaking process and another group interprets the record and works with the Commission in its review function. While this approach is expensive and may cause some delay, it may be the best way of proceeding when there is reason to believe at the outset that a long and bitter adversary process is likely.

The staff's role in rulemaking is an important regulatory issue and the Commission is closer to it than reviewing judges or members of Congress. It is important that the Commission, through careful experimentation, seek additional ways to preserve an effective staff role which in appearance and reality is fair to all interested parties.

[FR Doc. 80-36997 Filed 11-24-80, 12:06 pm]
BILLING CODE 6750-01-M

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1700

### Human Prescription Drugs in Oral Dosage Forms; Exemption of Sodium Fluoride Drug Preparations, Including Liquid and Tablet Forms, Containing No More Than 264 Milligrams of Sodium Fluoride Per Package From Child-Protection Requirements

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission issues an exemption from child-protection packaging requirements for sodium fluoride drug preparations, including liquid and tablet forms, containing no more than 264 milligrams (mg) of sodium fluoride per package and containing no other substances subject to the requirements for special packaging under the Poison Prevention Packaging Act of 1970.[1] An exemption for aqueous solutions of sodium fluoride containing no more than 264 mg of sodium fluoride per package is currently in effect. The Commission believes that child-protection packaging for all generic forms of sodium fluoride containing no more than 264 mg of sodium fluoride per package is unnecessary to protect children from serious illness or injury, based upon the low toxicity of sodium fluoride and the lack of serious adverse human experience associated with ingestion of the drug. The Upjohn company, manufacturer of a multiple vitamin product in chewable tablet form containing 221 mg of sodium fluoride per package, petitioned the Commission to exempt its sodium fluoride-containing product.

**DATE:** The exemption is effective November 26, 1980.

**FOR FURTHER INFORMATION CONTACT:** Charles Jacobson, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6400.

**SUPPLEMENTARY INFORMATION:**

Background

On March 19, 1980, the Commission proposed an exemption from the child-resistant packaging regulations under the Poison Prevention Packaging Act of 1970 (PPPA) for sodium fluoride drug preparations, including liquid and tablet forms, containing no more than 264 milligrams (mg) of sodium fluoride per package, (45 FR 17593). The Commission took that action in response to a petition (PP 79-2) from the Upjohn Company requesting an exemption for sodium fluoride tablet preparations containing no more than 221 mg of sodium fluoride per package. The petitioner's product is a multiple vitamin that uses sodium fluoride as an anticaries agent (for the prevention of dental decay) and is a prescription drug that is regulated under the PPPA solely on the basis of its fluoride content. Another main use of sodium fluoride is as an insecticide/ rodenticide.

[1] A majority of Commissioners—Chairman King and Commissioners David Pittle and Stuart Statler—approved issuance of the final exemption for sodium fluoride drug preparations containing not more than 264 mg of sodium fluoride per package. Commissioner Sam Zagoria voted to grant the petitioner's request and issue an exemption for sodium fluoride tablets containing not more than 221 mg of sodium fluoride per package. Commissioner Edith Sloan dissented from the decision to issue a final exemption and has issued a separate opinion which is on file in the Office of the Secretary of the Commission.

Aqueous solutions of sodium fluoride containing no more than 264 mg of sodium fluoride per package are currently exempted from the Commission's child-protection packaging requirements at 16 CFR 1700.14(a)(10)(vii). This exemption was based upon the Commission finding that 264 mg of sodium fluoride is less than an acutely toxic dose (42 FR 62363-4, December 12, 1977). In addition, the exemption was based upon the safety recommendation of the American Dental Association that no more than 264 mg of sodium fluoride be dispensed at one time.

Although the petitioner requested an exemption only for its chewable tablet preparation of sodium fluoride containing a maximum of 221 mg of sodium flouride per package, the Commission recognized in the proposal document the fact that the oral toxicity of sodium fluoride is not significantly affected by the dosage form. In other words, the toxicity of sodium fluoride in tablet preparations is considered by the Commission to be no greater than the toxicity of equivalent dosages of the currently exempted liquid preparations.

For this reason, the Commission decided to propose an exemption for sodium fluoride drug preparations, including liquid and tablet forms, containing no more than 264 mg of sodium fluoride per package and containing no other substance subject to the special packaging regulations. The Commission noted in the proposal document that there are currently sodium fluoride tablet preparations containing up to 264 mg of sodium fluoride per package. In this document the Commission, therefore, is revising the existing exemption for aqueous solutions of sodium fluoride by extending the exemption to all generic forms of sodium fluoride drug prescriptions but maintaining the maximum dosage level at 264 mg of sodium fluoride per package.

**Grounds for Exemption**

As was noted in the proposed exemption, the Upjohn Company contends that the same fact, lack of toxicity, which justified an exemption for aqueous solutions containing no more than 264 mg of sodium fluoride per package supports the current request. The petitioner also cites as justification for an exemption the lack of adverse human experience data associated with ingestion of its sodium fluoride-containing product. From 1965 until January, 1979, only one report of an accidental ingestion of the product by a child 5 years of age or younger has been received by the petitioner. This report involved a 3 year old child who ingested 15 tablets, for a maximum of 33.15 mg of sodium fluoride, without symptomatology.

An examination of the most current data sources available to the Commission confirms that there is a continued lack of serious adverse reaction by young children who have accidentally ingested sodium fluoride.

The National Clearinghouse for Poison Control Centers (NCPCC) reported, for 1977-1979, a total of 398 ingestions of medicinal products containing sodium fluoride by children under 5. Of these, 54 exhibited symptoms, and one was hospitalized.

The NCPCC data from 1969 through 1976 reported 1,496 ingestions by children under 5 years of age of anticaries products which contain no more than 264 mg of sodium fluoride per package. Fifty-two of the 1,496 cases exhibited symptoms. The symptoms ordinarily exhibited were nausea, vomiting, abdominal pain, diarrhea, headache, and a fever of more than 101°F. Nineteen of the 1,496 cases resulted in hospitalizations which were generally of an unspecified duration. One death of a one year old child as a result of ingesting sodium fluoride was also reported in the NCPCC data from 1969 through 1976. This death was listed under the chemical name "sodium fluoride" and tabulated under the general heading of "chemicals," which indicates that the product involved may have been an insecticide/rodenticide or a pure entity rather than an anticaries agent.

The Commission's Poison Control Center contract data for 1976 and 1977 reveal 254 ingestions by children under 5 years of age of anticaries products which contain no more than 264 mg of sodium fluoride per package. Twenty-seven of these cases exhibited symptomatology such as nausea, vomiting, diarrhea and lethargy. In addition, there was one 2-day hospitalization.

The Commission's National Electronic Injury Surveillance System (NEISS) for 1977 and 1978 reports 18 ingestions by children under 5 years of age of anticaries products containing no more than 264 mg of sodium fluoride per package. All of the 18 children were treated and released from the reporting hospital emergency room. Data reported through NEISS for 1979 reveal 4 incidents of ingestion by children under 5 associated with products containing sodium fluoride. Three of the children were treated and released; one was hospitalized. During the period of January 1, 1980 to August 1, 1980, 3 incidents of ingestion by children under 5, associated with sodium fluoride, were reported. The three children were treated and released.

The Commission's National Injury Information Clearinghouse currently has on file 4 in-depth investigations of ingestions by children under 5 years of age of anticaries tablets containing sodium fluoride. These incidents occurred in 1976, 1977, 1978 and 1979. All 4 children were treated in hospital emergency rooms and released. As of August 7, 1979, there were no death certificates or consumer complaints on file with the National Injury Information Clearinghouse that were associated with anticaries tablets containing sodium fluoride.

The Commission also conducted a toxicological evaluation of sodium fluoride. The Commission concurs with the petitioner that the toxicity of tablets containing sodium fluoride is similar to the toxicity of aqueous solutions containing sodium fluoride. The existing Commission exemption of aqueous solutions containing no more than 264 mg of sodium fluoride was based upon the Commission finding that 264 mg of sodium fluoride is less than an acutely toxic dose.[2] In addition, the exemption conformed with the safety recommendation of the American Dental Association that no more than 264 mg of sodium fluoride be dispensed at one time.

A general review by the Commission staff of the scientific and medical literature reveals that most of the reported sodium fluoride poisonings have resulted from its usage as an insecticide/rodenticide rather than its usage as a human oral prescription anticaries drug. However, the literature search did reveal 3 reported fatalities of children under 5 years of age from the ingestion of dosage levels of fluoride preparation which are considerably greater than the maximum level of this proposed exemption. The symptoms most commonly presented in acute sodium fluoride ingestions include nausea, vomiting, diarrhea, abdominal pain, salivation, muscular weakness, tremors, convulsions, hypotension, nephritis, and, in fatal cases, respiratory paralysis and cardiac arrest.

Information available to the Commission indicates that the lethal dose of sodium fluoride is about 5 grams in adults and about 3 grams in children. The Commission notes that an important factor in limiting severe toxic reactions is that sodium fluoride, in even moderately large doses, is a gastric and intestinal irritant which tends to induce vomiting and diarrhea. If such vomiting

[2] See 42 FR 62363-4, December 12, 1977.

occurs at an early stage following the sodium fluoride ingestion, which it usually does, then the risk of injury is considerably reduced. The Commission is aware, however, that the ingestion of 1 gram of sodium fluoride by a child would be likely to result in severe symptomatology or even lethality if vomiting were not to occur or if medical treatment were significantly delayed.

The Commission notes that there is a relatively low incidence (about one percent) of adverse reactions associated with normal dosages of sodium fluoride. These adverse reactions, which include gastrointestinal hemorrhages, exzema, dermatitis and uticaria type reactions, are a result of hypersensitivity to fluoride. These reactions cease upon termination of sodium fluoride therapy. It appears that the problem most often associated with the normal sodium fluoride usage as an anticaries agent is a chronic one and involves mottling of the teeth (fluorosis).

The Commission solicited the opinion of its Technical Advisory Committee (TAC) on Poison Prevention Packaging. Of the 14 TAC members who commented on the petition, 9 members recommended granting the exemption, 4 members recommended denial, and one member abstained.

The 9 members who recommended granting the exemption cited the current exemption of aqueous solutions containing no more than 264 mg of sodium fluoride; these members also stated that the marketing history, toxicology, and human experience for sodium fluoride-containing drugs demonstrate that there is a limited risk of severe toxic reaction from accidental ingestion.

The 4 TAC members who recommended denial of the petition cited the following considerations: (1) sodium fluoride should not be exempt from the special packaging regulations, the previous exemption notwithstanding; (2) there is a lack of adequate justification for the exemption, such as a lifesaving urgency requiring rapid access to the product; (3) flavored chewable sodium fluoride tablets provide more of an incentive for children to accidentally ingest the product than the currently exempted liquid forms; (4) an accidental ingestion could be a traumatic experience for the victim and his/her parents; and (5) increasing numbers of exemptions are likely to confuse pharmacists and result in greater noncompliance with special packaging regulations.

The Commission notes that while such considerations as product form, flavoring, and need for rapid access may enter into the evaluation of certain PPPA exemption requests, the major consideration remains the toxic potential of the exempted package and the human experience data.

The Commission also reviewed the medical literature that was cited by some of the TAC members in support of their recommendations to deny the exemption request. The review revealed that such literature was not directly related to the issues involved in the petition; one article involved the symptomatology associated with accidental ingestion of hydrofluoric acid, which is far more toxic than sodium fluoride, and another article involved the symptomatology associated with ingestion of sodium fluoride by cancer and leukemia patients, who probably have lowered fluoride tolerance. The Commission notes that individual variability in tolerance to fluoride cannot be used to predict toxicity in a normal population. In the case of fluoride therapy, information available to the Commission indicates that the incidence of adverse reactions is low and that those reactions that do occur subside upon termination of therapy. The Commission also notes that there is no scientific rationale for predicting a greater incidence of adverse reactions in children, whether due to intolerance or other factors. In fact, human experience data and the medical literature indicate very few adverse reactions, particularly in children.

The one TAC member who abstained noted what appeared to be a discrepancy in the drug's toxicity and its dosage regimen. The dosage regimen is based upon normal fluoride intake through drinking water. The Commission staff notes that the cautionary note accompanying the product limits use of the drug when certain amounts of fluoride are found in the daily drinking water. Fluoride supplementation is indicated only when the fluoride level of normal drinking water falls below certain limits. These cautions are designed to preclude the development of chronic fluoride overdosage (fluorosis).

The Commission also solicited the opinion of the Food and Drug Administration (FDA) on the exemption request. The Agency states that it previously had recommended granting the current exemption of liquid fluoride-containing products based on scientific literature which indicated that 264 mg of sodium fluoride was less than an acutely toxic dose. While observing that the product form is different, FDA states that the composition of sodium fluoride-containing tablets is not significantly different from currently exempted products, and that there is a lack of reports of accidental ingestions of these products resulting in serious toxic effects. Based upon the lack of reported substantial hazard, FDA concluded that the exemption request should be granted.

**Response to Comments**

The Commission received two comments, from the American Society of Hospital Pharmacists and from an interested person, in response to the proposed exemption.

The Society expressed support for exemption of sodium fluoride drug preparations containing no more than 264 mg of sodium fluoride per package.

The other commenter stated that sodium fluoride preparations are potentially toxic to young children and that, in cases where multiple dosages of the drug are prescribed for use in a single household, this potential is compounded. This commenter also suggested that flavored sodium fluoride tablets entice young children to ingest them.

The Commission notes that a toxicological evaluation of sodium fluoride, conducted by the staff and discussed above, concludes that 264 mg is unlikely to be a toxic dose in young children. Most of the reported sodium fluoride poisonings have resulted from its use as an insecticide/rodenticide rather than from its use as a human oral prescription anticaries drug. Three fatalities of children under five, reported in the literature, resulted from the ingestion of dosage levels of sodium fluoride drug preparations which were considerably greater than the maximum level (264 mg) of the proposed and this final exemption. In addition, the Commission points out that substantial human experience data reveal a low incidence of adverse reaction from ingestion of normal dosages of either flavored or unflavored preparations of this drug.

As to the issue of multiple dispensing of the drug, the Commission notes that human experience data do not support the contention that young children are likely to be poisoned from ingestion of this drug as the result of either single or multiple dispensings. Despite this lack of data concerning any poisonings from multiple dispensings, the Commission has, as an additional precaution, included language in this preamble (see below) urging medical and dental practitioners and pharmacists to observe the American Dental Association recommendation that no more than 264 mg of sodium fluoride be dispensed at one time. (Similar language was contained in the preamble to the proposed rule).

Findings

Based on currently available information showing the low toxicity of sodium fluoride and the lack of serious adverse human experience reported from ingesting sodium fluoride, the Commission finds that sodium fluoride drug preparations, including liquid and tablet forms, containing no more than 264 mg of sodium fluoride per package, do not pose a risk of serious personal illness or serious injury to children. The Commission emphasizes that this exemption level is partly based on the American Dental Association safety recommendation that no more than 264 mg of sodium fluoride be dispensed at one time. The Commission urges that medical and dental practitioners and pharmacists observe this recommended limitation in the interest of protecting young children from potentially toxic ingestions as a result of exposure to excessive amounts of sodium fluoride-containing preparations. The Commission also emphasizes that this exemption is limited to sodium fluoride-containing products which contain no other substances subject to the requirements for special packaging under 16 CFR 1700.14(a)(10).

Environmental Considerations

The Commission's interim rules for carrying out its responsibilities under the National Environmental Policy Act (see CFR Part 1021; 42 FR 25494) provide that exemptions to an existing standard that do not alter the principal purpose or effect of the standard normally have no potential for affecting the environment and that, therefore, environmental review of exemptions is generally not required (§ 1021.5(b)(1)). The rules also state that environmental review of rules requiring poison prevention packaging is generally not required (§ 1021.5(b)(3)).

With respect to this exemption of sodium fluoride drug preparations containing no more than 264 mg of sodium fluoride from poison prevention packaging, the Commission finds that the rule will have no significant effect on the human environment and that no environmental review is necessary.

Conclusion and Promulgation

Having considered the petition, the comment on the proposal, the poison control statistics from the National Clearinghouse for Poison Control Centers and from six poison control centers under contract with the Commission, medical and scientific literature and other Commission data sources, and having consulted, pursuant to section 3 of the Poison Prevention Packaging Act (PPPA) of 1970, with the Technical Advisory Committee on Poison Prevention Packaging established in accordance with section 6 of the Act, the Commission concludes that an exemption from the special packaging requirements for sodium fluoride drug preparations containing no more than 264 mg of sodium fluoride per package should be issued as set forth below. Accordingly, under the provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91-601, sections 2(4), 3, 5; 84 Stat. 1670-72; 15 U.S.C. 1471 (4), 1472, 1474) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92-572, sec. 30(a); 86 Stat. 1231; 15 U.S.C. 2079(a)), the Commission amends 16 CFR 1700.14 by revising paragraph, (a)(10)(vii), as follows:

**§ 1700.14 Substances requiring special packaging.**

(a) * * *

(10) *Prescription Drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by Federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15 (a), (b), and (c), except for the following:

* * * * *

(vii) Sodium fluoride drug preparations, including liquid and tablet forms, containing no more than 264 milligrams of sodium fluoride per package and containing no other substances subject to this § 1700.14(a)(10).

Dated: November 20, 1980.

Sadye E. Dunn,

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 80-36893 Filed 11-25-80; 8:45 am]

BILLING CODE 6355-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Social Security Administration

## 20 CFR Part 404

## Coverage of Employees of State and Local Governments; Interim Regulations

*Correction*

In FR Doc. 80-33811 appearing on page 72110 in the issue of Friday, October 31, 1980, make the following correction.

On page 72111, center column, in paragraph (c)(2) of § 404.1255a put "45 FR 72110, October 31, 1980" in the line reading "(insert FR citation and date this material is published)".

BILLING CODE 1505-01-M

## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

## [T.D. 7740]

## Income Tax; Soil and Water Conservation Expenditures

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document provides final regulations relating to the definition of the phrase "land used in farming" for purposes of determining whether soil and water conservation expenditures are deductible. The Internal Revenue Service has reconsidered its prior interpretation of that phrase in light of court decisions that found the interpretation overly restrictive. The regulations set forth a new interpretation of the phrase for the guidance of taxpayers making soil and water conservation expenditures.

**DATES:** The regulations are effective for taxable years beginning after 1953.

**FOR FURTHER INFORMATION CONTACT:** Paul A. Francis of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3297).

**SUPPLEMENTARY INFORMATION:**

Background

On February 27, 1980, the Federal Register published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 175 of the Internal Revenue Code of 1954 (45 FR 12850). The amendments were proposed to set forth a new interpretation of the phrase "land used in farming" for purposes of determining whether expenditures for soil and water conservation are deductible. No public hearing on the proposed amendments was requested, and accordingly none was held. After consideration of all comments regarding the proposed amendments, those amendments are adopted without change by this Treasury decision.

Purpose of Amendments

These amendments reflect Service consideration of the holdings with respect to the deductibility of soil and

water conservation expenditures in *Behring v. Commissioner,* 32 T.C. 1256 (1959), acq. withdrawn and acq. in result substituted, 1972–1 C.B. 1, *Estate of Straughn v. Commissioner,* 55 T.C. 21 (1970), acq., 1976–2 C.B. 3, and *Duda & Sons, Inc. v. United States,* 383 F. Supp. 1303 (M.D. Fla. 1974), *rev'd on other grounds,* 560 F. 2d 669 (5th Cir. 1977).

One of the conditions for deduction of soil and water conservation expenditures under Code section 175 is that the expenditures be in respect of "land used in farming". Section 175 (c)(2) defines "land used in farming" as land used (before or simultaneously with the expenditures) by the taxpayer or a tenant of the taxpayer for the production of crops, fruits or other agricultural products or for the sustenance of livestock.

The regulations deal with two issues raised in the cited cases with respect to the meaning of the phrase "land used in farming". The first issue is the application of section 175(c)(2) in the case of a taxpayer with newly acquired farmland. The second is the application of that provision to a tract of land only a part of which is actually used in farming.

### Newly Acquired Farmland

Section 175(c)(2) makes no reference to a taxpayer who has newly acquired land which was used in farming by a predecessor. Regulation § 1.175–4(a)(2) provides that such a taxpayer may deduct soil and water conservation expenditures made before the taxpayer actually begins to farm the land only if the use of the land by the taxpayer is substantially a continuation of the use by the predecessor.

In *Straughn* the Internal Revenue Service argued that a new owner could not deduct conservation expenditures because the use of the land by the new owner for growing grapes was not substantially a continuation of its prior use for growing wheat and cotton. The Tax Court rejected the distinction drawn by the Service between different types of agricultural products and held that the taxpayer could deduct the expenditures. The United States District Court for the Middle District of Florida found the *Straughn* decision persuasive and also permitted deductions under similar circumstances in the *Duda* case.

The regulations adopted by this Treasury decision provide that any type of farming use of the land by the taxpayer may satisfy the requirement that the use of the land be substantially a continuation of its prior use in farming. Thus, a taxpayer who plants crops on land previously used for grazing livestock would be entitled to deduct conservation expenditures if the other conditions of section 175 are met.

### Part of Tract Used in Farming

In *Duda* and in *Behring* taxpayers contended that use of any part of a tract of land in farming made the entire tract "land used in farming" within the meaning of section 175(c)(2). Under that view conservation expenditures in respect of a previously unfarmed part of a tract could be deductible if some other part of the tract was actually used in farming. The court in *Behring* accepted the taxpayer's theory, but the court in *Duda* rejected it and denied the claimed deductions.

The regulations adopted by this document provide that conservation expenditures are deductible only to the extent that they are allocable to land actually used in farming. The regulations provide rules for the allocation of conservation expenditures that benefit both land used in farming and other land of the taxpayer that does not qualify as "land used in farming".

### Comments Received

The only comment relating to the issue of deductibility where only a part of a tract is used in farming requested that the regulations follow the *Behring* opinion rather than the *Duda* opinion. The Internal Revenue Service believes that the *Duda* opinion correctly states the law on this point.

Other comments with respect to the notice of proposed rulemaking urged that the regulations permit deductions under section 175 when land is being prepared for its first use in farming. The suggested rule, however, would be inconsistent with the explicit requirement in section 175(c)(2) that the land be used in farming simultaneously with or before the soil and water conservation expenditures. Note also that Congress has specifically provided for deduction of land clearing expenditures under section 182.

### Review

The Treasury Department will review these regulations from time to time in light of comments received from offices within the Treasury Department or from other sources.

### Drafting Information

The principal author of these regulations was Paul A. Francis of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

### *Adoption of Amendments to the Regulations*

The amendments to 26 CFR Part 1 published as a notice of proposed rulemaking in the **Federal Register** for February 27, 1980 (45 FR 12850), are hereby adopted as proposed.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

**Jerome Kurtz,**

*Commissioner of Internal Revenue.*

Approved: November 12, 1980.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

26 CFC Part 1 is amended as follows:

**§ 1.175 [Deleted]**

**Paragraph 1.** Section 1.175 is deleted.

Par. 2. Paragraph (a)(1) of § 1.175–2 is amended by adding at the end thereof the following new sentence:

**§ 1.175–2 Definition of soil and water conservation expenditures.**

(a) *Expenditures treated as a deduction.* (1) * * * For rules relating to the allocation of expenditures that benefit both land used in farming and other land of the taxpayer, see § 1.175–7.

* * * * *

Par. 3. Section 1.175–4 is amended to read as follows:

**§ 1.175–4 Definition of "land used in farming.**

(a) *Requirements.* For purposes of section 175, the term "land used in farming" means land which is used in the business of farming and which meets both of the following requirements:

(1) The land must be used for the production of crops, fruits, or other agricultural products, including fish, or for the sustenance of livestock. The term "livestock" includes cattle, hogs, horses, mules, donkeys, sheep, goats, captive fur-bearing animals, chickens, turkeys, pigeons, and other poultry. Land used for the sustenance of livestock includes land used for grazing such livestock.

(2) The land must be or have been so used either by the taxpayer or his tenant at some time before or at the same time as, the taxpayer makes the expenditures for soil or water conservation or for the prevention of the erosion of land. The taxpayer will be considered to have used the land in farming before making such expenditure if he or his tenant has employed the land in a farming use in the past. If the expenditures are made by the taxpayer in respect of land newly acquired from one who immediately prior to the acquisition was using it in

farming, the taxpayer will be considered to be using the land in farming at the time that such expenditures are made, if the use which is made by the taxpayer of the land from the time of its acquisition by him is substantially a continuation of its use in farming, whether for the same farming use as that of the taxpayer's predecessor or for one of the other uses specified in paragraph (a)(1) of this section.

(b) *Examples.* The provisions of paragraph (a) of this section may be illustrated by the following examples:

*Example (1).* A purchases an operating farm from B in the autumn after B has harvested his crops. Prior to spring plowing and planting when the land is idle because of the season, A makes certain soil and water conservation expenditures on this farm. At the time such expenditures are made the land is considered to be used by A in farming, and A may deduct such expenditures under section 175, subject to the other requisite conditions of such section.

*Example (2).* C acquires uncultivated land, not previously used in farming, which he intends to develop for farming. Prior to putting this land into production it is necessary for C to clear brush, construct earthen terraces and ponds, and make other soil and water conservation expenditures. The land is not used in farming at the same time that such expenditures are made. Therefore, C may not deduct such expenditures under section 175.

*Example (3).* D acquires several tracts of land from persons who had used such land immediately prior to D's acquisition for grazing cattle. D intends to use the land for growing grapes. In order to make the land suitable for this use, D constructs earthen terraces, builds drainage ditches and irrigation ditches, extensively treats the soil, and makes other soil and water conservation expenditures. The land is considered to be used in farming by D at the time he makes such expenditures, even though it is being prepared for a different type of farming activity than that engaged in by D's predecessors. Therefore, D may deduct such expenditures under section 175, subject to the other requisite conditions of such section.

(c) *Cross reference.* For rules relating to the allocation of expenditures that benefit both land used in farming and other land of the taxpayer, see § 1.175–7.

Par. 4. The following new section is added immediately after § 1.175–6:

**§ 1.175–7 Allocation of expenditures in certain circumstances.**

(a) *General rule.* If at the time the taxpayer paid or incurred expenditures for the purpose of soil or water conservation, or for the prevention of erosion of land, it was reasonable to believe that such expenditures would directly and substantially benefit land of the taxpayer which does not qualify as "land used in farming," as defined in § 1.175–4, as well as land of the taxpayer which does so qualify, then, for purposes of section 175, only a part of the taxpayer's total expenditures is in respect of "land used in farming."

(b) *Method of allocation.* The part of expenditures allocable to "land used in farming" generally equals the amount which bears the same proportion to the total amount of such expenditures as the area of land of the taxpayer used in farming which it was reasonable to believe would be directly and substantially benefited as a result of the expenditures bears to the total area of land of the taxpayer which it was reasonable to believe would be so benefited. If it is established by clear and convincing evidence that, in the light of all the facts and circumstances, another method of allocation is more reasonable than the method provided in the preceding sentence, the taxpayer may allocate the expenditures under that other method. For purposes of this section, the term "land of the taxpayer" means land with respect to which the taxpayer has title, leasehold, or some other substantial interest.

(c) *Examples.* The provisions of this section may be illustrated by the following examples:

*Example (1).* A owns a 200-acre tract of land, 80 acres of which qualify as "land used in farming." A makes expenditures for the purpose of soil and water conservation which can reasonably be expected to directly and substantially benefit the entire 200-acre tract. In the absence of clear and convincing evidence that a different allocation is more reasonable, A may deduct 40 percent (80/200) of such expenditures under section 175. The same result would obtain if A had made the expenditures after newly acquiring the tract from a person who had used 80 of the 200 acres in farming immediately prior to A's acquisition.

*Example (2).* Assume the same facts as in example (1), except that A's expenditures for the purpose of soil and water conservation can reasonably be expected to directly and substantially benefit only the 80 acres which qualify as land used in farming; any benefit to the other 120 acres would be minor and incidental. A may deduct all of such expenditures under section 175.

*Example (3).* Assume the same facts as in example (1), except that A's expenditures for the purpose of soil and water conservation can reasonably be expected to directly and substantially benefit only the 120 acres which do not qualify as land used in farming. A may not deduct any of such expenditures under section 175. The same result would obtain even if A had leased the 200-acre tract to B in the expectation that B would farm the entire tract.

[FR Doc. 80–36926 Filed 11–21–80; 4:36 pm]
BILLING CODE 4830–01–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 943

### Approval of Program Amendments From the State of Texas Under the Surface Mining Control and Reclamation Act of 1977

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

**ACTION:** Final rule.

**SUMMARY:** The State of Texas has proposed to alter the Texas permanent program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) by amending two regulations relating to the designation of areas as unsuitable for surface coal mining. Part 943 is hereby amended to reflect the approval of these amendments to the Texas permanent program.

**DATE:** The approval of these amendments is effective on November 26, 1980.

**ADDRESSES:** Copies of the full text of the Texas program, including the amendments, are available for inspection during regular business hours at the OSM Headquarters Office and the Region IV Office and the central office and field offices of the Texas Railroad Commission at the addresses listed below:

U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement, Room 153, South Interior Building, Washington, D.C. 20240;

Office of Surface Mining Reclamation and Enforcement, Region IV, 5th Floor, Scarritt Building, 818 Grand Avenue, Kansas City, Missouri 64106;

Texas Railroad Commission, Surface Mining and Reclamation Division, 1124 S. Inter-Regional Highway, Austin, Texas 78704;

Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, Woodgate Office Park, Suite 125, 1121 East SW. Loop 323, Tyler, Texas 75703;

Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, Shank Office Building, 1419 3rd Street, Floresville, Texas 78114.

**FOR FURTHER INFORMATION CONTACT:** Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240, Telephone: (202) 343–4225.

**SUPPLEMENTARY INFORMATION:**

### Background on Texas Program Submission and the Secretary's Approval

On July 20, 1979, OSM received a proposed regulatory program from the State of Texas. The program was submitted by the Texas Railroad Commission, the State regulatory authority. The Texas permanent program was approved conditionally, effective February 16, 1980, in accordance with 30 CFR 732.13(i). The conditional approval was published under 30 CFR 943.11, on February 27, 1980, (45 FR 13008). The Texas program was subsequently amended to satisfy the condition of the approval and 30 CFR 943.11 was amended to reflect the approval of the Texas program without condition on June 18, 1980 (45 FR 41136–41137).

### Submission of Amendments

On March 27, 1980, OSM received a proposal from the Texas Railroad Commission containing three amendments to the state regulations. One of the three related to the award of costs, including attorneys' fees in administrative proceedings, and satisfied the condition of the approval of the Texas program. On June 18, 1980, the Secretary approved this amendment (to Texas Rule 051.07.04.023) and removed the condition of the approval of the Texas program (45 FR 41136–41137).

The remaining two amendments contained in the March 27, 1980, letter pertained to Texas Rule 051.07.04.070 concerning the State process for designating areas unsuitable for mining and are the subject of this notice. The amendments affect the provisions that interpret "valid existing rights" and "the close of public comment period" relative to petitions to designate areas unsuitable for mining. The procedures for review of proposed permanent program amendments are contained in 30 CFR 732.17 (44 FR 15328, March 13, 1979).

### Discussion of Amendments

(a) "Valid existing rights" provision:

Texas has proposed an amendment to its definition of "valid existing rights" by adding a new subsection to that definition in Texas Rule 051.07.04.070, relating to the interpretation of the document used to establish valid existing rights.

On February 6, 1980 (45 FR 8244), OSM proposed to amend subsection (c) of the definition of valid existing rights in 30 CFR 761.5, to add the option of relying upon applicable state case law concerning interpretation of documents that convey mineral rights.

In the preamble to that proposed rule, OSM stated:

> In order to implement what the Secretary believes is Congress' intent that state case law on the subject not be overruled, the Secretary is proposing that Subsection (c) of Part 761.5 be changed to provide an alternative basis for valid existing rights determinations. Where a state has case law establishing some other standard for interpreting documents which convey mineral rights, this law will be used to interpret documents executed in that state.

The Texas program that was approved conditionally on February 16, 1980, did not contain a provision similar to 30 CFR 761.5(c) relating to the interpretation of the terms of the document relied upon to establish valid existing rights.

The Secretary determined that the absence of this provision did not prevent the approval of the Texas program; however, OSM did advise Texas that this aspect of its program could be improved by adding a provision similar to 30 CFR 761.5(c). Accordingly, Texas proposed such a program amendment. The proposed amendment is consistent with OSM's proposed rule (*See* 45 FR 8244). Texas added a new subsection (c) to Rule 051.07.04.070, and the original subsection (c) has been re-designated subsection (d).

The proposed Texas amendment reads as follows:

"Rule 051.07.04.070 is supplemented by the following language after paragraph (b)(2) under *valid existing rights.*

(c) "Interpretation of the terms of the document relied upon to establish valid existing rights shall be based upon Texas case law concerning the interpretation of documents conveying mining rights. When no Texas case law exists, interpretation shall be based upon the usage and custom at the time and place where the document came into existence and upon a showing by the applicant that the parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims a valid existing right.

(d) "Valid existing rights does *not* mean mere expectation of a right to conduct surface coal mining. (Examples of rights that alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a State or Federal permit.)"

(b) "Close of public comment period" provision:

During the review of the Texas program, prior to the Secretary's conditional approval on February 16, 1980, OSM advised Texas that its Rule 051.07.04.070 could lead to confusion as to when the public comment period actually closes during the process for designating lands unsuitable for coal mining because of the ambiguous language of the regulation. Although this was determined not to be a significant problem that would prevent approval of the Texas program, OSM did suggest that Texas clarify this language at some future time. Texas agreed that the language of Rule 051.07.04.070 could have been clearer and has accordingly proposed to amend that language by adopting the following regulation:

"Rule 051.07.04.070 is amended as follows:

*"Close of public comment period* means the close of a public hearing on a surface mining permit application. When no public hearing is held, this time shall be 30 days after the last publication of the newspaper notice required by section .207(a)."

### Background on Approval Process

On July 2, 1980, the regional director published notice in the Federal Register announcing receipt of the program amendments (45 FR 44937–44969). The notice announced a public comment period through July 30, 1980, and that a public hearing would be held if requested of the regional director by July 15, 1980, and contained the full text of the program amendments.

The regional director did not receive any requests for a public hearing, so none was held. The one written comment was considered by OSM and is addressed below under the section entitled "Disposition of Comment."

On September 17, 1980, the regional director recommended to the Director of OSM that the program amendments be approved

### Director's Findings

Pursuant to 30 CFR 732.15(b)(9) and 732.17(f)(2), the Director finds that the proposed program amendments are consistent with SMCRA and the provisions of 30 CFR Chapter VII, Subchapter F, for the designation of areas as unsuitable for surface coal mining.

### Disposition of Comment

The Heritage Conservation and Recreation Service (HCRS) suggested that upon completion, the Memorandum of Agreement between OSM and the Advisory Council on Historic Preservation be made part of the Texas program.

The HCRS comment did not specifically address the two proposed amendments to the Texas program; however, a copy of the completed memorandum will be provided to Texas.

Approval of Amendments

The amendments to the Texas permanent program are hereby approved. A new section 30 CFR 943.15 is added to include approved amendments to the Texas program. 30 CFR 943.15(a), specifically, is added to include the approval of the two amendments of March 27, 1980, and is effective on November 26, 1980.

Additional Findings

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this approval.

This document is not a significant rule under Executive Order 12044 or 43 CFR part 14, and no regulatory analysis is being prepared on this approval.

This approval does not require the concurrence of the Administrator of the Environmental Protection Agency. On January 28, 1980, the Administrator of the Environmental Protection Agency transmitted written concurrence on the Texas permanent program. The amended regulatory provisions approved in this document are not aspects of the Texas permanent program that relate to air or water quality standards promulgated under the authority of the Clean Water Act, as amended (33 U.S.C. 1151–1175), and the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*).

The effective date of the conditional approval of the Texas permanent program (February 16, 1980) shall be used to compute any time requirements that commence with program approval.

Dated: November 20, 1980.

Walter N. Heine,

*Director, Office of Surface Mining.*

## PART 943—TEXAS

A new section, 30 CFR 943.15, is added to read as follows:

**§ 943.15 Approval of Regulatory Program Amendments.**

(a) The Texas permanent regulatory program amendments received by OSM on March 27, 1980, are approved effective November 26, 1980.

[FR Doc. 80-36941 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-05-M

**30 CFR Part 950**

## Conditional Approval of the Permanent Program Submission From the State of Wyoming Under the Surface Mining Control and Reclamation Act of 1977

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

**ACTION:** Final rule.

**SUMMARY:** On August 15, 1979, the State of Wyoming submitted to the Department of the Interior its proposed permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). After opportunity for public comment and thorough review of the initial program submission, the Secretary of the Interior determined that certain parts of the Wyoming program met the minimum requirements of SMCRA and the Federal permanent program regulations and others did not. Accordingly, the Secretary of the Interior approved the Wyoming program in part on February 15, 1980. Notice of that decision and the Secretary's findings were published in the Federal Register on March 31, 1980 (45 FR 20930–20982). The State of Wyoming resubmitted its program for approval by the Secretary on May 30, 1980. The resubmitted program included those portions of the initial submission not approved by the Secretary on February 15, 1980. After opportunity for public comment and thorough review of the program resubmission, the Secretary of the Interior determined that the Wyoming program, including the resubmission, does, with minor exceptions, meet the requirements of SMCRA and the Federal permanent program regulations. Accordingly, the Secretary of the Interior has conditionally approved the Wyoming program.

**EFFECTIVE DATE:** November 26, 1980.

**ADDRESSES:** Copies of the Wyoming program submission and the administrative record on the Wyoming program submission are available for public inspection and copying during business hours at:

Wyoming Department of Environmental Quality, Land Quality Division, Hathaway Building, Cheyenne, Wyoming 82002.

Wyoming Department of Environmental Quality, Land Quality Division, Field Office, 30 East Grinnell Street, Sheridan, Wyoming 82801.

Wyoming Department of Environmental Quality, Land Quality Division, Field Office, 933 Main Street, Lander, Wyoming 82520.

Office of Surface Mining Reclamation and Enforcement, Region V, Brooks Towers, 1020 15th Street, Denver, Colorado 80202.

Office of Surface Mining, Room 153, Interior South Building, 1951 Constitution Avenue, Washington, DC 20240, Telephone (202) 343–4728.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Carl C. Close, Assistant Director, State and Federal Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, DC 20240; telephone (202) 343–4225.

Mr. Donald Crane, Regional Director, Region V, Office of Surface Mining, Brooks Tower, 1020 15th Street, Denver, Colorado 80202; telephone (303) 837–5421.

**SUPPLEMENTARY INFORMATION:**

Introduction

This notice is organized to assist understanding of the findings underlying the Secretary's decision. It is divided into six major parts:

A. General Background on the Permanent Program
B. General Background on the State Program Approval Process
C. General Background on the Wyoming Program
D. Secretary's Findings
E. Explanation of the Secretary's Findings
F. Approval

Part A sets forth the statutory and regulatory framework of the Surface Mining Control and Reclamation Act of 1977 (SCMRA).

Part B sets forth the general statutory and regulatory scheme applicable to all States which wish to obtain primary jurisdiction to implement the permanent program within their borders.

Part C summarizes the steps undertaken by Wyoming and officials of the Department of the Interior, beginning with Wyoming's initial program submission and its program resubmission, and leading to the decision being announced today.

Part D contains the findings the Secretary has made with respect to each of the thirty (30) criteria for evaluation of a State program found in SMCRA and the Secretary's regulations.

Part E contains the reasons for each finding in Part D and the disposition of comments from the public and governmental agencies. For most findings, only the significant differences between Federal laws and rules and resubmitted portions of the Wyoming program are discussed and evaluated. Part E omits detailed discussions of

differences between Federal laws and rules and the Wyoming program, and detailed analysis of relevant public comments, which were discussed and approved in the Secretary's partial approval of the initial program submission as published in the Federal Register on March 31, 1980 (45 FR 20930–20982).

Part F identifies those parts of the Wyoming program which are conditionally approved.

It should be noted that these findings are an important part of the record for use as future indicators as to why Wyoming's program was deemed equivalent to SMCRA and consistent with applicable Federal regulations.

It should also be noted that Wyoming's program does not yet apply on Federal lands. Numerous mines in Wyoming conduct operations, in whole or in part, on "Federal lands" containing Federal mineral rights, surface rights, or both. Section 523(c) of SMCRA provides that a State may elect to enter into a cooperative agreement with the Secretary to provide for State regulation of surface coal mining and reclamation operations on Federal lands within the State. Pursuant to this authority, Wyoming has submitted a proposed cooperative agreement, which was published in the Federal Register on July 8, 1980 (45 FR 45927–45931), and public comment was invited. On October 1, 1980, OSM published a notice of proposed rulemaking (45 FR 64971). A public hearing was held in Cheyenne, Wyoming on October 30, 1980, and the public comment period expired on November 7, 1980. A final rule concerning the proposed Wyoming cooperative agreement is forthcoming. Because it is not yet final, however, this conditional approval does not include the cooperative agreement, which is subject to a separate rulemaking.

### A. General Background on the Permanent Program

The environmental protection provisions of SMCRA are being implemented in two phases—the initial program and the permanent program—in accordance with Sections 501–503 of SMCRA (30 U.S.C. 1251–1253). The initial program has been in effect since December 13, 1977, when the Secretary of the Interior promulgated initial program rules, 30 CFR Parts 710–725, 42 FR 62639.

The permanent program will become effective in each State upon the approval of a State program by the Secretary of the Interior or implementation of a Federal program within the State. If a State program is approved in full, the State will be the primary regulator of activities on non-Federal and non-Indian lands subject to SMCRA, rather than the Federal government.

The Federal rules for the permanent program, including procedures for States to follow in submitting State programs and minimum standards the State programs must meet to be eligible for approval, are found in 30 CFR Parts 700–797 and 730–865. Part 705 was published October 20, 1977 (42 FR 56064). Parts 795 and 865 (originally Part 860) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published March 13, 1979 (44 FR 15312–15463). Errata notices were published March 14, 1979 (44 FR 15484), August 24, 1979 (44 FR 49673–49687), September 14, 1979 (44 FR 53507–53509), November 19, 1979 (44 FR 66195), April 16, 1980 (45 FR 2600), June 5, 1980 (45 FR 37818), and July 15, 1980 (45 FR 47424). Amendments to the rules have been published October 22, 1979 (44 FR 60969), as corrected December 19, 1979 (44 FR 75143), December 19, 1979 (44 FR 75302), December 31, 1979 (44 FR 77440–77447), January 11, 1980 (45 FR 2626–2629) and August 6, 1980 (45 FR 52306–52324). Portions of these rules have been suspended, pending further rulemaking, on November 27, 1979 (44 FR 67942), December 31, 1979 (44 FR 77447–77454), December 31, 1979 (44 FR 77454–77455), January 30, 1980 (45 FR 6913), and August 4, 1980 (45 FR 51547–51550).

### B. General Background on State Program Approval Process

Any State wishing to assume primary jurisdiction over the regulation of coal mining within its borders may submit a program for consideration. The Secretary of the Interior has the responsibility to approve or disapprove the submission.

The Federal rules governing State program submissions are found at 30 CFR Parts 730–732. After review of the submission by OSM and other agencies, opportunity for the State to add to or modify the program, and opportunity for public comment, the Secretary may approve the program unconditionally, approve it conditioned upon minor deficiencies being corrected in accordance with the timetable set by the Secretary, or disapprove the program in whole or in part. If any parts of the program are disapproved, the State may submit a revision correcting the items which did not meet the requirements of SMCRA and applicable Federal regulations. If any of these revised program parts are also disapproved, SMCRA requires the Secretary of the Interior to establish a Federal program in that State. The State may again request approval to assume primary jurisdiction after the Secretary implements the Federal program. A State may not assume primary jurisdiction until all parts of its program have been approved.

Different criteria apply to various elements of a State program for the purpose of determining whether they can be approved by the Department. The three categories of potential program elements, each with its own standard of review, are discussed in the March 31, 1980, Federal Register (45 FR 20930 et seq.).

The special requirements under SMCRA and 30 CFR Chapter VII for anthracite mines in Pennsylvania are not applicable in Wyoming.

Before Wyoming made its initial program submission and subsequent resubmission, challenges to the Secretary's permanent program regulations were brought by representatives of industry, two States, and several environmental groups in the U.S. District Court for the District of Columbia. These suits were consolidated and heard in a single lawsuit, *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144).

The Secretary, in reviewing State programs, is complying with the provisions of Section 503 of SMCRA, 30 U.S.C. 1253, and 30 CFR 732.15. In reviewing the Wyoming program, the Secretary has adhered to the Federal rules as cited in "General Background on the Permanent Program," above, and as affected by the U.S. District Court for the District of Columbia in *In re: Permanent Surface Mining Regulation Litigation.*

In response to the arguments raised in the challenges, the Secretary voluntarily suspended several of the permanent program regulations. These suspensions were announced in the Federal Register on November 7, 1979 (44 FR 67942), December 31, 1979 (44 FR 77447) and January 30, 1980 (45 FR 6913).

Because of the litigation's complexity, the court has issued its decision in two "rounds." The Round I opinion, dated February 26, 1980, denied several generic attacks on the permanent program regulations, but suspended or remanded all or part of twenty-two specific regulations. The Round II opinion, dated May 16, 1980, denied additional generic attacks on the regulations, but suspended or remanded some forty additional parts, sections or subsections of the regulations. A listing of all the suspended and remanded regulations was published in the Federal Register on July 7, 1980 (45 FR 45604–45609).

The court also ordered the Secretary to "affirmatively disapprove, under Section 503 of SMCRA, those segments of a state program that incorporate a suspended or remanded regulation" (Mem. Op., May 16, 1980, p. 49). However, on August 15, 1980, the court stayed this portion of its opinion. One effect of this stay is to allow the Secretary, when requested by a State, to allow the inclusion in the State program of provisions equivalent to remanded or suspended Federal provisions. In making its resubmission, Wyoming was aware of the regulations suspended by the Secretary and the regulations remanded by the court and made modifications to several of its regulations in light of the suspensions and remands. (See the May 28, 1980, Memorandum from Nancy Wood to the Environmental Quality Council in the Wyoming resubmission (Vol. 3A).) Governor Herschler has requested that the Secretary not disapprove such provisions in the Wyoming program. (See Administrative Record Document Nos. WY-220 and WY-233.) Accordingly, the Secretary is approving provisions which, though they contain language from suspended and remanded Federal regulations, are otherwise acceptable.

In view of the three court decisions, the Secretary is applying the following standards to the review of State program submissions:

1. The Secretary need not affirmatively disapprove State provisions similar to those Federal regulations which have been suspended or remanded by the district court where the State has adopted such provisions in a rulemaking or legislative proceeding which occurred either (1) before the enactment of SMCRA, or (2) after the date of the Round II district court decision, since such State regulations clearly are not based solely upon the suspended or remanded Federal regulations. The Secretary also need not affirmatively disapprove provisions based upon suspended or remanded Federal rules if a responsible State official has requested the Secretary to approve them.

2. The Secretary will affirmatively disapprove all provisions of a State program which incorporate suspended or remanded Federal rules and which do not fall into one of the three categories in paragraph one, above. The Secretary believes that the effect of his "affirmative disapproval" of a State provision is that the requirements of that provision are not enforceable in the permanent program at the Federal level to the extent they have been disapproved. That is, no cause of action for enforcement of the provisions, to the extent disapproved, exists in the Federal courts, and no Federal inspection will result in notices of violation or cessation orders based upon the "affirmatively disapproved" provisions. The Secretary takes no position as to whether the affirmatively disapproved provisions are enforceable under State law and in State courts. Accordingly, these provisions are not being pre-empted or suspended, although the Secretary may have the power to do so under Section 504(g) of SMCRA and 30 CFR 730.11.

3. A State program need not contain provisions to implement a suspended or remanded regulation and no State program will be disapproved for failure to contain a suspended or remanded regulation.

4. Nonetheless, a State must have authority to implement all permanent program provisions of SMCRA, including those provisions of SMCRA upon which the Secretary based remanded or suspended regulations.

5. A State program may not contain any provision which is inconsistent with a provision of SMCRA.

6. Programs will be evaluated only on the basis of provisions other than those that must be disapproved because of the court's order. The remaining provisions will be unconditionally approved, conditionally approved, or disapproved in whole or in part, in accordance with 30 CFR 732.13.

7. Upon promulgation of new regulations to replace those that have been suspended or remanded, the Secretary will afford States that have approved or conditionally approved programs a reasonable opportunity to amend their programs as appropriate. In general, the Secretary expects that 30 CFR 732.17, concerning State program amendments, will govern this process.

On July 10, 1980, the United States Court of Appeals for the District of Columbia Circuit ruled that State programs need not contain minimum permit application requirements beyond those specified in sections 507 and 508 of SMCRA.

(*In re: Permanent Surface Mining Regulation Litigation*, No. 80-1308). On August 25, 1980, that court agreed to rehear the case, and vacated its earlier opinion. Accordingly, that decision presently has no effect on the Secretary's conditional approval of the Wyoming program.

To codify decisions on State programs, Federal programs, and other matters affecting individual states, OSM has established Subchapter T of 30 CFR Chapter VII. Subchapter T will consist of Parts 900 through 950. Provisions relating to Wyoming's program are found in 30 CFR Part 950.

**C. Background on the Wyoming Program Submission**

*Initial Submission*

On August 15, 1980, the Secretary of the Interior received a proposed regulatory program from the State of Wyoming. Notice of receipt of the submission initiating the program review was published in the August 22, 1979, **Federal Register** (44 FR 49313-49314) and in newspapers of general circulation within the State. The announcement invited public participation in the initial phase of the review process relating to the regional director's determination of whether the submission was complete.

On September 10, 1979, a public review meeting on the Wyoming program was conducted by the Governor of Wyoming in Cheyenne. A transcript of this meeting was placed in the administrative record on September 20, 1979 (Administrative Record No. WY-17).

On September 20, 1979, a public review meeting on the program and its completeness was held by the regional director in Cheyenne, Wyoming; September 20 was also the close of the public comment period on completeness (Administrative Record No. WY-24). On October 24, 1979, the regional director published notice in the **Federal Register** (44 FR 61266-61267) that he had determined the program submission to be complete.

On October 26, 1979, the Wyoming Department of Environmental Quality submitted an amendment to its program submission, containing a **Federal Register** notice and a letter relating to the regional director's finding of completeness (Administrative Record No. WY-36).

On December 11, 1979, the regional director published notice in the **Federal Register** (44 FR 71798-71799) and in newspapers of general circulation within the State setting forth procedures for the public hearing and comment period on the substance of the Wyoming program. The public comment period was scheduled to close January 7, 1980. On January 7, 1980, a public hearing on the Wyoming submission was held in Cheyenne, Wyoming, by the regional director.

During the period from January 2 through January 21, 1980, various meetings were held between the Secretary and his representatives, on one hand, and the Governor of Wyoming and various other State officials, on the other, concerning draft

amendments to the Wyoming program. Minutes and notes of these meetings are in the public record and were the subject of a **Federal Register** notice on January 15, 1980, (45 FR 2912) and public comment period. None of those draft materials was made an official part of the initial submission. Discussion of those items in the March 31, 1980, **Federal Register** (45 FR 20930–20982) was for general guidance to both the State and the public and did not bind the Secretary in making the decision announced today. Discussions of the draft materials and their location in the administrative record may be found in Part C of the March 31, 1980, **Federal Register** (45 FR 20933–20934).

On January 28, 1980, the regional director submitted to the Director of OSM his analysis of the Wyoming program, noting numerous differences between the program and the Federal regulations, and copies of the transcript of the public meeting and the public hearing, written presentations, exhibits, copies of all public comments received, and other documents comprising the administrative record. The regional director recommended to the Director that the Wyoming program be approved in part.

On February 14, 1980, OSM published in the **Federal Register** (45 FR 10046–10047) a notice of the availability of the views on the Wyoming program submitted by the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed State program.

On February 15, 1980, the Administrator of the Environmental Protection Agency transmitted his written concurrence with the Secretary's approval of those parts of the Wyoming program approved in the initial decision.

On February 15, 1980, the Director of OSM recommended to the Secretary that the Wyoming program be partially approved. The Secretary accepted that recommendation and approved the Wyoming program, in part.

The Secretary informed the State of his decision in a letter to Governor Herschler on February 15, 1980, which included the Secretary's findings on both the approved and disapproved parts of the formal Wyoming program. The public announcement of the decision was published in the Federal Register on March 31, 1980 (45 FR 20930–20982). A copy of the letter to Governor Herschler is available for review in the administrative record. The February 15, 1980, decision was based on the formal submission of August 15, 1979, (Administrative Record No. WY–3), as amended on October 26, 1979.

*Resubmission*

On May 30, 1980, Wyoming resubmitted for approval by the Secretary those portions of its program that were not approved by the Secretary on February 15, 1980. Notice of receipt of the resubmission and notice of a public hearing were published in the **Federal Register** on June 4, 1980 (45 FR 37697–37699). A public hearing was held in Cheyenne, Wyoming, on June 19, 1980, and the record was open for public comment until June 24, 1980.

On July 9, 1980, OSM officials discussed eighteen issues raised during review of the Wyoming resubmission with Wyoming officials by telephone (Administrative Record No. WY–204). On July 25, 1980, notice was published in the **Federal Register** (45 FR 49595–49599) that the record on the Wyoming resubmission was being reopened to allow the public to comment on the eighteen issues and on the provisions of the Wyoming regulations which tentatively had been identified as containing suspended or remanded Federal regulations, as discussed in "General Background on State Program Approval Process," above. The record remained open for comment until August 8, 1980.

On August 5, 1980, the State provided OSM with a letter responding to the eighteen issues discussed by telephone on July 9, 1980 (Administrative Record No. 220). Those responses are referred to, where appropriate, in the findings under Parts D and E of this notice.

The regional director submitted to the Director of OSM his analysis of the Wyoming program resubmission, together with copies of the transcript of the public hearing, written presentations, exhibits, copies of all public comments received, and other documents comprising the administrative record. On August 29, 1980, the regional director recommended to the Director that the Wyoming program be conditionally approved.

On August 21, 1980, OSM published in the **Federal Register** (45 FR 55767–55768) a notice of the availability of the views on the Wyoming program resubmission submitted by the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies.

On August 4, 1980, the Administrator of the Environmental Protection Agency transmitted his written concurrence with the Secretary's conditional approval of the Wyoming program.

On September 3, 1980, the Director recommended to the Secretary that the Wyoming program be conditionally approved. The Secretary accepted that recommendation and conditionally approved the Wyoming program on September 18, 1980. A copy of the letter to Governor Herschler announcing that decision is available for review in the administrative record.

Throughout the Wyoming State program review process, the Secretary and OSM have had frequent contact with the Governor of Wyoming and the staff of the Wyoming Land Quality Division. Discussions of the State program submission and resubmission were held among various State and Federal officials. Minutes or notes of these discussions were placed in the administrative record and made available for public review and comment.

All contacts between officials and staff of the Interior Department and the State of Wyoming have been conducted in accordance with the Department's guidelines for such contacts published September 19, 1979 (44 FR 54444.54445).

## D. Secretary's Findings

In accordance with Section 503(a) of SMCRA, the Secretary finds that Wyoming has the capability to carry out the provisions of SMCRA and to meet its purposes, in the ways and to the extent set forth in Findings 1 through 7 below:

1. The Wyoming Environmental Quality Act (EQA), the regulations adopted thereunder, and the Wyoming Administrative Procedures Act, provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in Wyoming in accordance with Section 503(a)(1) of SMCRA;

2. The Wyoming EQA provides sanctions for violations of Wyoming laws, regulations or conditions of permits concerning surface coal mining and reclamation operations, and these sanctions meet the requirements of Sections 503(a)(2), 517, 518 and 521 of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the Land Quality Division or its inspectors:

3. The Wyoming Land Quality Division has sufficient administrative and technical personnel and sufficient funds to regulate surface coal mining and reclamation operations, in accordance with the requirements of Section 503(a)(3) of SMCRA;

4. Wyoming law provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of Sections 506,

507, and 508 of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within Wyoming;

5. Wyoming has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA;

6. Wyoming has established, for the purpose of avoiding duplication, a process for coordinating the review and issuance of permits for surface coal mining and reclamation operations with other Federal and State permit processes applicable to the proposed operations. This finding corresponds to Section 503(a)(6) of SMCRA;

7. Wyoming has enacted regulations consistent with regulations issued pursuant to SMCRA except for those minor inconsistencies discussed below.

As required by Section 503(b)(1)–(3) of SMCRA, 30 USC 1253(b)(1)–(3), and 30 CFR 732.11–732.13, the Secretary has, through OSM, fulfilled the requirements set forth in Findings 8 through 10 below:

8. Solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Wyoming program;

9. Obtained the written concurrence of the Administrator of the Environmental Protection Agency with respect to those parts of the Wyoming program being approved which relate to air or water quality standards promulgated under the authority of the Federal Clean Water Act, as amended (33 USC 1151–1175), and the Clean Air Act, as amended (42 USC 7401 *et seq.*); and

10. Held a public review meeting in Cheyenne, Wyoming, on September 20, 1979, to discuss the initial Wyoming program submission and its completeness and held public hearings in Cheyenne, Wyoming, on January 7, 1980, on the substance of the initial submission and June 19, 1980, on the substance of the resubmission;

11. In accordance with Section 503(b)(4) of SMCRA, 30 USC 1253(b)(4), the Secretary finds that the State of Wyoming has the legal authority and sufficient qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII.

In accordance with 30 CFR 732.15, the Secretary makes Findings 12 through 30, below, on the basis of information in the Wyoming program submission, including the side-by-side comparison of the Wyoming law and regulations with SMCRA and 30 CFR Chapter VII, the Wyoming program resubmission, public comments, testimony and written presentations at the public hearings, and other relevant information. Specific references to State rules and more detailed discussions of the "State window" alternatives may be found in Part E.

12. The Wyoming program provides for Wyoming to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII through certain provisions of the State program which, as alternatives to certain Federal regulatory requirements, are in accordance with the applicable portions of SMCRA and are consistent with the regulations. Pursuant to 30 CFR 731.13, The Secretary makes Findings 12.1 through 12.15 below with respect to Wyoming's proposed alternative approaches ("State window" items) to the requirements of 30 CFR Chapter VII.

12.1 Wyoming's alternative approach to 30 CFR 780.23 (description of postmining land use contained in reclamation plans) is in accordance with the provisions of SMCRA and is consistent with 30 CFR Chapter VII.

12.2 Wyoming's alternative approach to 30 CFR 785.14 and Part 824 (special requirements for mountaintop removal operations) is in accordance with the provisions of SMCRA and consistent with 30 CFR Chapter VII.

12.3 Wyoming's alternative approach to 30 CFR 785.15, 785.16, and Part 826 (special provisions for operations on steep slopes) is in accordance with SMCRA and consistent with 30 CFR Chapter VII. See discussion in Part E, Findings 12.3 and 13.S.

12.4 Wyoming's alternative approach to 30 CFR 785.19(c), (d), and (e) (identification of alluvial valley floors and evaluation of the effect that mining on alluvial valley floors has on farming) is in accordance with the provisions of SMCRA and is consistent with 30 CFR Chapter VII.

12.5 Wyoming's alternative approach to 30 CFR 816.22 (identification of topsoil to be removed) is in accordance with the provisions of SMCRA and is consistent with 30 CFR Chapter VII.

12.6 Wyoming's alternative approach to 30 CFR 816.44(d) (requirements for permanent diversions and reconstruction of channels temporarily diverted) is in accordance with the provisions of SMCRA and is consistent with 30 CFR Chapter VII.

12.7 Wyoming's alternative approach to 30 CFR 816.57 (identification of streams for which authorization is necessary to mine within 100 feet) is in accordance with the requirements of SMCRA and is consistent with 30 CFR Chapter VII, based on clarification of Wyoming's intent to measure aquatic systems, wherever they support fish, provided on August 5, 1980 (Administrative Record No. WY–220). See discussion in Part E, Finding 12.7.

12.8 Wyoming's alternative approach to 30 CFR 816.72 (valley fill requirements) is in accordance with the requirements of SMCRA and is consistent with 30 CFR Chapter VII.

12.9 Wyoming's alternative approach to 30 CFR 816.73 (head-of-hollow fill requirements) is in accordance with the provisions of SMCRA and is consistent with 30 CFR Chapter VII.

12.10 Wyoming's alternative approach to 30 CFR 816.74 (requirements for durable rock fills) is in accordance with the requirements of SMCRA and is consistent with 30 CFR Chapter VII.

12.11 Wyoming's alternative approach to 30 CFR 816.104 (restoration of contour where thin overburden exists) is in accordance with SMCRA and is consistent with 30 CFR Chapter VII.

12.12 Wyoming's alternative approach to 30 CFR 816.105 (provisions for restoration of contour where thick overburden exists) is in accordance with SMCRA and is consistent with 30 CFR Chapter VII.

12.13 Wyoming's alternative approach to 30 CFR 816.42(a)(2) and 816.46(u) (removal of sedimentation ponds when revegetation has met the liability period—usually 10 years in Wyoming) is in accordance with SMCRA and is consistent with 30 CFR Chapter VII. The program did not clearly show that baseline water quality data and data comparison techniques will be adequate to ensure accurate and proper decisions by the regulatory authority. By letter dated August 5, 1980 (Administrative Record No. WY–220), the State provided acceptable assurances that the data will be required. See discussion in Part E, Finding 12.13.

12.14 Wyoming's alternative approach to 30 CFR 701.5 and 816.150—816.176 (road classification) is in accordance with the technical requirements of SMCRA.

12.15 Wyoming's alternative approach to exploration activities is addressed in Finding 15.B since it was not presented with the other "State window" alternatives and was not proposed pursuant to 30 CFR 731.13.

13. The Land Quality Division has the authority under Wyoming laws and regulations to implement, administer, and enforce all applicable requirements consistent with 30 CFR Chapter VII, Subchapter K (performance standards), and the Wyoming program includes provisions adequate to do so, except for the minor inconsistencies discussed in Part E, Finding 13.

14. The Land Quality Division has the authority under Wyoming laws and regulations and the Wyoming program includes adequate provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G (permits), except for those minor deficiencies discussed in detail in Part E, Finding 14.

15. The Land Quality Division has the authority to regulate coal exploration consistent with 30 CFR Parts 776 and 815 (coal exploration) and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815, and the Wyoming program includes provisions adequate to do so.

16. The Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to require that persons extracting coal incidental to government-financed construction maintain information on site, consistent with 30 CFR Part 707.

17. The Land Quality Division has the authority, and the Wyoming program includes provisions to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal land within Wyoming, consistent with the requirements of Section 517 of SMCRA (inspections and monitoring) and 30 CFR Chapter VII. Subchapter L (inspection and enforcement).

18. The Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to implement, administer, and enforce a system of performance bonds and liability insurance, or other equivalent guarantees consistent with 30 CFR Chapter VII, Subchapter J (performance bonds), with the exception of the minor deficiency discussed in Part E. Finding 18.

19. The Land Quality Division has the authority under Wyoming laws and the Wyoming program provides for civil and criminal sanctions for violations of Wyoming law, regulations and conditions of permits and exploration approvals including civil and criminal penalties, in accordance with Section 518 of SMCRA (penalties) and consistent with 30 CFR 845 (civil penalties), including the same or similar procedural requirements.

20. The Land Quality Division has the authority under Wyoming laws and the Wyoming program contains provisions to issue, modify, terminate and enforce notices of violations, cessation orders and show-cause orders in accordance with Section 521 of SMCRA (enforcement) and consistent with 30 CFR Chapter VII, Subchapter L (inspection and enforcement), including the same or similar procedural requirements.

21. The Land Quality Division has the authority under Wyoming laws and the Wyoming program contains provisions to designate areas as unsuitable for surface coal mining consistent with 30 CFR Chapter VII, Subchapter F (designation of lands unsuitable for mining).

22. The Land Quality Division has the authority under Wyoming laws and the Wyoming program provides for public participation in the development, revision and enforcement of Wyoming laws and regulations and the Wyoming program, consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII, with the exception of the minor deficiencies discussed in Part E, Finding 22.

23. The Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Land Quality Division consistent with 30 CFR Part 705 (restrictions on financial interests of State employees).

24. The Land Quality Division has the authority under Wyoming laws and the program includes provisions to require the training, examination, and certification of persons engaged in, or responsible for, blasting and the use of explosives in accordance with Section 719 of SMCRA, to the extent required for approval of its program.

25. The Land Quality Division has the authority under Wyoming laws and the Wyoming program provides for small operator assistance consistent with 30 CFR Part 795.

26. The Land Quality Division has the authority under Wyoming laws and the Wyoming program provides for protection of employees of the Land Quality Division in accordance with the protection afforded Federal employees under Section 704 of SMCRA.

27. Wyoming has the authority under its laws and the Wyoming program provides for administrative and judicial review of State program actions in accordance with Sections 525 and 526 of SMCRA (review of decisions) and 30 CFR Chapter VII, Subchapter L (inspection and enforcement).

28. The Land Quality Division has the authority under Wyoming laws and the Wyoming program contains provisions to cooperate and coordinate with, and provide documents and other information to, the Office of Surface Mining under the provisions of 30 CFR Chapter VII.

29. The Wyoming EQA and Wyoming Land Quality Rules and Regulations, as currently in effect, contain no provisions which would interfere with or preclude implementation of SMCRA and 30 CFR Chapter VII. The Wyoming Administrative Procedures Act, Wyoming Water Quality Rules and Regulations, Wyoming Air Quality Rules and Regulations, Wyoming Water Laws, Wyoming State Engineer Regulations and Instructions, Department of Environmental Quality Rules of Informational Practices, Wyoming Public Records Law, Wyoming Open Meeting Law and other laws and regulations of Wyoming do not contain provisions which would interfere with or preclude implementation of the provisions of SMCRA and 30 CFR Chapter VII.

30. The Land Quality Division and other agencies having a role in the program will have sufficient legal, technical, and administrative personnel and sufficient funds to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(b) (program requirements), and other applicable State and Federal laws.

**E. Explanation of the Secretary's Findings**

The discussion in this section is based on a review of the Wyoming program resubmission of May 30, 1980, supplemented by comments received on the resubmission and information submitted by the State on August 5, 1980 (Administrative Record No. WY–220). Throughout, the discussion also refers to materials considered by the Secretary in making his February 15, 1980, decision as published in the **Federal Register** on March 31, 1980 (45 FR 20930 *et seq.*). The discussion in Part E of the Secretary's findings of March 31, 1980, was based on a review of the Wyoming program submitted August 15, 1979, and amended October 26, 1979, as well as material Wyoming subsequently made available to the Department, described in Part C of the March 31, 1980, **Federal Register** notice (45 FR 20930 *et seq.*). The program submission and material subsequently added by the State included enacted laws and regulations and various proposed amendments to those laws and regulations. None of the amendments had been enacted at the time of Departmental review. In accordance with 30 CFR 732.11(d), the failure to have all necessary laws and regulations fully enacted required that the Secretary not approve the program in full or conditionally at that time.

Two versions of the Land Quality Rules and Regulations were contained

in Wyoming's initial program submission. After review of these two versions by OSM, other governmental agencies and members of the public, Wyoming discussed a third version of rules. This third version was presented to the Department of the Interior in the form of a "Regulatory Memorandum" (Administrative Record No. WY-99). It was modified after discussions on January 2-5, 1980, between representatives of the Department of the Interior and the State of Wyoming. The modifications were incorporated into the fourth version of the rules, given to the Department of the Interior on January 9, 1980 (Administrative Record No. WY-119).

Because the Land Quality Division proposed to make extensive modifications in its rules, the Secretary disapproved the entire body of rules. Accordingly, a set of fully enacted Land Quality Rules and Regulations was made part of Wyoming's resubmission on May 30, 1980.

The discussion of particular issues in the March 31, 1980, findings (45 FR 20930 *et seq.*) reflected a review of all four versions of rules which were before the Department of the Interior and the public during the period of consideration of Wyoming's initial program submission. Comments by other Federal agencies and the public were based on review of the first two versions of the rules. Analysis and disposition of those comments reflected, where appropriate, later versions of Wyoming's rules. In the discussion of specific findings in the March 31, 1980, notice (45 FR 20930 *et seq.*), references to particular rules were, for the most part, to the January 9, 1980, proposed rules.

Any indication in the Secretary's March 31, 1980, findings (45 FR 20930 *et seq.*) of the adequacy or inadequacy of those portions of Wyoming's initial program submission that were not approved was tentative and subject to modification upon further review by the Department, the public, and other agencies in the program resubmission review process. The discussions below reflect the results of the Department's final review and consideration of public comments on both the program submission and resubmission.

In addition, only sections of the Wyoming EQA which were in accordance with SMCRA and which were fully enacted were approved in the Secretary's February 15, 1980, decision. Discussions of proposed amendments to the EQA were included in the March 31, 1980, findings (45 FR 20930 *et seq.*) as guidance for Wyoming, other government agencies, and the public in the development and review of Wyoming's resubmission. The conclusions expressed with respect to such amendments were not necessarily final.

Part E is divided into two sections. The first section is entitled "Department's Findings." The second section is entitled "Disposition of Comments Received." In the March 31, 1980, notice (45 FR 20930 *et seq.*), the comments of other governmental agencies and the public were integrated with the Department's analysis. To maintain clarity and avoid redundancy, the Department's discussions of the resubmission and comments on the resubmission are now separated, with cross-references provided where necessary.

Where the detailed findings are numerous and complex, they are divided into two general categories. The first category includes those findings on statutes enacted and rules promulgated by Wyoming in close or exact accordance with the Secretary's tentative findings in the March 31, 1980, notice (45 FR 20930 *et seq.*). The basis for the Secretary's tentative findings was discussed under Part E of that notice (45 FR 20936 *et seq.*). The Secretary's tentative findings were compared with the program resubmission to assure that the State had enacted or promulgated the same language that was considered by the Secretary in making the tentative findings and that the resubmission had been subject to an opportunity for review and comment by government agencies and the public.

The Department has evaluated the provisions in the resubmission, assured that the enacted or promulgated language is essentially the same as that considered in the tentative findings, and considered comments by government agencies and the public. Where Wyoming did enact or promulgate the same language and where the Secretary has not changed his tentative finding on the basis of government agency or public comments, the final approval of those provisions is included in this notice. This notice does not, however, repeat the bases upon which the Secretary found these provisions approvable. These may be found in the March 31, 1980, notice (45 FR 20936 *et seq.*) and the finding number is cited below in this notice to facilitate reference to the March 31, 1980, notice.

The second category includes the Secretary's findings for the remaining provisions of the resubmission that differ from the initial submission and from documents described in Part C of this notice that were subsequently submitted. This category includes findings for materials submitted by Wyoming in response to requests for additional information or findings of unacceptability made in the March 31, 1980, notice (45 FR 20930 *et seq.*); findings on provisions where Wyoming enacted or promulgated language different from that which the Secretary tentatively found acceptable in the March 31, 1980, notice; and findings on any new provisions included in the resubmission. Additional analyses of the resubmission of issues which had not been discussed in the March 31, 1980, notice, but which required detailed discussion in these findings, are also included. Findings in the second category generally required more analysis than did those in the first category. The findings under this category are organized by the general finding number followed by a letter. Where applicable, the finding number from the March 31, 1980, notice is also included in the discussion to facilitate reference to discussions in that earlier notice. Unless otherwise noted, all references to the EQA are to that Act as amended by the 1980 Wyoming legislature, and as it appears in Exhibit A.1. of the resubmission.

For Findings 13 (environmental performance standards), 14 (permit system), and 15 (coal exploration), a brief description is provided of the provisions being approved under this category. The description is provided because citations were changed by the State during the process of enacting the statutory provisions and promulgating the regulations.

**Department's Findings**

*Finding 1*

The Secretary finds that the Wyoming Environmental Quality Act (EQA), the regulations and guidelines adopted thereunder, the Wyoming Administrative Procedures Act, and the State Engineer's regulations provide for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands in Wyoming in accordance with SMCRA, subject to the discussions in Findings 13.F, 13.P, 14.A, 14.C, 18.A, 22.C and 22.D, below. This finding corresponds to Section 503(a)(1) of SMCRA, 30 U.S.C. 1253(a)(1). An analysis of the issues underlying this finding is found in the detailed discussions of Findings 6 and 12 through 30, below.

*Finding 2*

The Secretary finds that the Wyoming EQA provides sanctions for violations of Wyoming laws, regulations or conditions of permits concerning surface

coal mining and reclamation operations, and these sanctions meet the requirements of SMCRA, including civil and criminal actions, forfeiture of bonds, suspensions, revocations, and withholding of permits, and the issuance of cease-and-desist orders by the Land Quality Division or its inspectors. This finding corresponds to Section 503(a)(2) of SMCRA (30 U.S.C. 1253(a)(2)). An analysis of the issues underlying this finding is found in the detailed discussions of Findings 18, 19 and 20, below.

*Finding 3*

The Secretary finds that the Land Quality Division has sufficient administrative and technical personnel and sufficient funds to enable Wyoming to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. This finding corresponds to Section 503(a)(3) of SMCRA (30 U.S.C. 1253(a)(3)). An analysis of the issues underlying this finding is found in the detailed discussion of Finding 30, below.

*Finding 4*

The Secretary finds that Wyoming law provides for the effective implementation, maintenance, and enforcement of a permit system that meets the requirements of SMCRA for the regulation of surface coal mining and reclamation operations on non-Indian and non-Federal lands within Wyoming, subject to the discussions in Findings 14.A and 14.C below. This finding corresponds to Section 503(a)(4) of SMCRA (30 U.S.C. 1253(a)(4)). An analysis of the issues underlying this finding is found in the detailed discussion of Finding 14, below.

*Finding 5*

The Secretary finds that Wyoming has established a process for the designation of areas as unsuitable for surface coal mining in accordance with Section 522 of SMCRA. This finding corresponds to Section 503(a)(5) of SMCRA (30 U.S.C. 1253(a)(5)). An analysis of the issues underlying this finding is found in the detailed discussion of Finding 21, below.

*Finding 6*

The Secretary finds that Wyoming has established, for the purpose of avoiding duplication, a process for coordinating and reviewing permit applications with other governmental agencies. This finding corresponds to Section 503(a)(6) of SMCRA. In addition to the following paragraphs in this finding, discussion of the analysis underlying this finding is found in Findings 13 and 14, below.

Wyoming has identified in its program submission seven State agencies having related responsibilities for elements of permitting and inspection of surface and underground coal mining operations. These are the Land, Air, and Water Quality Divisions of the Department of Environmental Quality, the State Engineer, the Recreation Commission, the Game and Fish Department, and the Wyoming State Inspector of Mines. The related responsibilities are coordinated through five Memoranda of Understanding (MOUs). In these MOUs, the agencies agree to review elements of applications, provide technical assistance to the principal agency (the Land Quality Division, which serves as the "regulatory authority"), and to apply certain environmental protection performance standards to permit applications (Exhibits F–1 through F–5 of resubmission).

The MOUs between the three divisions of the Department of Environmental Quality and the MOU between the Land Quality Division and the State Engineer contain certain standards and require plans to meet certain engineering and environmental requirements. This information is required to be in permit applications for surface (or underground) coal mining operations pursuant to promulgated Rule II 3a(5) of the resubmitted program. A permit can be approved only with this information included; otherwise the requirements of Rule II 3a(5) and W.S. 35–11–406(n)(i) (complete application) would not be met. Once a permit is approved, the permittee must comply with the measures in the application. Thus, the requirements of the Water Quality and Air Quality Divisions, and the requirements of the State Engineer, are enforceable under the provisions of Wyoming's program.

The MOUs divide important functions among the Land, Air, and Water Divisions of the Department of Environmental Quality and provide a strong vehicle for addressing their respective concerns. The MOUs reached with other entities such as the State Engineer and the Game and Fish Department also establish protocols and identify authorities. While coordination will require on-going attention, the Land Quality Division staff has worked under the MOUs successfully and should provide proper coordination. Use of guidelines is discussed further in Finding 14.22 in this notice.

*6.1* The MOU between the three divisions of the Department of Environmental Quality (Exhibit F.1) has been resubmitted with some changes. The exhibit was signed by all participants and approved as to form and execution by the Attorney General on April 18, 1980. The changes are in all sections, but principally reflect editorial rather than substantive changes. Exceptions are (1) a change in the Water Quality Division's effluent limits for total suspended solids, (2) additional provisions allowing separate, but conditional, inspections by the various divisions, and (3) identification of W.S. 35–11–437 as the sole enforceable basis for the permit conditions, Article IV, and the Land Quality Division's rules.

The first change is addressed under Finding 13.C (13.14) in this notice, which contains an explanation by the State that the Secretary finds acceptable. The second change in the MOU is acceptable since it minimizes duplicative inspections, and yet allows the regulatory authority to conduct independent inspections. The third change, that of relying on W.S. 35–11–437 as the limiting mechanism to identify the scope of enforcement authority by the Land Quality Division in matters involving other divisions' rules, is logical since that section of the statute contains the enforcement authority for surface coal mining operations.

Accordingly, the Secretary finds the Department of Environmental Quality MOU (Exhibit F–1) to be acceptable.

*6.2* The MOU between the Wyoming State Engineer and the Department of Environmental Quality regarding reservoirs (Exhibit F.4) has been modified in the resubmission. The MOU is signed by all parties and was approved by the Wyoming Attorney General as to form and execution on March 4, 1980. The MOU contained in the resubmission is accompanied by an "Appendix A" which is titled "Proposed Regulations for Surface Coal Mining Operations." Thus the MOU contains materials which do not appear to be in effect through the authority of the MOU. Further, the material in "Appendix A" includes requirements previously found by the Department to be inconsistent with SMCRA. (See Finding 13.28.) By letter dated August 5, 1980 (Administrative Record No. WY–220), the State indicated that the Appendix A attached to the MOU is the wrong appendix and that Appendix A attached to the State Engineer's regulations in Volume 5, Exhibit B.9, is the correct appendix. The Appendix A in Exhibit B.9 corrects the deficiencies discussed in Figure 13.28 and is acceptable.

The other changes in the MOU relate to administrative procedures designed to enhance coordination between the two State agencies and are acceptable.

Included with Exhibit F.4. is an MOU between the State Engineer and the Department of Environmental Quality which addresses "wells." This MOU was approved by the Attorney General on May 25, 1980. The resubmission contains only editorial changes and is acceptable.

*6.3* The resubmission contains a new Wildlife Guideline (No. 5, exhibit not labeled in the resubmission, but should be Exhibit G.1.e.). Criteria identical to the Federal requirements of 30 CFR 816.97(c) (powerline construction) have been added to Section VI of the guideline; this is briefly discussed in Finding 13.64. Other changes include designation of the study area as including the permit area and the adjacent area, addition of requirements for collection of surface water quality data, reduction of the time period for trapping small mammals, adding walking transect observations to methods of assessing the presence of predators, and addition of a requirement to include wildlife monitoring data in the annual report. Appendices 1 and 2 and the references in the guideline have also been enhanced to improve black-footed ferret surveys and data presentation.

The Secretary finds Guideline No. 5 for wildlife acceptable as consistent with similar Federal requirements. (For further explanation see Finding 12.7, below.)

*6.4* The resubmission contains a new Hydrology Guideline (No. 8, Exhibit G.1.g). Important changes to the guideline as resubmitted are (1) the addition of a part describing the hydrologic data to be provided in the annual report, (2) change of term "ground water recharge rates" to "ground water recharge areas," (3) change of terminology in Part IV to include more descriptive geologic and hydrologic terms, (4) recommendation of three-day pump tests and expansion of the description of the pumping tests, (5) specification of water quality analysis including requiring a major cation-major anion balance, (6) requirement for supporting geophysical or lithological logs, (7) addition of water rights information, (8) identification of proposed results of the monitoring program, (9) a discussion of complementary computer modeling, and (10) the addition of Appendix 2 which lists water quality parameters for hydrologic investigations. The Secretary finds this guideline acceptable as consistent with Federal requirements.

*6.5* The resubmission contains a new Alluvial Valley Floor Guideline (No. 9, Exhibit G.1.h.). The changes in the resubmitted guideline are (1) modification of the term "adjacent area" to correspond to Rule I 2(3), (2) deletion of the term "agricultural activities," (3) redefinition of the term "alluvial saturated zone" to include hydrologic principles, (4) inclusion of a standard definition of "animal unit," (5) modification of the term "essential hydrologic functions" to correspond to Rule I 2(24), (6) addition of the Rule I 2(48) definition of "natural damage to the quantity or quality of water," (7) addition of the Rule I 2(89) definition of "subirrigation or flood irrigation agricultural activities," (8) expansion of the term "unconsolidated stream laid deposits" to include terrace and flood plain deposits consonant with Rule I 2(101), (9) inclusion of the Rule I 2(104) definition of "undeveloped rangeland," (10) addition of the Rule I 2(105) definition of "upland areas," (11) editing of subirrigation and flood irrigation criteria in Section II, (12) addition of the requirement to map unconsolidated, stream laid deposits, (13) addition of aerial imaginery and diurnal fluctuations of water table as indicators of subirrigation, (14) addition of flood frequency to determinants of the suitability of periodic flood flows for enhanced plant production, (15) modification of the procedures for evaluating artificial flood irrigation and irrigation potential, (16) addition of subirrigation or flood irrigation agricultural activities to the alluvial valley floor identification criteria, (17) reduction in the time period for which changes in ownership/tenancy and management practices are to be provided in the application, (18) deletion of authority to permit landowner/tenant to claim confidentiality for land use and other data, (19) restriction in the use of the "importance to agriculture" formula to agree with Rule III 2d, (20) restriction of the determination of natural drainage to areas important to farming consistent with the district court ruling, (21) addition of a requirement for a cumulative assessment of surface and ground water changes and the effects on the productive capability of off-site alluvial valley floors, (22) requirement to assess the capability to re-establish essential hydrologic functions of off-site affected alluvial valley floors and (23) numerous editorial changes.

The Secretary finds the Alluvial Valley Floor Guideline consistent with 30 CFR 785.19 and that Wyoming has established methods for identifying, evaluating, and protecting alluvial valley floors.

*Finding 7*

The Secretary finds that Wyoming has enacted regulations consistent with regulations issued pursuant to SMCRA, subject to the discussions in Findings 13.F, 13.P, 14.A, 14.C, 18.A, 22.C, and 22.D, below.

*Finding 8*

The Secretary has, through OSM, solicited and publicly disclosed the views of the Administrator of the Environmental Protection Agency, the Secretary of Agriculture, and the heads of other Federal agencies concerned with or having special expertise pertinent to the proposed Wyoming program. This finding corresponds to Section 503(b)(1) of SMCRA (30 U.S.C. 1253(b)(1)). This finding is based upon the facts set forth in the two **Federal Register** notices inviting and announcing public availability of these comments. See 45 FR 10046–10047 and 45 FR 55767–55768.

*Finding 9*

The Secretary has, through OSM, obtained the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to those parts of the Wyoming program approved on February 15, 1980, and those parts for which this notice announces approval which relate to the air or water quality standards promulgated under the authority of the Federal Clean Water Act, as amended (33 U.S.C. 1151–1175), and the Clean Air Act, as amended (42 CFR 7401 *et seq.*). This finding corresponds to Section 503(b)(2) of SMCRA (30 U.S.C. 1253(b)(2)). The finding is based on the two letters transmitted by the Administrator of EPA to the Secretary. A copy of each letter has been placed in the Administrative Record.

*Finding 10*

The Secretary, through the OSM regional director for Region V, held a public review meeting in Cheyenne, Wyoming, on September 20, 1979, to discuss the Wyoming program submission and its completeness and held public hearings in Cheyenne, Wyoming, on January 7 and June 19, 1980, on the substance of the Wyoming program submission and resubmission. This finding corresponds to Section 503(b)(3) of SMCRA (30 U.S.C. 1253(b)(3)).

*Finding 11*

The Secretary finds that the State of Wyoming has the legal authority and has sufficient qualified personnel necessary for the enforcement of the environmental protection standards of SMCRA and 30 CFR Chapter VII. This finding corresponds to Section 503(b)(4) of SMCRA (30 U.S.C. 1253(b)(4)).

*Finding 12*

The Secretary finds that the Wyoming program provides for Wyoming to carry out the provisions and meet the purposes of SMCRA and 30 CFR Chapter VII, subject to the discussions in Findings 13.F, 13.P, 14.A, 14.C, 18.A, 22.C, and 22.D below. This finding corresponds to the first half of 30 CFR 732.12(a); it is based on Findings 1 through 11 and 12.1 through 30. Analyses of the issues underlying those findings are found throughout this section.

*12.1–12.15* Wyoming proposed in its resubmission a total of fourteen alternative approaches to Federal regulations (termed "State windows") pursuant to 30 CFR 731.13. These are presented in Exhibit G.6 of the resubmission. The Secretary found, in the Federal Register publication of March 31, 1980, that one of the items, relating to mountaintop removal, was acceptable as presented. (See Finding 12.2.)

The resubmission includes two additional "State window" items, one dealing with timing and criteria for removing sedimentation ponds, and the other addressing certain light-use classifications of roads. The resubmission also includes a fifteenth item, a discussion of coal exploration requirements which, while submitted in Exhibit G.6 with the other "State windows," was cited in the resubmission as not being based on 30 CFR 731.13 (the "State window" provisions of the Federal regulations). That particular element of the resubmission is addressed briefly in Finding 12.15. Each of the "State window" items is discussed and the Secretary's findings described in Findings 12.1 through 12.15, below.

*12.1* Wyoming has promulgated Rule II 3b(12)(b) to require a discussion of postmining land use only when the proposed postmining land use is different from the premining use. Wyoming chooses to rely on discussions of the existing (premining) land use required by Rules II 2a(1) and II 2a(1)(a) and Rule II 3a(6)(d) which, using the last-cited rule as an example, requires such information as (1) a thorough discussion of major past and present uses of the permit and adjacent areas, (2) an analysis of the capability of the land to support a variety of uses, and (3) any land use classification existing in the permit and adjacent areas.

The lack of exact equivalents in the resubmission to the Federal requirements of 30 CFR 780.23 applicable where there is no change in land use is considered to be an administrative modification that eliminates having to discuss the postmining land use twice: once as the existing land use and a second time as the proposed postmining land use. Duplicative discussion would occur whenever all the pre- and postmining land uses were the same.

Wyoming has also enacted W.S. 35–11–406(b)(xi) and (xii) to require owner consent or order from the Environmental Quality Board in lieu of consent, and promulgated Rule II 3b(12)(iii)(A) to require, where applicable, concurrence of the owner of record with changes in land use. Rule XIII 1a(2)(b) requires sending notices to governmental agencies. Thus, the postmining land use will be subjected to analysis and approved by the regulatory authority coordinated with other affected parties. The Secretary finds Wyoming's alternative provisions for describing postmining land use to be consistent with the Federal requirements of 30 CFR 780.23 in the context of 30 CFR 731.13.

*12.2* Wyoming has neither defined mountaintop mining nor promulgated regulations for variances from approximate original contour requirements for mountaintop mining operations. Conditions for mountaintop mining are non-existent in the major known coal resource areas of Wyoming. The Secretary has found this alternative approach consistant with SMCRA and acceptable since the Wyoming program does not provide a variance and is, as a result, more stringent than the Federal permanent regulatory program. Under Section 515(c) of SMCRA, implementation of mountaintop removal provisions is optional, and a State program need not include them.

*12.3* Wyoming has enacted W.S. 35–11–103(e)(xxi) to define "steep slope surface coal mining operation" and has promulgated Rule I 2(86) to define steep slopes. The Secretary finds that Wyoming will ban mining on steep slopes until the Wyoming Environmental Quality Council has promulgated rules and regulations establishing steep slope mining performance standards. This is discussed more fully in Findings 13.S (13.126), below.

*12.4* Wyoming has promulgated rules that include special permit information requirements and performance requirements for alluvial valley floors (Rules III 2 and V 2, respectively). The alternative rules to the Federal regulations in the State program resubmission use comprehensive terms to summarize the requirements listed in more detail in the Federal regulations. Wyoming has promulgated Rule III 2a(4) to require "such other information that the administrator shall require to identify whether an alluvial valley floor exists within the permit area or adjacent areas and its extent, if any." This permits the regulatory authority to detail the information requirements to a greater degree than exist in Rule III 2, when necessary. This same authority is provided in newly-promulgated Rule III 2b(11) and Rule III 2c(5).

Wyoming has promulgated Rule III 2 with somewhat different language from that used in the original submission. In particular, in Rule III 2a, requiring affirmative demonstration of the premining absence of an alluvial valley floor, the term "alluvial valley floors" apparently has been limited to "alluvial valley floors containing areas of subirrigation or flood irrigation agricultural activities." In Rule III 2a(3) the requirement for written views of the local conservation district regarding flood irrigation potential has become a discretionary element. No explanation of these changes is offered.

These changes have the potential of being important with respect to identification of *potential* alluvial valley floors in that they could eliminate investigations of areas with a potential for flood irrigation. However, the Secretary finds that the State program will comply with the requirements of 30 CFR 785.19(c)(2)(ii) (A) and (B) to identify historical flood irrigation and future flood irrigation potential because Guideline No. 9 of the resubmission requires identification of potential flood irrigated alluvial valley floors (Part II.C.2.b of the guideline). Accordingly, the changes cited above do not result in provisions which are inconsistent with SMCRA and 30 CFR Chapter VII, when the entire body of alluvial valley floor identification provisions in the Wyoming program is considered.

Wyoming has deleted the requirement for water quality data over one year and substituted the requirement for such data to show seasonal variations (Rule III 2b(6)). This change is consistent with the district court's ruling of February 26, 1980, p. 50. See discussion above under "General Background."

In a manner similar to that used in Rule III 2a, Wyoming has added to Rule III 2c the qualifying phrase discussed above regarding subirrigation and flood irrigation and further added the phrase "which are important to farming." Since Rule III 2c(2) addresses only material damage subject to Section 510(b)(5) of SMCRA, this change is also consistent with the district court ruling (*Id.* at 52–53).

Wyoming has added requirements to Rule III 2c for a monitoring plan in accordance with Rule V 2e and, by letter dated August 4, 1980, has clarified its intent to monitor all affected alluvial

valley floors (Administrative Record No. WY–220).

Wyoming modified Rules V 2c and d(1) to apply the criteria of material damage and interruption, discontinuance and preclusion to alluvial valley floors "of importance to farming." This is also in accordance with the district court rulings. Rule V 2d(3) has been added by Wyoming to provide the grandfather clause contained in 30 CFR 785.19(e)(1)(i).

Additional elements of Wyoming's alluvial valley floor provisions are discussed in Finding 13.116.

The Secretary finds, based on the above discussion, that Wyoming's alternative provisions for identifying alluvial valley floors are consistent with the Federal requirements.

*12.5* Wyoming has promulgated Rules I 2(79) (defining "soil horizons"), I 2(97) (defining "topsoil"), and IV 2c and IV 3b (performance standards for removing, protecting and replacing soils). Wyoming has promulgated the cited rules to provide for automatic consideration of all soils present at a site as potentially suitable plant growth media rather than initially restricting the analysis to the A horizon as could occur pursuant to 30 CFR 816.22(b). The Wyoming alternative provides the same assurance of suitable plant growth media as contained in 30 CFR 816.22(e). Wyoming has also promulgated Rule IV 3b(1) which requires the A or more organic horizons of topsoil to be segregated from the B and C horizons where such practice would enhance revegetation. This is equivalent to 30 CFR 816.22(d).

Wyoming has proposed the alternatives to take into account the highly variable soil at most Wyoming mine sites. The Secretary finds that these soil protection provisions are consistent with the Federal requirements of 30 CFR 816.22.

The definition of topsoil is also addressed in Findings 13.3, 13.5 and 13.6. Segregation of soil horizons is discussed in Finding 13.4.

*12.6* Wyoming has promulgated Rule IV 3e(2)(b) to require that permanent diversions or stream channels be constructed to establish or restore stream characteristics to approximate premining stream channel characteristics and to establish and restore erosionally stable stream channels and flood plains. This is a substitute for the Federal requirements to establish the stream to its naturally meandering slope of an environmentally-acceptable gradient, and to establish or restore a longitudinal profile and cross-section that approximates premining stream channel characteristics (30 CFR 816.44(d)).

The resubmission takes into account that there are numerous variables in stream flow systems and that the topographic and geomorphic changes attendant to mining require careful analysis to achieve proper erosional balances in postmining surface water systems. The Secretary finds that the alternative standards incorporate the Federal requirements to restore a naturally stable channel and flood plain and that the alternative will result in streams and diversions being restored properly, considering topography, soils, and watersheds in the region of the mine.

*12.7* Wyoming has promulgated Rule IV 3p(2) to apply the buffer zone concept of 30 CFR 816.57(a) to perennial and intermittent streams as opposed to perennial streams and streams with biological communities meeting the criteria of 30 CFR 816.57(c). Wyoming perceives problems with enforcing a provision based on an assessment of the biological community. Therefore, it has selected, as the criteria for considering buffer zones, the hydrologic definition of those streams that are likely to support aquatic biologic systems to some degree. Thus perennial and intermittent streams would automatically receive close scrutiny regarding the need for buffer zones.

Concern has arisen as to whether the elimination of biological communities as a determinant for buffer zones would weaken protection of the aquatic ecosystem. This is also discussed in Finding 13.39 below. To counter this concern, the Wyoming program contains several provisions to assure protection of the aquatic ecosystem: Rule II 3a(6)(e), which requires studies of fish and their habitats, at the level of detail required after consultation with State and Federal game and fish agencies; Rule II 3b(4), which requires a plan to minimize adverse impacts to fish and related environmental values, including wildlife and fish habitats of high value; the Wildlife Guideline (No. 5), which requires surveys and evaluations of water quality and aquatic (fish) habitat and standard procedures for assessing fish and fish habitat using measurements of the biological community in the same manner as 30 CFR 816.57; and Rule IV 3p(2), which includes the two types of streams supporting biological communities defined in 30 CFR 816.87(c). (See Finding 13.G below.)

The Secretary finds the substitution of intermittent and perennial streams for buffer zone requirements to provide equivalent protection of stream biota, considering the other provisions of the Wyoming program which require definition and protection of the aquatic system and the assurance provided by the State on August 5, 1980. The State gave assurance that premining studies. as described in Guideline 5, will be conducted on streams within or adjacent to the permit area which are expected to be important to fisheries (Administrative Record WY–220). The Secretary assumes that the phrase "important to fisheries" includes streams that support biological communities as defined in 30 CFR 816.57(c), whether or not the streams support fish populations. Based on that assumption, the Secretary finds the State's explanation acceptable.

*12.8* Wyoming has promulgated Rule IV 3c(1)(b), which prohibits placement of excess spoil in areas (1) with an overall slope of 20 degrees or (2) in areas of springs, seeps, or drainages. This, excess spoil cannot be placed in an area which would qualify as a "valley fill," "head-of-hollow fill," or "durable rock fill" as defined in 30 CFR 701.5. ("Durable rock fill" is a variant of valley or head-of-hollow fills.) The prohibition of Rule IV 3c(1)(b)(ii) also eliminates the need for underdrains (see Finding 13.46).

Since coal resource areas conducive to surface mining operations in Wyoming are conducted on relatively flat terrain, adequate room exists to place any excess spoil out of drainages and steep slope valleys. As discussed in Finding 12.3 above, Wyoming currently plans to prohibit mining on steep slope areas, thus prohibiting placement of excess spoil in steep slope areas.

The Secretary finds the Wyoming rules will achieve more stringent environmental protection than the Federal regulations, since they prohibit construction of valley fills.

*12.9* Wyoming has, as discussed in Finding 12.8 above, prohibited placement of excess spoil in topographic locations which, as a result of steepness. require construction as "head-of-hollow fills" (see 30 CFR 816.73). Thus, the Secretary finds the proposal to prohibit construction of head-of-hollow fills to be acceptable as providing more stringent environmental protection than the Federal regulations.

*12.10* As discussed in Findings 12.8 and 12.9 above, Wyoming prohibited placement of excess spoil in "valley fills" or "head-of-hollow fills." "Durable rock fills" permitted by the Federal regulations (30 CFR 816.74) are prohibited in the State program resubmission since these are essentially "valley" or "head-of-hollow" fills containing durable rock and designed to alternative standards. The Secretary

finds the prohibition of durable rock fills by the Wyoming program to be acceptable as providing more stringent environmental protection than the comparable Federal regulations.

*12.11* Wyoming has promulgated Rule IV 3a(5) to define "thin overburden" as existing where (1) operations are carried out continuously in the same limited permit area for more than one year and (2) the volume of all available spoil and suitable waste material over the life of the mine is demonstrated not to be sufficient to achieve the approximate original contour. The second part of the definition differs from that of 30 CFR 816.104 in that it does not use a numerical ratio. The alternative language in the Wyoming rule is essentially the same as that in Section 515(b)(3) of SMCRA.

Wyoming considers the single ratio to neglect site-specific considerations where all material should be returned to the mined area to achieve approximate original contour regardless of whether the dimensional criterion of 30 CFR 816.104 is met. The Secretary finds the alternative rule to be consistent with SMCRA and acceptable as an alternative to 30 CFR 816.104 because it requires that all material be returned to the pit regardless of the numercial factor to assure that the land is returned to approximate original contour consistent with the approved postmining land use.

*12.12* Wyoming has promulgated Rule IV 3a(6) to apply to situations addressed in 30 CFR 816.105 as "thick overburden." This rule requires that spoil demonstrated to be in excess of that necessary to achieve approximate original contour be disposed of in accordance with the State rule for "excess spoil" (Rule IV 3c(1)). The language of the rule approaches the language of Section 515(b)(3) of SMCRA, but does not use the numerical criterion provided in 30 CFR 816.105.

Wyoming reasons that bulking ratios for spoil are not constant and that natural compaction processes occurring after grading are not well understood. Therefore, Wyoming considers that a standard ratio is not sufficiently flexible to account for geologic variability in the coal resource areas of Wyoming. When evaluating proposed postmining topography on a site-specific basis, Wyoming considers the suitability of the topography for promoting revegetation and hydrologic stability. Evaluations of approximate original contour are based on support of the postmining land use, revegetation, and hydrologic stability. The Secretary assumes that only that spoil which, if placed back on the mined area, would lead to hydrologic instability or revegetation problems or both would be determined to be excess. Based on that assumption, the Secretary finds the alternative rule to be consistent with SMCRA and acceptable as an alternative to 30 CFR 816.105, since it encourages emphasis on achieving hydrologic stability and supporting vegetation when considering postmining topography in the coal resource areas of Wyoming.

*12.13* Wyoming has also promulgated Rule IV 3g(1) to require retention of sedimentation ponds or sedimentation control devices until the affected lands have been restored and until the untreated drainage from such lands will not degrade the quality of receiving water. While this was proposed by Wyoming as an alternative to the requirements of 30 CFR 816.42(a)(2) and 816.46(u), the Secretary finds it consistent with the Federal requirements without consideration of the "State window" alternatives procedure. However, even if 30 CFR 816.42(a)(2) and 816.46(u) were interpreted to require retention of sediment ponds throughout the entire period for measuring revegetation success (i.e., 10-years in arid areas like Wyoming), the Wyoming proposal for earlier removal is approved under the "State window" criteria. The need to preserve water and avoid the evaporation loss resulting from sediment ponds in Wyoming justifies pond removal whenever the background level of sediment discharges has been achieved without regard to complete revegetation success. This is also discussed in Finding 13.B (13.13, 13.25), below.

In response to the Secretary's initial finding that the word "restored" in Rule IV 3g(1) was identical in meaning to the term "restored and revegetated," the State clarified its intention to, in fact, not require that the revegetation bond period be terminated prior to removal of sediment control facilities but rather to require that facilities be removed when "disturbed land channels are relatively stable and the monitoring of untreated runoff shows that water quality has been reduced to baseline conditions" (Exhibit G.6, counterpart to 30 CFR 816.46(u) of resubmission). The word "restored" is discussed by Wyoming in the resubmission as meaning that the disturbed area is sufficiently stabilized that runoff is restored to background water quality conditions and to projected flow conditions. Once water quality has returned to baseline levels, it could be reasoned that the revegetated area would, in general, have adequate vegetation to control erosion at premining levels (or "baseline conditions").

Wyoming states, in the resubmission, that "[t]his alternative provision is sought on the basis of local requirements, which necessitate that unnecessary detention and evaporation loss of surface runoff be minimized so as to reduce adverse impacts on senior downstream water rights in an environment where surface runoff is limited and demands for this resource are high."

Wyoming states that baseline conditions will be established prior to drainages being disturbed. This is most important since baseline conditions, both water quality and quantity, are highly variable in surface water streams in Wyoming. Wyoming's rules for gathering baseline surface water information (Rule II 3a(6)(h)(i)) did not appear to be implemented in the Hydrology Guideline (No. 8) to the degree necessary to ensure that adequate baseline information will be obtained to allow a quantitative determination by the regulatory authority that runoff from reclaimed lands meets baseline conditions. (See Section III A of Guideline). The State therefore emphasized that it will require baseline data sufficient to characterize seasonal variation on all drainage that will receive runoff from affected lands (Administrative Record No. WY-220). These data will, of course, have to be statistically valid.

The Secretary finds that Wyoming's proposed alternative is acceptable and should be adequate to enforce the requirement to obtain surface water flow and quality data either from reference basins located in the general area, or from the undisturbed drainages of the permit area, and to show what types of comparisons of data will be (1) feasible and (2) necessary to show that "disturbed lands are relatively stable and the type of monitoring of untreated runoff necessary to show that water quality has been [restored] to baseline conditions." The Secretary finds the alternative to achieve the purposes of, and be consistent with, the pertinent Federal requirements.

*12.14* Wyoming includes in Rule I 2(71)(c)(ii) in the resubmission, a definition of "non-constructed light use road" for a class of roads or road segments that do not require blading, cutting, or filling and which would be used by light-duty vehicles, but which would be used for more than six months. Wyoming also includes, in Rule IV 3j(3)(d), performance standards for those light-use roads. The Federal regulations for roads were remanded by the district court. (Opinion of May 16, 1980, at 32-36;

see discussion under "General Background," above.) However, the rules for these "non-constructed light use roads" are no less stringent than the performance standards in Sections 515 and 516 of SMCRA.

*12.15* Wyoming submitted material describing its program to regulate exploration in Appendix G.6 ("State windows" pursuant to 30 CFR 731.13). However, the explanation indicates the State did not develop its rules for exploration based on the criteria of 30 CFR 731.13. Therefore, this material is discussed under Finding 15 (exploration) rather than under "State windows."

*Finding 13*

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and regulations to implement, administer, and enforce applicable mining and reclamation requirements consistent with 30 CFR Chapter VII, Subchapter K (performance standards), and that the Wyoming program includes provisions adequate to do so, subject to the discussions in Findings 13.F and 13.P below. This finding is made under 30 CFR 732.15(b)(1).

Wyoming incorporates provisions corresponding to Section 515, 516, 527, 711, and 717 of SMCRA and Subchapter K of 30 CFR Chapter VII in Wyoming Statutes 35–11–103, 401, 402, 404, 406, 407, 411, 415, 428, 429, 430, and 601 and in Wyoming Land Quality Division Rules and Regulations Chapters I, II, III, IV, V, VI, VII, VIII, IX, XXI, XXIII, and other pertinent rules and regulations of other Wyoming State agencies. Volume 1, Part G.8, of the program submission contains a discussion of Wyoming's administrative and enforcement procedures for performance standards.

Discussion of significant issues raised during review of the Wyoming provisions for environmental performance standards follows:

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 13 acceptable subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following findings which have the same numbers as the tentative findings on the same provisions in the March 31, 1980, notice:

*13.1* The State has provided adequate regulations for signs in Rules IV 2c(1)(b), IV 2c(1)(d), IV 3m, IV 2c(3)(c), and VI 1(d) as required by 30 CFR 816.11.

*13.2* The State has provided for temporary sealing of drilled holes and/or protective devices in Wyoming Statute 35–11–404 and Rules IV 3n and XV 3a(2)(a) as required by 30 CFR 816.13 through 816.15.

*13.3* The State has provided a definition of topsoil in Rule I 2(97) which includes all soil horizons suitable as a plant growth medium. This is also discussed and found acceptable under Finding 12.5, since the definition was proposed as part of a "State window" alternative to 30 CFR 816.22(c).

*13.4* Rule IV 3b(1) allows the regulatory authority to require segregation of the A horizon or more organic horizon of the topsoil where such practice would enhance revegetation. This satisfies the requirements of 30 CFR 816.22(d).

*13.5* The State has promulgated a series of definitions which result in "topsoil" being more restrictively defined than subsoil. These are discussed under Findings 12.5 and 13.3 and are found acceptable.

*13.6* The State has provided adequate distinction between subsoil and spoil and for chemical analyses of subsoil and spoil in Rules IV 2c(3), IV 3a, and IV 3c(1), which regulate spoil handling and separation of spoil, subsoil, and topsoil.

*13.7* The State has removed the phrase "in accordance with applicable Federal and State air quality standards" from Rule IV 3o. This makes the rules consistent with 30 CFR 816.21 through 816.24 for topsoil protection and air resource protection under applicable regulations since topsoil will be protected even if quantitative "pollutant level" standards are not violated.

*13.8* The State has promulgated a rule requiring scarification prior to topsoiling (IV 3b(2)). This is considered preferable to 30 CFR 816.24(a) in consideration of the soil protection provisions of Wyoming's rules and the characteristics of soils in Wyoming where mixing of undersirable spoils and scarce soils should be avoided where possible.

*13.9* See Finding 13.A below.

*13.10* The State has required that topsoil information be provided in accordance with the standards of the National Cooperative Soil Survey of the U.S. Department of Agriculture (see Rule II 3a(6)(f)) and thus satisfied the comments of the U.S. Forest Service by requiring a soil survey to be conducted and graded in a manner consistent with the Federal requirements.

*13.11* The State has promulgated a definition of "hydrologic balance" which includes short-term and long-term changes (Rules I 2(40)). Thus, when used in combination with Rules IV 3c(3)(a), IV 3f(2), IV 3i, and other rules, authority equivalent to that in 30 CFR 816.41(a) is provided to prevent long-term adverse changes to the hydrologic balance.

*13.12* The State has promulgated a series of rules to ensure that acid-forming and toxic-forming materials are selectively placed where necessary to control and minimize water pollution. These rules include IV 3c(3)(a), IV 3c(3)(d), and IV 3a(2). In this manner, the requirements of 30 CFR 816.41(d)(2)(vii) are satisfied.

*13.13* See Finding 13.B below.

*13.14* See Finding 13.C below.

*13.15* The State has promulgated Water Quality Division rules which require a detention time for the 10-year 24-hour event (Rule X 8 and Appendix A). Further, the MOU between divisions of the Department of Environmental Quality in the resubmission includes a requirement to design for a minimum 24-hour theoretical detention time for the 10-year 24-hour event. However, the Federal counterpart, 30 CFR 816.46(c), was remanded by the court. See discussion above under "General Background." The rules and MOU are, however, no less stringent than the performance standards of Sections 515 and 516 of SMCRA.

*13.16* Rule IV 3i will require ground water monitoring to determine the extent of disturbance to the hydrologic balance. The State has adequate authority to require additional wells when necessary to determine the extent of disturbance. Thus, Rule IV 3i is consistent with 30 CFR 816.52(a)(3).

*13.17* W.S. 35–11–406(n)(iii) will require an approvable plan to affirmatively demonstrate that proposed operations are designed to prevent material damage to the hydrologic balance outside the permit area. Further, the requirements of W.S. 35–11–406(b)(xviii) to minimize disturbance to the prevailing hydrologic balance and Rules II 3b(10) and XXIII 2a(1) require the determination of probable hydrologic consequences of mining. Thus, the State program now satisfies the general requirements of 30 CFR 816.42 through 816.53 for protection of the hydrologic balance. The State has also promulgated Rules IV 3e, IV 3g, IV 3c(3), IV 3h, IV 3f, and IV 3i to be consistent with the varied Federal requirements for protection of the hydrologic balance in all activities.

*13.18* The State has developed an MOU between the Water Quality and Land Quality Divisions and has promulgated rules for the Water Quality Division which incorporate effluent

limitations for manganese consistent with 30 CFR 816.42(a)(7) (see Section 7 of Wyoming DEQ MOU and Rule X 4a of Water Quality Division Rules and Regulations). Finding 13.18 has been satisfied by incorporation of manganese. See also Finding 13.C (13.14) for a discussion of the quantitative limits for manganese set in the resubmission and additional clarification provided by the State on August 5, 1980 (Administrative Record No. WY-220).

*13.19* Rule I 2(1) defines "acid drainage" in terms of both pH and total alkalinity-acidity consistent with the definition in 30 CFR 701.5.

*13.20* The State has promulgated rules including ephemeral streams in the requirements for diversions (see Rules IV 3e(1) and IV 2(e)). Thus, the State program is equivalent to 30 CFR 816.43.

*13.21* Rule IV 2f(5) will require that permanent diversions and restored stream channels be designed to be erosionally stable and consistent with the role of the fluvial system. This rule provides the same protection as does 30 CFR 816.44(d)(2). This is also discussed in Findings 12.6 and 13.23.

*13.22* See Finding 13.D below.

*13.23* See Finding 13.21 above.

*13.24* Rule IV 3g(7) includes the following as sediment control measures: limiting the extent of disturbed areas and stabilizing, diverting, treating, or "otherwise" controlling runoff. In combination with other rules, such as IV 3d(3) (mulching) and IV 3a(3) (compacting), the requirements of 30 CFR 816.45(b) are met.

*13.25* See Finding 13.B below.

*13.26* The State has promulgated Water Quality Division rules requiring computations showing the detention time, to include sediment storage, for the 10-year 24-hour precipitation event (Appendix A to Rule X 8). This requirement is repeated in Section 7 of the DEQ MOU. However, the Federal counterpart, 30 CFR 816.46(c), has been remanded by the court. See discussion above under "General Background." The rules and MOU, however, are no less stringent than the performance standards in Sections 515 and 516 of SMCRA.

*13.27* The State has promulgated rules requiring that all permanent impoundments meet, at a minimum, the specifications of U.S. Soil Conservation Service Technical Release No. 60 and the SCS Practice Manual No. 378 (Rule IV 3h(2)(f)). Thus, the State requires compliance with Pub. L. 83-566 through such references. The resubmitted State Engineer regulations now also meet the Federal requirement that the crest of the emergency spillway be at least one foot above the crest of the principal spillway (see State Engineer Regulations V 8b(5)). Thus, this portion of the State program is now consistent with 30 CFR 816.46(i).

*13.28* The State program resubmission shows that the size of the impoundments requiring special spillway, embankment, barrier, and MSHA specifications was changed from 50 to 20 acre-feet in the Land Quality and State Engineer's rules as required by the Secretary. Thus, the State resubmission is in compliance with 30 CFR 816.46(q) with respect to using the same criteria for more stringent standards. The remaining requirements of 30 CFR 816.46(q) are met by a combination of Rules V 8b(7) and (8) of the State Engineer and Rules IV 3h(2)(f) and IV 3h(2)(e) of the Land Quality Division.

That the requirements of 30 CFR 816.46(t) are assured is included in a statement in the side-by-side analysis which indicates that the "routine inspection" required for the smaller sedimentation ponds by Rule IV 3(h)(2)(d) would be conducted at least quarterly and would be reported annually while larger ponds would be inspected "routinely." The MSHA requirements of 30 CFR 77.216-3 are for inspections each 7 days and these inspections will be required by MSHA in any case. The OSM requirements allow for reduction of inspections of smaller dams to quarterly. The State requirements are considered consistent with Federal requirements in that MSHA inspections are required and all impoundments will be "routinely inspected."

*13.29* See Finding 13.E below.

*13.30* Rules IV 2c(3)(f), IV 3c(3)(a) and IV 3c(3)(b) ensure proper disposal of spoil that is toxic- or acid-forming or which would prevent adequate reestablishment of vegetation. Thus, the program is consistent with 30 CFR 816.48.

*13.31* Rules IV 3h, II 3b(9), II 3b(11), and IV 3h(1), in addition to W.S. 35-11-406(n)(iii), W.S. 41-3-301, 41-3-302, and 35-11-416(b), ensure that water impoundments shall not affect the water of adjacent and surrounding landowners. This is consistent with 30 CFR 816.49(a)(4).

*13.32* Rules IV 3c(3)(a) and IV 3c(3)(d) provide controls over acid-forming and toxic materials in terms of ground water pollution in a manner equivalent to the requirements of 30 CFR 816.50(b). These rules are based on W.S. 35-11-406(b)(xviii), which requires a plan to minimize the disturbances to the prevailing hydrologic balance, and W.S. 35-11-406(n)(iii), which requires that permits be approved only if the proposed operations have been designed to prevent material damage to the hydrologic balance outside the mine site.

*13.33* Rules II 2b(3)(d), II 3a(5)(a)(ii)(B), and IV 3i, in addition to the Water Quality Division's requirements for monitoring point source discharges, provide an acceptable equivalent to the Federal requirements of 30 CFR 816.52. In addition, Guideline No. 8 provides advice on the design of elements of a hydrologic monitoring program.

*13.34* The State has noted that reporting requirements are established in the Water Quality Division's regulations (Chapter X, Section 5), which require reporting at least quarterly. The MOU among the DEQ divisions requires reports such as the NPDES permit report to be furnished to all other appropriate divisions (see Section 10 of MOU). Thus, the requirements of 30 CFR 816.52(b)(iii) will be satisfied.

*13.35* Rule IV 3i(1) will require that all hydrologic monitoring be adequate to determine the extent of disturbance to the hydrologic balance and to plan for necessary modifications to the operations. This would include periodic monitoring as required by 30 CFR 816.52(a)(2). Further, Rule II 3b(9) requires a plan to ensure protection of the quantity and quality of, and rights to, surface and ground water. Thus, aquifers will be further protected. Spoil analysis to assess potentials for leaching is required in Rule IV 2c(3)(e). Thus, all requirements of 30 CFR 816.52(a)(2) are met.

*13.36* Rule II 3a(5)(iv) incorporates the Wyoming State Engineer's regulations for wells; Rule IV 3n(1) ensures that the transfer of wells does not relieve the mine operator of the responsibility to prevent pollution or the operator's responsibility for capping, sealing, or plugging drill holes during exploration; W.S. 41-3-905 and 41-3-930 require registration of wells and permits for construction of wells.

These rules and statutes provide protection equivalent to that provided by 30 CFR 816.53. W.S. 41-3-930 does exempt small production, non-commercial wells from the State Engineer's permit requirement. Such exempted wells are to be used for stock, household use, or noncommercial irrigation when the area irrigated does not exceed one acre and the flow does not exceed 25 gpm and provided the water right has been correctly filed. However, Rule II 3a(5)(a)(iv) provides the same requirements as 30 CFR 816.53 for removal of water wells, regardless of size.

*13.37* Rule IV 3e(3)(c) allows no discharge of surface water into an

underground mine which is more stringent than 30 CFR 816.55, and is therefore acceptable. Rules VII 2a(5) and (b) apply performance standards for hydrologic protection to underground mines. Rule VII 2b(2) requires all underground mining activities to be placed and conducted to prevent or control gravity discharges and that any discharges not violate State or Federal water quality standards. Rule II 3b(11) requires an evaluation of the impact on the hydrologic system for any type of mining. The State does not provide for the water quality "variance" of 30 CFR 817.55(c) for discharges of certain types of wastes.

Discharges from one underground mine to another would have to be evaluated to meet the requirements of Rule II 3b(11), the effluent limits of the Water Quality Division, and Rule IV 3r (MSHA approval of operations within 500 feet of an underground mine), Thus, protection equivalent to that of 30 CFR 817.55 would be afforded. This is also discussed in Finding 13.107.

*13.38* Rule IV 3e(2)(c) requires renovation of permanent diversions and streams to approved standards. Similarly, Rule IV 3h(4) requires renovation of all permanent impoundments to approved standards. Thus, the State program resubmission in this regard to equivalent to 30 CFR 816.56.

*13.39* See Finding 13.F below.

*13.40* Rule IV 3t requires maximum utilization and conservation of the coal resource so as to minimize reaffecting the land. As standard practice, Wyoming requires recovery of rider coal seams wherever possible and requires analysis of mining deeper seams. Thus, the State rules and practice provide the same authority as does 30 CFR 816.59.

*13.41* Rule VI 2a requires that properly requested preblasting surveys be conducted by personnel approved by the regulatory authority and that the operator or applicant be responsible for conducting the survey or for having the survey conducted. Rules VI 3a(4) and VI 5a(3) provide for audible warning signals. The State program is consistent with 30 CFR 816.62.

*13.42* Rule VI 5a(6) incorporates the Federal permanent program requirements of 30 CFR 816.65(e) for maximum airblast levels.

*13.43* Rule VI, performance standards for blasting, is consistent with 30 CFR 816.61 through 816.68.

*13.44* Rule VI 5b(5) contains the scaled distance equation required by 30 CFR 816.65(e)(1).

*13.45* Rule IV 3c(1)(d)(ii) includes a "long-term static safety factor" of 1.5 for excess spoil piles and is therefore consistent with 30 CFR 816.71(f).

*13.46* Rule IV 3c(1)(b)(ii) prohibits placement of excess spoil in areas of springs, seeps, drainages, croplands, or important wildlife habitat. See discussion of prohibition of valley fills, head-of-hollow fills, or durable rock fills in Findings 12.8, 12.9, 12.10.

*13.47* Rules IV 3t and XIII 1a(8)(d) restrict the operations to be conducted within 500 feet of an active or abandoned underground mine and require MSHA approval. Rule IV 3t requires minimizing future affects of mining. The State program is thus consistent with 30 CFR 816.79.

*13.48* Rule IV 3c(2)(a) prohibits disposal of coal processing wastes in the construction of dams, embankments, or diversion structures. Therefore, the State program is more stringent than the Federal program, and the requirements of 30 CFR 816.91 through 816.93 need not be exactly replicated since coal processing wastes will not be used in dams or embankments. Coal processing wastes are to be disposed of in accordance with excess spoil disposal requirements of the State program plus additional requirements contained in Rule IV 3c(2). Construction of dams and embankments to impound coal processing wastes is regulated by Rule IV 3c(2)(d) of the resubmission. This rule is similar to the requirements of 30 CFR 816.93. However, no coal processing wastes may be used in such a dam or embankment if the structure would be located in a flood plain, channel, or area of seepage. (See Findings 13.50 and 13.51 below and 13.46 above.)

*13.49* Rule IV 3c(2)(c)(vii) requires that, if a potential hazard is found to exist at a coal processing waste pile, the regulatory authority shall be immediately notified and that, if no remedial measures can be formulated, the appropriate emergency agencies shall be notified of the hazard to protect the public. The State resubmission is consistent with the requirements of 30 CFR 816.82(b).

*13.50* Rule IV 3c(2)(c)(iii) keeps coal processing wastes outside areas of flood plains or seepage. This exclusion is in addition to that of Rule IV 3c(1)(b)(ii) for excess spoils which also applies and prohibits location in areas of springs, seeps, drainages, croplands, or important wildlife habitat. This provides for more stringent controls over placement of coal processing wastes than do the Federal regulations.

*13.51* Rule IV 3e(3)(a) controls discharge from coal processing waste dams and embankments (i.e., dams or embankments contructed of native earth materials for the purpose of retaining or supporting coal processing wastes). Discharges are to be controlled to in turn control erosion and minimize disturbance to the hydrologic balance. Further, the State has promulgated rules for sedimentation ponds to control discharges and meet effluent limitations (IV 3g(1)). The State provisions are equivalent to those of 30 CFR 816.83(d).

*13.52* Rule IV 3c(2)(c)(i) requires construction of coal processing waste piles in 24-inch layers compacted as necessary to achieve a static safety factor of 1.5 and to prevent spontaneous combustion. The Wyoming rule gives the regulatory authority discretion to set a compaction density minimum of 90 percent of maximum dry density which is required in all cases under 30 CFR 816.85(c)(2).

Wyoming Rule IV 3c(2)(a) prohibits use of coal wastes in the construction of dams, embankments, or diversion structures. Therefore, the provisions of Rule IV 3c(2)(c)(i) apply only to coal waste disposal piles; thus, consideration of protection to the hydrologic balance and public safety is not as critical as that of dams or embankments in determining whether Wyoming's provision is adequate. Rather, consideration of Wyoming's provision is based on the prevention of spontaneous combustion and stability of the piles since the 1.5 static safety factor for stability is required in all cases.

As discussed in Finding 14.120 below, the Secretary is not requiring that the Wyoming program require a pyrite analysis because of the low sulfur content in coal in Wyoming. Pyrite is one primary contributing factor to spontaneous combustion in coal waste piles. (See Administrative Record No. WY-234.) Since the 1.5 static factor is required and the chance of spontaneous combustion is minimal, the Secretary does not believe that it is necessary for Wyoming to achieve the required 90 percent maximum dry density determined by AASHTOT99-74 in all cases. The Secretary assumes, however, that Wyoming will require compaction of coal waste piles to that density or its equivalent in any case where there is a potential for spontaneous combustion or instability.

Rule IV 3c(2)(c)(vii) requires at least quarterly inspections of coal processing waste banks by a registered professional engineer or other qualified person approved by the regulatory authority. Such inspections will facilitate changing density specifications to ensure stability and control of combustion.

The State program resubmission is consistent with 30 CFR 816.85(c), since the appropriate density will be required

wherever necessary to prevent combustion or to achieve mass stability.

*13.53* The Secretary found in the March 31, 1980, notice, that the provisions of 30 CFR 816.87 for utilization of burned coal processing wastes were not specifically required in the Wyoming program since coal processing wastes are not now produced in Wyoming and any future piles are to be constructed to prevent combustion. The State has not specifically addressed the Federal requirement for burned coal processing wastes. If such wastes were removed during surface coal mining operations, approval of the regulatory authority would be required to ensure compliance with Wyoming's statutes and rules requiring all mining operations to be planned and approved (W.S. 35-11-401(a)). All coal wastes generated would have to be placed within a permit area. Therefore, their removal would have to be regulated until such time as the performance bond was released. The resubmission remains consistent with the Federal requirements.

*13.54* Rule II 3a(5)(a)(iii) requires that a plan for any industrial solid land waste disposal facility be included in the mining and reclamation plan. The State program resubmission contains the DEQ MOU which incorporates Chapter I, Section 11 c of the Land Quality Division's Solid Waste Rules. These rules require approval of coal waste disposal by the Land Quality Division and cover of such material with at least two feet of non-combustible material. Further, no disposal is to take place within 8 feet of any coal outcrop or storage area. The State program submission is consistent with the Federal requirements of 30 CFR 816.89 for disposal of non-coal wastes.

*13.55* Rule II 3a(5)(a)(iii) incorporates the requirements of Rule I 11c(1)(c) and (e) of the Solid Waste Rules to apply hydrologic controls in solid waste disposal sites associated with coal mining. Further, Rule II 3b(10) requires an assessment of the probable hydrologic consequences of proposed operations, and W.S. 35-11-406(b)(xviii) requires operations to be conducted to minimize disturbance to the hydrologic balance. The State resubmission is therefore consistent with these specific requirements of 30 CFR 816.89(b).

*13.56* Rules IV 3b(3)(c), IV 3c(2)(c)(v), and IV 3o control wind erosion of soils, coal processing wastes, and other disturbed areas. The resubmitted State program includes an MOU between DEQ divisions (Exhibit F.1) which applies to fugitive dust control. However, the Federal counterpart, 30 CFR 816.95, was remanded by the district court to the extent the regulation would control fugitive dust not caused by erosion. See discussion above under "General Background." The rules and MOU are no less stringent than Section 515(b)(4) of SMCRA.

*13.57* See Finding 13.56 above.

*13.58* See Finding 13.56 above.

*13.59* See Finding 13.56 above.

*13.60* See Finding 13.56 above.

*13.61* See Finding 13.56 above.

*13.62* Rule IV 3e(2)(b) requires reestablishment of aquatic habitats and natural riparian vegetation. Rule II 3b(4)(b)(iii) protects or requires reestablishment of habitats of unusually high value for fish and wildlife, such as wetlands. Guideline No. 5 considers aquatic and wildlife habitat. Thus, the State program resubmission is equivalent to 30 CFR 816.97(d)(5).

*13.63* Rule II 3b(12)(b)(iii)(h) ensures that wherever postmining land uses are to be changed, approval of measures to prevent or mitigate adverse effects on wildlife or fish will be obtained from appropriate State and Federal fish and wildlife management agencies. Further, Rule IV 3p(1)(f) requires the use of vegetation to enhance interspersion of habitats. The requirements of 30 CFR 816.97(d)(10) and (11) for interspersing wildlife habitat will therefore be enforced by the regulatory authority, under the resubmitted program, as required by State or Federal fish and wildlife management agencies.

*13.64* The State program resubmission contains revised Guideline No. 5 for wildlife, which incorporates references to the same two documents incorporated in 30 CFR 816.97(c). (This is also discussed in Finding 6.3) Wyoming has also promulgated Rule II 3b(4)(b)(iii) to protect habitats of high value. Consideration of wildlife in postmining land uses is discussed in Finding 13.63 above. The state program resubmission is consistent with 30 CFR 816.97(c).

*13.65* The State has promulgated adequate rules to meet the requirements of 30 CFR 816.97 for protection of fish, wildlife, and related environmental values. Specificity for most wildlife surveys is added in Guideline No. 5 (Wildlife).

*13.66* Rule IV 3a(1) requires rough backfilling and grading to follow contour and area strip mining on the time and space schedules identified in 30 CFR 816.101(a)(1) and (3). The State program resubmission therefore is consistent with 30 CFR 816.100 and 816.101(a). Rule IV 1 requires Section 3 of Rule IV to control for surface coal mining operations if a conflict develops between Rules IV 2 and IV 3 for "contemporaneous as practicable" backfilling and grading.

*13.67* Rule IV 3a(3) requires backfilling and grading to approximate original contour and Rule I 2(6) defines "approximate original contour" as that configuration which complements the drainage pattern of the surrounding terrain. Thus, the requirements of 30 CFR 816.101(b)(1) to return areas to approximate original contour are met.

*13.68* Rule IV 3a(7) requires that all spoil that may result from a permanent impoundment be regraded in accordance with the general backfilling requirements. Thus, such spoil would not automatically be considered excess but would only be considered "excess" if a "thick overburden" existed (see Rule IV 3a(6)). The resubmission is consistent with 30 CFR 816.102.

*13.69* Rule IV 3a and, in particular, Rules IV 3a(3) and (4) require backfilling and grading to approximate original contour and elimination of highwalls. Thus, the State has provided authority in rules equivalent to 30 CFR 816.102. The regulation authority is based on W.S. 35-11-415(b)(v) (contouring operations), and the Secretary believes that authority exists to enforce the rules regardless of whether statutes contain the same language. (See Wyoming Attorney General's opinion dated May 19, 1980.) Therefore, the requirements of the Wyoming program rules to backfill and grade to meet approximate original contour requirements, which requirements (and a definition of "approximate original contour") are not contained in Wyoming statutes, have the same authority as the rules would have if the identical language were in the statutes. "Approximate original contour" is suitably defined in Rule I 2(6).

*13.70* Rule IV 3a(8) (cut-and-fill terraces) is consistent with the Federal requirements of 30 CFR 816.102(b).

*13.71* Rules IV 3a(5) and (6) distinguish between thin and thick overburdens. This is discussed in detail under "State window" Findings 12.11 and 12.12.

*13.72* Rule IV 3b(4) requires removal and stabilization of any rills or gullies in excess of 6 inches which are inconsistent with the postmining land use. The resubmission is consistent with and generally more stringent than the 9-inch requirement of 30 CFR 816.106, though the State requirement combines the lesser depth with the allowance for rills and gullies to form under natural non-disruptive conditions where the postmining land use and vegetation are not adversely affected.

*13.73* Rule IV 3d(1) requires the operator to establish, on all affected lands, a diverse, permanent vegetative cover consistent with 30 CFR 816.111.

*13.74* The State has promulgated a number of rules related to the requirements of 30 CFR 816.112. These include Rules IV 3d and IV 2d. In particular, Rule IV 2d(5) requires field trials to justify more suitable reclamation species. Rule IV 3d(1) requires establishment of species native to the area or which will support the approved postmining land use. Rule IV 3d(2) permits the use of introduced species only to achieve a stabilizing cover for the approved postmining land use. Thus, use of introduced species must be approved based on the demonstrated capability to meet the standards for revegetation.

*13.75* Rule IV 3p(1)(f) will ensure that plant species are selected to enhance fish and wildlife habitat consistent with 30 CFR 816.112(c).

*13.76* See Finding 13.G below.

*13.77* See Finding 13.G below.

*13.78* The State has promulgated Rule IV 2d(6) to require sampling at any time a determination of revegetation success is made. Thus, confusion as to whether control areas should be periodically sampled to show trends no longer exists. In fact, such areas will be routinely sampled to show trends and forecast any needs for corrective measures. The resubmission is consistent with 30 CFR 816.116(a).

*13.79* See Finding 13.H below.

*13.80* Rule IV 2d(6) requires that cover and productivity be at least equal to that existing on the area before mining. Guideline No. 2 provides that information on the statistical significance with which the premining and postmining vegetation communities should be compared. The Wyoming program resubmission provides for determinations of revegetation success in cover and productivity in a manner similar to that of 30 CFR 816.116(b). (See Finding 13.140 for additional discussion.)

*13.81* Rule IV 3d(6) includes the 10-year liability period for revegetation success consistent with the Federal requirements for arid and semiarid areas of 30 CFR 816.116(b)(1)(ii). The initiation of the bond liability period is discussed in Findings 13.140, 18.3, and 18.10.

*13.82* Rule IV 3d(6)(b) specifies that when the approved postmining land use is to be commercial forest, the standards for measuring success will be established prior to approval of the plan. Thus, no permits approving reforestation may be granted until the State has promulgated rules equivalent to 30 CFR 816.117 and in accordance with State and Department of the Interior procedures under 30 CFR 732.17. It is not expected that any coal mining will occur on commercial forest lands in Wyoming in the near future since most of the commercial forest land is not located in the major coal resource areas.

*13.83* Rules IV 2d(5) and IV 3d(2) restrict the use of introduced seed species to those shown to be of superior value through field test plots and, where necessary, to stabilize and control erosion or to achieve the approved postmining land use. As noted in Finding 13.81, Rule IV 3d(6) requires the 10-year bond liability period for revegetation. Thus, the State resubmission is consistent with the requirements of 30 CFR 816.112 and 816.116(b)(ii).

*13.84* The Secretary's notice of March 31, 1980, inadvertently skipped the number 13.84 in listing his findings. There is no Finding 13.84.

*13.85* See Finding 13.82 above.

*13.86* Rule IV 3s requires that, if temporary cessation will extend past 30 days, the operator must submit the equivalent of an annual report (W.S. 35–11–411) to the regulatory authority. The annual report requires an identification of the extent of mining and reclamation operations in acres and the progress of all reclamation work. The report is also to include a revised schedule of operations. Any other information required by the regulatory authority must also be submitted (W.S. 35–11–411(a)(ii)). Thus, the requirements of 30 CFR 816.131 to submit a notice of intent to temporarily suspend operations and to provide other information are fulfilled by the State's requirements.

*13.87* Rules IV 2k and IV 21 require removal of structures unless approved as beneficial to the approved postmining land use, and require reclamation to begin within 180 days. Also, Rule IV 3a(1) places time and space constraints on reclamation (backfilling and grading in particular). Thus, in the event of permanent cessation of operations, reclamation must continue under Wyoming's regulatory program. The resubmission is consistent with 30 CFR 816.132.

*13.88* See Finding 13.I below.

*13.89* Rule II 3b(12)(b)(iii)(H) requires approval of measures to prevent or mitigate adverse effects on wildlife or fish by State and Federal fish and wildlife authorities if the land use is to be changed. The State program submission also included an MOU between the Land Quality Division and the Wyoming Game and Fish Department (Exhibit F.2) which requires the Game and Fish Department to be notified of the need for Land Quality Division (the regulatory authority) assistance in reviewing mining and reclamation plans. Though the time for comments is not specified in the State program as it is in 30 CFR 816.133(c)(8). the State permitting procedures (Rule XIII 1a(2)) and the MOU ensure that Wyoming Game and Fish Department comments will be obtained and that at least 60 days will elapse from receipt of the plan to the time action is taken on it.

The U.S. Fish and Wildlife Service offered consultation services to Wyoming in an undated letter included in the State program submission as Exhibit G.9. The U.S. Fish and Wildlife Service will also have the opportunity to review all plans involving Federal coal lands. This will include most of the coal mines in Wyoming. The Secretary finds the Wyoming provisions adequate in providing the opportunity for agencies with fish and wildlife management responsibilities to review all mining and reclamation plans, including plans proposing changes in land use.

*13.90* The State has promulgated a series of rules to provide general provisions for roads consistent with the Federal requirements. However, the Federal counterparts, 30 CFR 816.150–816.176 have been remanded by the district court. See discussion above under "General Background." The Wyoming rules are no less stringent than the performance standards in Sections 515 and 516 of SMCRA.

*13.91* See Finding 13.90 above.

*13.92* See Finding 13.90 above.

*13.93* See Finding 13.90 above.

*13.94* See Finding 13.90 above.

*13.95* See Finding 13.90 above.

*13.96* The State has promulgated Rule IV 3g(1) which requires all surface drainage to be passed through a sedimentation pond unless the drainage comes from sediment pond areas themselves, diversion ditch areas themselves, or road disturbances. Therefore, as in 30 CFR 816.42(a)(4), drainage from roads does not always have to pass through sedimentation ponds to be in compliance with the Wyoming program and the Wyoming program is consistent with Federal requirements.

*13.97* See Finding 13.90 above.

*13.98* See Finding 13.90 above.

*13.99* Rule IV 3j(5)(a)(i) requires control of additional contributions of suspended solids to streams or runoff and damage to fish and wildlife using the best technology currently available, and is thus consistent with 30 CFR 816.180 and 30 CFR 816.181 for railroad and other transportation and mine facilities.

*13.100* Rule VII 2 provides performance standards for underground mines in addition to those required for surface mines. These Rule VII 2 standards limit backfilling and grading requirements to those in Rule IV 2b

(reestablish the "contour of the land in a manner consistent with the proposed future use of the land") rather than including Rule IV 3a (requiring sealing and backfilling of shafts and adits, and all subsidence features occurring within 5 years of completion of mining to be appropriately reclaimed). The rule also provides for gravity discharge and subsidence controls. The State has promulgated Rule VII 2(a)(5), which incorporates "all applicable performance standards of Rule IV and W.S. 35–11–101, *et seq.*" into the underground mining and reclamation standards. The resubmission has adopted language to correspond to the district court rulings concerning 30 CFR 817.54, 817.101(b)(1), and 817.102 (Opinion of May 16, 1980, at 36–37, and 17–18). The resubmission is consistent with the remaining Federal requirements for the permanent regulatory program.

*13.101* Rule VII 2(b)(3) provides the State with authority to prohibit all types of underground mining as necessary to prevent subsidence, and thus is acceptable as more stringent than 30 CFR 817.121(a).

*13.102* Rule VII 2b requires that underground mining activities be planned and conducted to prevent material damage caused by subsidence. Further, Wyoming has clarified its intent to require that all perennial streams and impoundments be evaluated on the basis of detailed subsurface information prior to approving mining beneath them (Administrative Record No. WY–220). Thus, the perennial stream and impoundment criteria of 30 CFR 817.126(a) are accounted for, since mining causing an adverse, permanent effect on streams or impoundments would cause material damage to the land surface. Under both the Federal and State requirements, streams or impoundments can be undermined if there will be no material damage (see 30 CFR 817.126(a)). Rule VII 2b also provides controls on mining under parks, cemeteries, public buildings, acquifers, and in urbanized areas in a manner consistent with 30 CFR 817.126.

*13.103* Rule II 3a(5) requires listing of MSHA identification numbers and applicable approvals. Rule VII 2(a) refers both to the U.S. Bureau of Mines and to "appropriate Federal and State laws" in the context of sealing shafts and adits. Thus, MSHA requirements must be met in a manner consistent with the Federal requirements since MSHA enforces Federal requirements. Further, Rule IV 3r requires MSHA approval of any operations within 500 feet of an underground mine. This would also apply to all shaft sealing.

*13.104* Rules VII 1a, 1b, 2a(5), and 2b(8) incorporate all applicable portions of the surface mining rules (Chapters II, IV, and V) in the underground mining rules. As a result, Rule III is also incorporated (as required by Rule V). Rule VI would apply to any surface blasting. In effect, a comprehensive set of permit requirements and performance standards for underground mines has been promulgated by Wyoming and thus the State resubmission is consistent with 30 CFR Part 817.

*13.105* Rule VII 2a(5) (underground mining) incorporates (1) Rule IV 3g, which requires use of sedimentation ponds, (2) Rule IV 3e, which requires use of diversions, (3) Rule IV 3c(3), which requires special handling of acid-forming and toxic-forming materials, and (4) Rule IV 3d which requires revegetation. Rule VII 1c(3) also requires a subsidence control plan and VII 2b(2) requires prevention or control of gravity discharges. Thus, the requirements of 30 CFR 817.41(d) are included in the resubmission. Further, W.S. 35–11–406(b)(xviii) requires a plan to minimize disturbance to the prevailing hydrologic balance, as in 30 CFR 817.41(b).

*13.106* Rule IV 3g(7) requires that appropriate sediment control measures be designed, constructed, and maintained using the best control technology available. This rule is incorporated into underground mining requirements through Rule VII 2a(5). The Wyoming program has authority through these rules to specify that sumps be used to control sediment in underground mining operations in a manner consistent with 30 CFR 817.45(h).

*13.107* Rules VII 1c(2) and 2b(2) require a plan that demonstrates prevention or control of potential gravity discharges when such discharges might be in excess of State or Federal water quality standards. 30 CFR 817.50(b) requires that effluent limitations be met by such discharges, including the effluent limitations contained in 30 CFR 817.50(b)(1)(i) and 817.50(b)(2)(ii). This was also discussed in Finding 13.37.

*13.108* Rule VII 2b(1) requires that underground development wastes be disposed of in compliance with Rule IV 3c, which governs (1) excess spoil, (2) coal processing wastes, and (3) acid-forming and toxic-materials. Thus, requirements for overburden (spoil) from surface mines and underground development wastes are provided consistent with 30 CFR 817.71 and other Federal requirements for hauling and disposing of development wastes and spoils.

*13.109* Rule VII 2a(5) incorporates Rule IV 3p and all fish, wildlife and related standards promulgated for surface mining in the underground mining rules, consistent with the requirements of 30 CFR 817.97.

*13.110* Rules III 4 and XIII 1a(7) specify permit processing requirements for concurrent surface and underground mining operations. Rule IV 3r requires maintenance of a 500-foot barrier and Rule V 4 requires that a safe vertical distance be maintained between concurrent surface and underground operations. Thus, requirements of 30 CFR Part 818 are met in the resubmission

*13.111* Rules IV 3r and V 4 are consistent with 30 CFR 818.15 (a) and (b) in terms of maintaining 500 feet between concurrent surface and underground operations, unless otherwise approved by MSHA.

*13.112* See Finding 13.111 above.

*13.113* Rule V 5(c) incorporates dimensional specifications for undisturbed areas of coal to be left after auger mining operations are completed, consistent with 30 CFR 819.11(a).

*13.114* Rule V 5b provides authority to limit or prohibit auger mining if environmental impacts cannot be prevented or corrected, which is consistent with 30 CFR 819.11(e).

*13.115* Rule V 5d requires plugging of auger holes that discharge water containing acid- or toxic-forming material within 72 hours of completion, consistent with 30 CFR 819.11(c)(1).

*13.116* Rule V 2 and guideline provide for protection of alluvial valley floors. See Finding 12.4 for a more detailed discussion regarding the manner in which the State program resubmission provides adequate protection for alluvial valley floors.

*13.117* W.S. 35–11–103(e)(xviii) provides a definition of "alluvial valley floors" which is essentially identical to that of Section 701(1) of SMCRA and 30 CFR 701.5.

*13.118* See Finding 13.J below.

*13.119* Rule V 2d incorporates monitoring requirements for operations in or adjacent to alluvial valley floors, which, with the clarification received (Administrative Record Document WY–220) and as discussed in Finding 13.0 (13.118) below, are consistent with 30 CFR 822.14.

*13.120* Rule V(1) provides for regulation of operations on prime farmland consistent with 30 CFR Part 823. Wyoming has also promulgated rules equivalent to those incorporated by reference in Part 823 of 30 CFR and has modified its rules to correspond with the modification of the Federal requirements specified in 44 *FR* 77455 (December 15, 1979). These modifications are discussed in Finding 14.69.

*13.121* Rule I 2(39) contains a definition of "history of intensive agricultural use." The term is used in Rule II 3a(6)(g)(i) in the context of identifying prime farmland. The term is more detailed than, but consistent with, the Federal definition of "historically used for cropland" (30 CFR 701.5), and is not related to the time of the lease or lease option for surface coal mining as is the Federal term.

*13.122* Rule III 1a(5) requires identification of the moist bulk density of major soil horizons for prime farmland but contains no requirements equivalent to 30 CFR 823.14(c) for use of moist bulk density as a criterion for reconstruction (see Rule V 1a(3)(c)). This is an appropriate change since OSM has suspended the moist bulk density standard for soil compaction (44 *FR* 77455, December 31, 1979). Instead, the Wyoming program resubmission requires soil replacement in a manner that avoids excessive compaction, creates pore spaces favorable for rooting zone, minimizes erosion, and restores available water holding capacity consistent with the premining soil condition. This is consistent with the requirements of 30 CFR 823.14(e).

*13.123* See Finding 13.K below.

*13.124* See Finding 13.L below.

*13.125* See Finding 13.M below.

*13.126* See Finding 13.N below.

*13.127* W.S. 35–11–401(m) prohibits steep slope mining until State program rules are promulgated. See Finding 13.S (13.126) below for a more detailed discussion of this finding.

*13.128* W.S. 35–11–103(e)(xx) defines "surface coal mining operations" as including "leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, and the loading of coal."

There are no distance limits on the inclusion of coal loading. Therefore, all performance standards and permit application requirements are applied to all processing plants and all coal loading facilities. The State program thus fulfills the requirements of 30 CFR Part 827, and is more stringent in that it applies to coal loading facilities located off the mine site.

Wyoming has two distinct sets of regulations governing in situ operations. One set pertains to *all* in situ operations (Rule XXI 2a) and the other pertains only to in situ coal operations (Rule V 3a(5)). Between the two, all requirements of 30 CFR 785.22 and Part 828 are included in the Wyoming program.

Following are the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930, *et seq.*). Also included are findings that have undergone more detailed analysis by the Department.

*13.A* In Finding 13.9, the Secretary suggested that the Wyoming program resubmission should provide for certification of laboratories for soils analyses. The Federal regulations require that soils tests conducted to determine nutrient levels, chemical constituents, and need for soil amendments should be performed by a qualified laboratory using standard methods approved by the regulatory authority (30 CFR 816.25).

The State has responded that it sees no reason to be in the business of certifying laboratories to conduct soils analyses in Wyoming. Wyoming has included, as part of the program submission, two guidelines addressing. in part, soils (Guidelines No. 1 and No. 3) which provide references or directives for conducting analyses of pH, conductivity, saturation percent, texture class, sodium absorption ratios, $CaCO_3$, selenium, boron, nitrate, organic matter, molybdenum, acid base potential, exchangable sodium, lead, phosphorous, potassium, and arsenic. This is in addition to the guidelines' directions on soil sampling, sample preparation, and presentation of field descriptions.

As represented in Wyoming Administrative Record Document No. WY–99, OSM tentatively acccepted the State's position on the need for soils laboratory certification during the public comment period. Reanalysis of the issue indicates that the Wyoming soils guidelines are expanded to show standard methods for all pertinent measurements. With the guidelines, the program will be adequate in terms of obtaining accurate soils data in practice, since methodologies are standardized, thus eliminating the need for laboratory certification. The pertinent elements of Wyoming's program are acceptable.

*13.B* In Findings 13.13 and 13.25, the Secretary found that the Wyoming equivalent to 30 CFR 816.42(a)(2) was generally consistent with the Federal requirement since the term "restored" was considered equivalent to meeting the revegetation requirements of 30 CFR 816.111–816.117. However, Wyoming stated in its resubmission that, in fact, they would not require retention of sedimentation ponds until the requirements of 30 CFR 816.111–816.117 have been met if untreated runoff from the restored lands, at the time of considering removal of ponds or other facilities, would not degrade receiving waters. This proposal is submitted as a "State window" pursuant to 30 CFR 731.13 and, thus, is discussed in detail in Finding 12.13 which the Secretary finds acceptable.

*13.C* In Finding 13.14, the Secretary found that Wyoming's proposed use of the term "daily average" for measuring total suspended solids was consistent with 30 CFR 816.42(a)(7). However, in the State program resubmission, the values for total suspended solids, iron and manganese listed under the heading "Instantaneous Maximum" are incompatible with Footnotes 4 and 6 to the Effluent Limitations Table in the Federal regulations. As presented in the submission, all values are too high to meet the Federal requirements. By letter dated August 5, 1980 (Administrative Record No. WY–220), the State explained that the Wyoming provision was consistent with the Federal requirement because "daily maximum" is considered to be a "representative sample." In addition, the standard for "instantaneous maximum" in the Water Quality Division regulation represents one grab sample, but is not a "representative sample." The State confirmed this interpretation with the Environmental Protection Agency (EPA). Based on this explanation, the Wyoming provision is acceptable.

*13.D* In Finding 13.22, EPA noted that the initial Wyoming program submission did not discuss the necessity of modifying downstream water treatment facilities once a stream channel diversion protecting the facility was removed. The Wyoming program resubmission indicated that water treatment facilities, of the type contemplated by 30 CFR 816.44(c) and EPA, are not found in the permit area and that protection for offsite areas is provided in Rules IV 3e and IV 3g. Under Rule IV 3e(2)(b)(ii), diversions are to be reclaimed in a manner that reestablishes approximate premining stream channel characteristics. Under Rule IV 3g(1), sedimentation ponds are to be retained until the affected lands have been restored. Thus, it is suggested that the stream drainage system will be reestablished so as not to affect downstream water treatment facilities. However, the rules do not require the specific consideration of downstream water treatment facilities.

On the other hand, Wyoming's Rule II 3b(11) requires evaluation of off-site hydrologic effects, and if there are adverse effects on water supplies or water systems, the application must identify alternative sources of water supply. Thus, downstream water treatment facilities must be considered in the regulatory authority's assessment.

The Secretary finds that Wyoming's statutes (e.g., 35-11-406(n)(iii)) and Rule II 3b(11) ensure consideration and protection of downstream water treatment facilities in a manner consistent with 30 CFR 816.44(c).

*13.E* As discussed in finding 13.29, the State, in its program resubmission, has explained that substitution of the word "lethal" for the word "detrimental" in the State's definition of "toxic materials" (Rule I 2(98)) was based on the objective of establishing stringent, well defined controls for materials that may be introduced into the environment. The State indicated in the resubmission that protection was also given by Rules IV 2c(3)(e), IV 2c(3)(f), and IV 3a(2) and by W. S. 35-11-415(b)(iv). These provisions address identifying spoil as a source of water pollution, disposal of toxic overburden or spoil, minimizing adverse effects on ground water, and covering or disposing of toxic materials constituting a hazard to health and safety or posing a threat of water pollution. The State thus equates detrimental (adverse effect) to terms such as "water pollution," "adverse effect," or "hazardous to health and safety" and believes the word "lethal" sets more stringent controls than does "detrimental."

The Secretary believes that there is a potential for confusion between State and Federal requirements for protection of biota and water uses unless the State assures that "lethal doses" will actually reflect *all* detrimental effects. By letter dated August 5, 1980 (Administrative Record No. WY-220), the State stated its intent to propose an amendment to the regulation defining "toxic materials" which would substitute "detrimental" for "lethal." Until this rule is promulgated, the Secretary cannot find this Wyoming provision consistent with the Federal requirement, but will make promulgation of the regulation a condition of approval of the Wyoming program.

*13.F* In Finding 13.39 the Secretary found that the Wyoming program submission appeared to have properly documented the elimination of "biological community" from State rule IV 3p(2), which is otherwise equivalent to 30 CFR 816.57(a). Additional questions have arisen during review of the resubmission. The State has promulgated Rule IV 3p(2) and Rule II 3a(6)(e), which require studies of fish, wildlife, and their habitats in coordination with State and Federal fish and wildlife protection agencies, and Rule IV 3p(1), which requires the operator to use, to the extent possible, the best technology currently available, consistent with the approved postmining land use, to protect, restore, and enhance habitats of high value to fish and wildlife. The State has also promulgated Rule II 3b(4), requiring a plan to minimize impacts to fish and high value habitats, and Rule II 3b(12)(b)(iii)(H), which requires postmining land use plans to obtain approval of mitigation measures to protect fish if the land use is to be changed.

Sections I, E, K, and L of Guideline No. 5 describe techniques to be used to measure fish habitat, benthic invertebrates, and periphyton in systems supporting fish. Recognizing that sampling of biological communities is an essential element of fish and aquatic habitat investigations (see, for example, Hynes, H.B.N., 1970, *The Ecology of Running Waters,* pp. 112-271; Reid and Wood, 1976, *Ecology of Inland Waters and Estuaries,* pp. 337-369; Odum, Eugene P., 1971, *Fundamentals of Ecology* (3rd Ed.), pp. 316-320; and Kendeigh, Charles S., 1961, *Animal Ecology,* pp. 42-58, Administrative Record No. WY-224), the Secretary believes that all streams with a potential to support a biological community will be required to be investigated under the requirements of the resubmitted Wyoming State program and that all such streams and bilogical communities will be appropriately protected. As discussed in Finding 12.7, the State provided assurance on August 5, 1980 (Administrative Record No. WY-220), that makes the Wyoming provision consistent with the Federal requirement.

*13.G* The State deleted Rule IV 3d(6) and the grazing requirement contained therein in response to the district court ruling concerning 30 CFR 816.115 (Opinion of February 26, 1980, at 58-59). The State resubmission is acceptable for indicating how the range and pasture land will be measured, since the vegetation guideline (No. 2, Part 3) requires specified testing methodology for adequacy of reclamation, including adequate cover for soil protection, suitable species composition for forage or shelter, and adequate productivity for forage.

*13.H* The State program resubmission responded to the Secretary's question in Finding 13.79 regarding the term "reasonably good husbandry practices" used in Rule IV 2d(6) as follows:

> The State regards only those practices which are characteristic of the land practices normally conducted in the region for unmined lands having uses similar to the approved postmining land use to be "reasonably good husbandry practices."

The Secretary finds this consistent with 30 CFR 809.13(b)(3), which was promulgated on August 4, 1980 (45 *FR* 51547-51550).

*13.I* In Finding 13.88 the Secretary found that Wyoming's use of the language "previous [land] use which was of greatest economic or social value to the community area; or must have a use which is of more economic or social value than all of the other previous uses" to be a more stringent judgment of "higher and better uses" than in 30 CFR 816.133(a)(2). In the resubmission, the State indicated that the postmining land use would be evaluated on the basis of the feasibility of backfilling, grading, reestablishing a hydrologic system, soils protection and capability to revegetate in support of the postmining land use. Wyoming's statement regarding incorporation of determinations of the feasibility of meeting specific reclamation requirements in the course of making findings of "highest previous use" will provide analyses under the State program consistent with those needed to comply with 30 CFR 816.133(a)(2).

*13.J* In Finding 13.118, the Secretary found that the State program submission did not provide a "grandfather" clause for the protection requirement of "significant" alluvial valley floors for mining operations approved prior to August 3, 1977, as does 30 CFR 822.12(d) and, therefore, was more stringent.

The State has enacted W.S. 35-11-406(n)(v)(B) which replicates the "grandfather" clause exempting certain mines from consideration necessary under Section 510(b)(5) of SMCRA. Thus, the "grandfather" clause of the State program provides the exemption privileges of Section 510(b)(5) of SMCRA pertaining to alluvial valley floors of significance to farming.

State Rule V 2d(3), however, provides that "[m]onitoring *may be* required in accordance with subsection E of this section." (emphasis added) This appears to make the mandatory requirements of 30 CFR 822.14 discretionary in the Wyoming resubmission. The Secretary notes that monitoring must be required for all mines encountering alluvial valley floors.

While the type and extent of monitoring is to be determined by the regulatory authority based on site-specific considerations, some type of monitoring is required. In fact, the Wyoming program requires surface and ground water monitoring in all operations (Rule IV 3i); thus, the apparent exemption in Rule V 2d(3) seems meaningless.

It would appear that Wyoming intended to limit the objectives of

environmental monitoring in accordance with the "grandfather" clause. That is, operations qualifying for the Section 510(b)(5) (of SMCRA) exemption would not be concerned about interruption, discontinuance, or preclusion of farming on "grandfathered" alluvial valley floors (AVF's) and thus would not have to monitor for such effects on those AVFs. However, if the mine were operating in or adjacent to an alluvial valley floor, monitoring would likely be necessary to ensure that essential hydrologic functions were reestablished.

By letter dated August 5, 1980 (Administrative Record No. WY–220), the State provided assurance that Rules III 2b(9) and c(4) require environmental monitoring for all alluvial valley floors, except for those operations that fall within the "grandfather" clause provided by Section 510(b)(5) of SMCRA. The State also assured that it will require monitoring in accordance with the standard that existing operations restore the essential hydrologic functions where mining on or adjacent to alluvial valley floors occurs. This requirement is through Rule V 2e. This assurance makes the program provisions acceptable.

*13.K* In Finding 13.123 the Secretary found Wyoming's proposed rule for determining revegetation success on prime farmland (Rule V 1b(3)) adequate, provided the State ensures that the reference area used to determine success for prime farmland will be monitored in terms of estimated yields under a high level of management. However, in apparent response to the district court rulings (Opinion of May 16, 1980, at 4–5), the resubmission indicates the State has promulgated Rule V 1b(2) (which requires revegetation success on prime farmlands) to be based on vegetation on non-mined prime farmlands *"under equivalent levels of management."* (Italic added.)

Complicating the analyses is the appearance of language in the side-by-side of State and Federal provisions (page 154) which reports the same rule (V 1b(2)) as defining success in terms of *"capability* of prime farmlands to support premining productivity." The latter proposal is in concert with the court rulings. The regulations that appear to be promulgated in Rule V do not show the change which corresponds to the district court rulings. The side-by-side language is promulgated in Rule XIII 1a(6)(a) ("the postmining land use of prime farmland will be capable of supporting crop yield equivalent to the surrounding non-mined prime farmland under equivalent levels of management.") This provision is in the permit review regulations and will prevail in actions on permit applications. Rule XVI 6a(2)(b)(ii) specifies that bond release will be at the time soil productivity will have returned to non-mined levels consistent with good management practices. It is apparent that actual performance may still be based on estimated yields, as it must to accurately reflect the capability while soil productivity will be a surrogate basis for bond release. The Secretary finds that, until new Federal requirements are promulgated, Rule V 1b(2) shown in the side-by-side analysis which bases performance on the capability of prime farmlands to support premining productivity, and Rule XIII 1a(6)(a) which bases permit approval on capability, are acceptable.

*13.L* In Finding 13.124 the Secretary found that further clarification was required in order to evaluate the proposed State rules for special bituminous coal mines. Wyoming has provided a discussion and clarification in the resubmission which is evaluated in Finding 13.M below.

*13.M* In Finding 13.125 the Secretary found that questions remained regarding the State's intended meaning of the term "new special bituminous coal mines." The resubmission explains that Wyoming intends to classify the Kemmerer Coal Company I-U-D mine permit areas as the only *"existing* special bituminous coal mine" (emphasis added) in Wyoming since only that operation can qualify under the State equivalent to 30 CFR 825.11 (Rule VIII 1a(1)(g)) (i.e., only that operation was in existence prior to January 1, 1972). Wyoming intends to allow separate mine pits within this mine, upon adequate showings of compliance with Rule VIII 1a(1).

The critical criteria for determining qualifications as an existing special bituminous coal mine would include the mining of more than one coal seam (Rule VIII 1a(1)(c)) and production of coal since January 1, 1972 (Rule VIII 1a(1)(g)). Thus, anywhere within the total permit area, as that area is specified when a permit is issued under the permanent regulatory program, any multi-seam pits which have been producing coal since January 1, 1972, may qualify as existing special bituminous coal mines.

Wyoming intends to classify other mines as "*new* special bituminous coal mines" (emphasis added) if the mine permit area is located on lands immediately adjacent to the Kemmerer Coal Company's mine permit area. Again, permit areas would be defined in the permit issued pursuant to the permanent regulatory program. The two permit areas that could, in the opinion of the State, contain new special bituminous coal mines are shown to the south and north of the Kemmerer Mine permit area in the map titled "Map No. 1 Special Bituminous Coal Mines," which is contained in the resubmission.

The State indicates, in the resubmission, that the FMC Skull Point operation will be a "new special bituminous coal mine" as could any plan for mining operations in the location of Rocky Mountain Energy Company's Twin Creek Mine (provided all applicable criteria of Rule VIII 1a(2) were met). No other plans are expected to meet the criteria for new special bituminous coal mines, according to the information provided in the resubmission.

In order to reach the conclusion that Section 527 of SMCRA authorizes the State program provisions for special bituminous coal mines as resubmitted, the Secretary has assumed that the term "special bituminous coal mine" refers to an entire mine permit area which may encounter, in one or more locations within that mine, areas of more than one coal seam dipping more than 15 degrees where the operator chooses to mine those seams in one or more separate mine pits which are to remain open to facilitate mining. In other words, the Wyoming program interprets the term "special bituminous coal mine" to apply to the entire mine permit area, which area could include other types of mining in addition to open pit mining.

Once a permit area is designated a special bituminous coal mine, there can be any number of pits within the permit area which may be exempted from backfilling and grading requirements. The provisions of the Wyoming statutes and rules for special bituminous coal mines apply to any eligible pits within the permit area, but *only* to the pits and, under Wyoming's program, the associated spoil piles. And, a *new* special bituminous coal mine need not be immediately adjacent to a pit; rather it must be adjacent to a mine permit area of the entire operation as far as it may extend during successive permit terms.

The Wyoming program further interprets the term "which may be developed," used in Section 527(b) of SMCRA to identify new special bituminous coal mines, to mean "opening of a new mine, continuing the development of an ongoing operation, or redeveloping an area that has been mined in the past." This becomes important in defining the FMC operation as a new special bituminous coal mine since the pit at that mine was opened after 1972 and before 1977.

The Secretary finds that Wyoming properly interprets the term "special bituminous coal mine" to involve a total mine permit area including one or more pits which specifically qualify for exemptions equivalent to those of Section 527 of SMCRA.

The Secretary also finds that the word "develop" is permissibly used by Wyoming in the resubmission to include both continuation of mining and opening of new pits within the mine permit area designated as a new or existing special bituminous coal mine. This finding is based on common definitions of the word "develop" from *Merriam-Websters Third New World International Dictionary,* Unabridged, 1976, p. 618.

The word "develop" means, in a mining engineering sense, "To open up a coal seam * * * as by sinking shafts and driving drifts, as well as installing the requisite equipment."

(*A Dictionary of Mining, Mineral, and Related Terms,* Bureau of Mines, DOI, 1968, Administrative Record No. 231.) The Internal Revenue Service views development of mineral deposits to involve expenditures made after exploration and before mining. The expenditures would be for "driving shafts, tunnels or galleries and similar operations undertaken to make ore accessible for production (26 CFR 1.616-1a, IRS Code, Administrative Record No. 232). Thus, a difference exists, for tax purposes, between exploration, development, and mining.

The Wyoming resubmission concludes that "develop" includes both "development" and "mining." Again, this is important in determining whether the pit of the existing FMC coal mining operation qualifies the entire FMC permit area as a new special bituminous coal mine and whether that pit is eligible for exemptions.

Based on the Secretary's analysis, there is no evidence that the word "developed" used in Section 527 of SMCRA was used in consideration of the more complex definitions peculiar to mining. It is reasonable to assume that the term "developed" was used as defined in Webster's or other commonly recognized dictionaries. Further, the House Report accompanying H.R. 2 (Conference Report No 95-943, July 12, 1977, page 112) states that "State laws, regulations and decisions made by State regulatory authorities are to be protected" in the issuance, by the Secretary, of regulations. Therefore, the State of Wyoming's considerations are to be protected to the degree consistent with SMCRA. Accordingly, the Secretary finds Wyoming's interpretation of the term "developed" to be suitable and in accordance with SMCRA.

The State resubmission may cause some confusion when trying to distinguish, however, between the words "mine" and "pit." The resubmission provides promulgated rules for backfilling and grading of special bituminous coal mines. Rule VIII 3c indicates that pits not covered under VIII 3a above (*existing* special bituminous coal mines) must comply only with backfilling and grading requirements of Rule IV 2b (as opposed to IV 2b and IV 3a). There is a possibility that operators will interpret this to mean that a variance will be given for any pit within the permit area, regardless of whether it qualifies for an exemption.

It is the Secretary's understanding that Wyoming will first classify mine permit areas as "existing" or "new" and then will apply standards for "existing" special bituminous mines only to qualifying pits within the "existing" mines (and likely will find only one such pit). Standards for "new" special bituminous coal mines will be applied to any eligible pits within a "new " mine and any new pits within an "existing" mine.

Wyoming has promulgated Rule VIII 4a, which requires compliance with all other performance standards to the degree they "do not preclude the benefit intended." The Secretary initially determined that this provision was too extensive since Section 527(c) of SMCRA limited the alternative regulations to standards governing "on site handling of spoils, elimination of depressions capable of collecting water, creation of impoundments, and regrading to the approximate original contour." Thus, all performance standards regarding topsoil, hydrology, wildlife, erosion, revegetation, and certain other performance standards would still apply.

The State has provided evidence that ensures proper compliance with all applicable performance standards and permit requirements (Administrative Record No. WY-220). Wyoming has stated that Section 4 of Chapter VII of the rules applies only if the special bituminous surface coal mine operator affirmatively demonstrates that compliance with a specific performance standard requires utilizing impracticable backfilling and grading, resulting in more stringent standards than described in Chapter VII, Section 3.b. Thus the exemption applies only to backfilling and grading and this portion of the program is consistent with the Federal requirements.

*13.N* In Finding 13.126, the Secretary found that Wyoming needed to enact a definition of "steep slopes" as well as a ban on mining steep slopes until regulations were prepared. Wyoming has promulgated Rule I 2(86) to define "steep slopes" as any slope of more than 20 degrees or such lesser slopes as may be designated * * *." Wyoming has also promulgated Rule IV 3c(1)(b)(i) to prohibit the placement of excess spoil (i.e., excess of regrading requirements) on an overall slope that exceeds 20 degrees. However, the definition relating to steep slopes within enacted W.S. 35-11-103(e)(xxi) differs in that it defines "steep slope surface coal mining operation" as that occurring on steep slopes generally "exceeding twenty (20) degrees and which, because of the steepness of the terrain, requires special spoil handling procedures." This term, defined in W.S. 35-11-103(e)(xxi), is then used in W.S. 35-11-401(m), which Wyoming has enacted to prohibit mining operations on steep slopes until adequate rules are promulgated.

Under the Wyoming program, Rule IV 3c(1)(b)(i) prevails to prohibit placement of spoil on downslopes exceeding 20 degrees. This is consistent with the special performance standards of 30 CFR 826.12(a)(i) and (d) and thus satisfies the Federal requirements for protecting the environment. In effect, the Wyoming rules do not use the term "steep slope." Rather the rules prohibit excess spoil in steep slope situations. On the other hand, the statute is designed to prohibit steep slope mining gradations themselves, albeit using a different definition of "steep slope." The Secretary finds that Wyoming intends to prohibit steep slope mining until additional rules are promulgated (Exhibit G.6 for sections 785.15 and 826 in resubmission). This issue was also discussed in Finding 12.3.

*13.O* In Finding 13.142, the Federal requirements for ground water protection in 30 CFR 816.50 are contained in promulgated Rule IV 3c(3)(d) which requires acid or toxic materials used as backfill to be placed to prevent leaching into surface or subsurface waters, and in Rule IV 3a(2) which requires placement of all backfilled materials in a manner which minimizes adverse effects on ground water. These requirements are all reinforced by W.S. 35-11-406(b)(xviii) which requires a plan that minimizes the disturbances to the prevailing hydrologic balance. The State resubmission is consistent with the Federal requirements.

*13.P* Rule IV 2d(6) will require that a bond be held until the revegetated area

is capable of renewing itself under natural conditions and the productivity is at least equal to that existing prior to mining. The standards of the rule are to be met for two consecutive years. 30 CFR 816.116(b)(1)(ii) requires that the standards be met for "the *last* two consecutive years of the responsibility period." (Italic added.) The State rules do not specify the time during the ten year period that the two years of measurement will take place. An operator could then measure the vegetation at the end of the initial planting and irrigation, when productivity is high, and meet the requirements of the rule and not take into acount decline in cover and productivity that may occur before the end of the bond release period.

Although this difference in the rules could be resolved by an explicit discussion of timing of bond release measurements in Guideline No. 2, a modification to the regulation is preferable. This change has been made a condition of Wyoming program approval.

*13.Q* Wyoming has promulgated Rule IV 3g(4)(b) to require that one year of sediment storage be designed into ponds. This rule has been changed in response to the district court ruling (May 16, 1980, Opinion, at p. 21). In making the change in the resubmission, Wyoming also eliminated the surface performance standard requirement for removal of stored sediment in 30 CFR 816.42(b). While this oversight in the resubmission does not provide the same language as do the Federal regulations at present, reasonable design of sedimentation ponds under Wyoming's program will automatically require sediment removal. And, in fact, Rule II 3b(9)(b) requires "a plan for sediment removal and disposal."

Removal will occur since, if sediment accumulated in excess of the design amount, a violation of Water Quality Division Rule X, Appendix A, (which requires a "detection time to include storage") would also occur.

The Secretary finds that the current State program provides all necessary requirements for sediment removal necessary to maintain the approved (and safe) pond design in comparison to the Federal regulations currently in effect.

*Finding 14*

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and regulations and the Wyoming program does include provisions to implement, administer and enforce a permit system consistent with 30 CFR Chapter VII, Subchapter G (permits), subject to the discussions in Findings 14.A and 14.C below. This finding is made under 30 CFR 732.15(b)(2).

Wyoming incorporates provisions corresponding to Sections 506, 507, 508, 510, 511 and 513 of SMCRA and Subchapter G of 30 CFR Chapter VII in Wyoming Statute 35-11-103, 401, 402, 405, 406, 408, 409, 410, 426, 427, 428, 429, 601, 801, and 802, and Wyoming Rules I, II, III, IV, VII, VIII, IX, XIII, and XIV. Part G.1 of the first volume of the program submission contains discussions of the systems for (1) mining permit review and approval, (2) amendments, (3) renewals, (4) revisions, (5) transfers and (6) licenses.

Discussion of significant issues raised during the review of the Wyoming permit provisions follows.

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 14 acceptable subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following findings which have the same numbers as the tentative findings on the same provisions in the March 31, 1980, notice.

*14.1* See Finding 14.A below.

*14.2* W.S. 35-11-406(n)(i) requires that no permit may be issued unless the application is "accurate and complete." W.S. 35-11-406(j) requires that public notice of a "complete" application be given to correspond with 30 CFR 786.11(a). Thus, an incomplete application must be denied consonant with 30 CFR 786.19(a). The exact meaning of the word "complete" in the Wyoming program is discussed in Finding 14.A (14.1) below.

*14.3* The State has promulgated Rule XIII 1a(8)(c) to require the coal mining operation to be conducted in compliance with any other applicable State or Federal law. The State program resubmission also contains MOUs for State agencies with designated responsibilities for implementing other acts (see Finding 6). The rules also contain coordination requirements for the Endangered Species Act and Fish and Wildlife Coordination Act (see Rules II 2a(1)(b)(iv), II 3a(6)(e), II 3b(4), and IV 3p).

The Wyoming State program provides for the identification of historic and archeological resources, which would include sites eligible for listing in the National Register of Historic Places. The survey information required by applicants would be evaluated, under the Wyoming program, by the Wyoming State Historic Preservation Officer pursuant to the MOU developed between Wyoming DEQ and the Wyoming Recreation Commission (Exhibit F.3).

Wyoming requires, under Rule XIII 1a(5), that the applicant provide a plan which would demonstrate the capability to mitigate the adverse impacts of mining on areas prohibited for mining pursuant to Section 522(e) of SMCRA (e.g., including sites *listed* on the National Register).

*14.4* Finding 14.4 relates to the cooperative agreement under the Federal lands program. See discussion under "Introduction" above.

*14.5* Rule II 2a(1)(b)(iv) requires identification of endangered or threatened plant species on any State or Federal list; Rule II 3a(6)(e) requires coordination of fish and wildlife studies; Rule II 3b(4)(b)(i) requires protection of threatened or endangered wildlife species listed pursuant to 16 U.S.C. 1531 *et seq.;* and rule IV 3p(1)(g) requires a report of threatened endangered species and golden eagles. The State rules are consistent with the Federal requirements to protect threatened and endangered plant and wildlife species and golden eagles. See Finding 14.93 for further discussion.

*14.6* The State program resubmission shows that Rules XIII 1a(2)(b) and XVIII 3b(1) require applications and petitions to be disseminated to government agencies. Further, public notices of receipt of these are required by W.S. 35-11-406. Thus, Federal agencies will be notified of the permit application and petition process, and the concerns of the National Park Service expressed during review of the original submission are satisfactorily accounted for.

*14.7* Rule XIII 1a(2)(b) requires that public notices be sent to Federal agencies with jurisdiction over, or an interest in, the permit area. Rule II 3a(5)(b) requires information for any other permits or approvals pertinent to the proposed operations. Rule II 3b(1)(b)(iv) requires the location and design for diversions, channels, erosion control, and discharge (among other) facilities. Further, Rule XIII 1a(8)(c) requires that operations be conducted in a manner which prevents violation of other applicable laws and, thus, requires an applicant to have obtained the requisite approvals prior to operations. Thus, the State has ensured that dredge and fill operations will be accounted for

both by notification to the Corps of Engineers and by review by the regulatory authority.

*14.8* See Finding 14.B below.

*14.9* W.S. 35-11-401(d) provides guidance for continued operations after timely submission of a complete application equivalent to that provided by 30 CFR 771.13(b) and thus is consistent with the Federal allowances for continued operations in the event of administrative delays.

*14.10* The State included a guideline (No. 6) in its submission which addresses organization of a permit. In Part III, Section II of the guideline, ranges in scales for maps are specified. The map scales range from 1:4800 to 1:24000. Surface and underground mine maps in mine plans for Federal lands in Wyoming are generally 1:4800 or 1:6000 scale. This observation is based on OSM's analysis of mine plans for Federal lands in Wyoming on file in the Region V OSM offices. The State program, therefore, adequately provides the authority to obtain, and in practice the Wyoming regulatory authority does obtain, maps of proper scale to allow site-specific analyses by the regulatory authority, even through the Wyoming rules do not specify the scale (1:6000 or larger) of maps of the permit area as does 30 CFR 771.23(e)(1).

*14.11* Rule II 1b requires information in the application to set forth references to technical material as well as the entities responsible for collecting and analyzing data. Rule II 3a(5)(a)(ii)(B) incorporates the Water Quality Division's standards, which, in turn, specifically incorporates EPA's water quality analytical procedures. The State resubmission is consistent with the requirements of 30 CFR 771.23(c) for identification of preparers of technical data and identification of analytical procedures.

*14.12* W.S. 35-11-406(a)(xii) establishes a permit fee not to exceed $2,000, which is consistent with 30 CFR 771.25.

*14.13* Rule I 2(3) presumptively limits the "adjacent area" to one-half mile of the proposed permit (mine plan) area unless otherwise specified by the regulatory authority. The Secretary finds this consistent with the Federal requirements, since the limitation will be varied according to the potential adverse effects of the proposed operation and is merely used to provide some quantitative indication of the area to be surveyed as early as possible in the environmental monitoring program. It is recognized that the distance will almost always be greater in some direction from the proposed operations for hydrologic effects of mining.

*14.14* Rule II 3a(5) includes the Mine Safety and Health Administration (MSHA) identification number and is, therefore, consistent with 30 CFR 778.13(f).

*14.15* Rule II 3a(2)(b) and W.S. 35-11-406(a)(xiv) require a listing of "notices of violation *which resulted in enforcement action* of this act, any law, rule, or regulation of the United States * * * pertaining to air and water environmental protection" (italic added). The Secretary understands that the emphasized language is designed to exclude from the listing notices of violation under present State law which are merely informative and do not necessarily require action by the operator (Administrative Record WY-99). Under this interpretation, the State program resubmission is consistent with 30 CFR 778.14(c).

*14.16* Rule II 3a(3) requires right-of-entry statements and documents which clearly explain and support the legal rights claimed by the applicant. W.S. 35-11-406(a)(ii) and (b)(xi) requires a sworn statement as to the legal right and power by legal estate to mine and, if the application was filed after March 1, 1975, an instrument of consent from the resident or agricultural landowner granting permission to enter and mine. The State provisions are consistent with 30 CFR 778.15.

*14.17* Finding 14.17 relates to the cooperative agreement under the Federal lands program. See discussion under "Introduction" above.

*14.18* See Finding 14.16 above.

*14.19* Rule II 2b(1)(b) requires a map showing the yearly progression of mining and reclamation during the life of the mine. Rule II 2b(2) requires a time schedule for each major step in the reclamation plan in order to coordinate the reclamation plan with the mining plan. Thus, the State program is consistent with 30 CFR 778.17(a).

*14.20* W.S. 35-11-406(a)(xiii) requires a certification that a public liability insurance policy exists or that there is evidence of meeting other State or Federal self-insurance requirements. Rule XIII 2b requires that the liability insurance be adequate prior to permit approval. The State resubmission is consistent with the requirements of 30 CFR 778.18.

*14.21* Rule II 3a(5) requires a list of permits or approvals needed and copies or numbers of permits obtained from DEQ or the State Engineer. Thus, the requirements of 30 CFR 778.19 are met since the number and type of permits are adequate for a "description" and since the actual permits can easily be obtained from other State or Federal agencies once the type and number of the permits are identified.

W.S. 35-11-406(d) requires the applicant to file a copy of the permit application for public inspection at the office of the regulatory authority and in the office of the appropriate county clerk. Rule XIII 1b(1)(b) requires evidence of public notice. The public notice must contain information regarding the location of the plan for review (W.S. 35-11-406(j)). Thus, the requirements of 30 CFR 778.20 for identification of the public review office are also met.

The State cannot, under its program, approve an application unless the applicant has complied with W.S. 35-11-406(a)(xv) (has provided "such other information as the administrator deems necessary or as good faith compliance with the provisions of this act require"). Thus, if any other information is required for the analysis, including information contained in other permits, the application must contain that information.

*14.22* See Finding 14.C below.

*14.23* Rule II 3a(6)(k) requires hydrologic and geologic information for the adjacent and general areas. Rules II 3a(6)(a), (b), (h), and (j) require geologic and hydrologic data on the permit area and other related areas. Rule XXIII 3a addresses the availability of information. The State program does not use the term "mine plan area." Rather, "permit area" is defined (Rule I 2(56)) to include all operations on the entire life of the mine. W.S. 35-11-406 requires information covering the full extent of proposed operations. W.S. 35-11-405(b) specifies that the permit remains in force until the termination of all mining and reclamation operations. (See W.S. also 35-11-103(e)(xi) for definition of "mining permit" covering *all* operations.) The resubmission is consistent with 30 CFR 779.13 and other geologic and hydrologic requirements of the Federal permanent regulatory program.

*14.24* See Finding 14.23 above and promulgated Rule XXIII 3.

*14.25* Rules II 32b(10) and XXIII 2 require a determination of the probable hydrologic consequences of the proposed operation on the hydrologic regime and an assessment by the regulatory authority of the probable cumulative hydrologic impacts of all anticipated mining in the general area. These requirements are consistent with 30 CFR 780.21(c) and 786.19(c).

*14.26* W.S. 35-11-406(n)(i) and (ii) require the regulatory authority to find in writing that an application is complete and that the proposed reclamation can be achieved. Further,

Rule II 3a(6)(b) requires test borings on core samples of overburden. Under Rule XXIII 2a(2), the regulatory authority must find in writing that the test borings and core samples are adequate to characterize the overburden.

*14.27* Rule II 3a(6)(h) includes manganese as a water quality parameter for which base line data must be provided. The State program resubmission is consistent with 30 CFR 779.16(b)(2) in terms of including the requirement for baseline manganese data. This effluent limitation for discharges has also been discussed in Finding 13.c (13.14).

*14.28* Rules II 2a(1)(j)(i) (listing of all known adjudicated and appropriated water rights), II 2(1)(j)(ii) (listing of wells), and VII 1a (which incorporates permit requirements for surface mines in the underground mining regulations) provide requirements for descriptions of known uses of water consistent with 30 CFR 779.15(a)(3), 779.16, and 779.17.

*14.29* Rules II 2a(1)(c) and (d) require the applicant to obtain precipitation and wind data. The State program does not contain a rule equivalent to 30 CFR 779.18(a)(3) for seasonal temperature data. Rather, the State proposes to depend on published temperature records and general knowledge of seasonal temperature ranges. In view of the fact that specific temperature ranges will be obtained from other sources in the Wyoming program, as required, the Secretary finds the resubmission adequate with respect to 30 CFR 779.18(a)(3).

*14.30* Rule II 3a(6)(d)(ii) requires a map of vegetation reference areas and a "delineation" of existing vegetation types within the permit and adjacent areas. The State has submitted a vegetation guideline (No. 2) which requires mapping of vegetation (see the "General Procedures" in that guideline) and a permit organization guideline (No. 6) which specifies map scales (1:4800 to 1:7200) for vegetation maps. Thus, the resubmission is consistent with 30 CFR 779.19 in that vegetation maps will be obtained. See Finding 14.10 for additional discussion of map scales. Vegetation maps should correspond to both soils and mining operations maps.

*14.31* Rules II 2a(1)(e) and II 3a(6)(e) require adequate wildlife data in the permit application. The State program resubmission also includes a wildlife guideline (No. 5) which provides additional details for the applicant to follow as "good practice." Rule II 3b(4)(b)(i) requires a plan to minimize adverse impacts to threatened or endangered species (Federal-and State-listed species). However, the Federal counterparts, 30 CFR 779.20 and 780.16, have been remanded by the district court. See discussion under "General Background" above. These rules and the guideline, however, are no less stringent than Section 515(b)(24) of SMCRA.

*14.32* Rule II 3a(6)(e) requires consultation with State and Federal fish and wildlife management agencies regarding the extent of pre-mining studies. The submission also contains a letter of agreement to contribute expertise from the U.S. Fish and Wildlife Service (Appendix G.9). An MOU between the Wyoming Game and Fish Department and the Land Quality Division identifies administrative coordination procedures to obtain technical reviews and assistance from the State Game and Fish Department. These provisions, along with other rules of the State program, satisfy the requirements of 30 CFR 731.14(g)(10) (consultations with fish and wildlife authorities). See Finding 14.31 above for analysis in light of the district court order.

*14.33* Rule II 3a(6)(d)(iii) requires a description of uses of land preceding mining and thus is consistent with 30 CFR 779.22(b)(5).

*14.34* Rule II 3b(12)(b)(iii)(D) includes the requirement that proposals for designation of cropland as a new postmining land use shall be supported with a demonstration of a reasonable likelihood of sustaining the cropland. A firm, written commitment is no longer required. This is consistent with the district court's ruling regarding 30 CFR 816.133(c)(9)(i) (Opinion of February 26, 1980, at 63–63).

Rule XVI 6a addresses schedules of bond releases. The bond release schedule in this rule "may" be recommended by the regulatory authority. However, the maximum amounts to be released and the phases of release are mandatory. The discretion lies only in retaining additional amounts of bond or retaining the bond for longer periods. These provisions are consistent with current Federal requirements.

*14.35* Rule II 3a(6)(n) requires, in the application, locations of existing man-made features within the permit area. In Rule II 3b(3)(a), the State program requires a blasting plan showing how compliance with Rule VI is to be achieved. In Rule VI 5a(7)(a), the resubmission shows that blasting may be limited in areas within ½ mile (rather than 1,000 feet) of a dwelling. In Rule VI 5a(7)(b), the 500-foot limitation for certain facilities such as flammable facilities and water lines is stated. The resubmission is consistent with 30 CFR 779.24(d) since the information needed to make a finding of compliance with Rule VI must be contained in the application in order to make the application complete and approvable. However, the 1,000-foot and 500-foot requirements of 30 CFR 816.65(f)(1) and (2) were remanded by the district court (opinion of May 16, 1980, at 26). See discussion under "General Background" above. Rule VI 5a(7) is no less stringent than Sections 515(b)(15) and 522 (e)(5) of SMCRA.

*14.36* W.S. 35–11–406(n)(iv) covers Section 522(e) of SMCRA and thus the resubmission is consistent with the requirements of the Federal program for analysis of unsuitability. This is also discussed in Finding 21.

*14.37* Rule II 2a(1)(k) requires a "description of any significant" artifacts, fossils, or other articles of cultural, historical, archeological, or paleontological value. Thus, the resubmission is consistent with 30 CFR 779.12(b). (See also Finding 14.3.)

*14.38* Rule II 3b(3) requires a blasting plan showing, among other requirements, how the applicant intends to comply with Rule VI. The resubmission is consistent with 30 CFR 780.13.

*14.39* Rules II 2b and II 3b require various maps. The resubmissions also contains Guideline No. 6 which identifies maps (and map scales) to be used in permit applications. The requirements of 30 CFR 780.14 are included in the State program. The requirement for map scales was discussed in Finding 14.10.

*14.40* W.S. 35–11–406(n) requires written findings and Rule II 3b(1)(b)(iv) allows "typical design" for surface water and ground water hydrologic control methods. Thus, conceptual designs for hydrologic control measures may be permissible, provided a written finding of compliance is supported. The Wyoming regulatory authority will, of course, have to ensure that all applications contain adequate information to support a written technical analysis showing that water flow and water quality will be regularly protected. These designs, combined with the findings required by W.S. 35–11–406(n), make the resubmission consistent with Federal requirements.

*14.41* Rules II 2b(1)(b) and II 3b(1)(a) require only a reasonable number of maps. Accordingly, the concerns expressed by Kemmerer Coal Company and discussed in Finding 14.41 in the March 31, 1980, **Federal Register** notice (45 *FR* 20959) have been adequately addressed and the Secretary does not believe that the map requirements under Wyoming's program are inconsistent with SMCRA.

*14.42* See Finding 14.31 above.

*14.43* Rules II 3b(4) and IV 3p(1) require the operator to show the practicality of enhancing, and incorporate measures to enhance, fish and wildlife values. this requirement is consistent with SMCRA. The district court remanded 30 CFR 780.16(a)(2). See Finding 14.31 above for effect of the remand.

*14.44* Rules II 2 and II 3, and in particular II 3b(10), which incorporates Rule XXIII 2, require analysis of the probable cumulative hydrologic impacts of all anticipated mining on the hydrologic regime consistent with 30 CFR 780.21.

*14.45* Rules II 2b(3)(a), II 3b(7), and IV 3c(3) require a plan to meet standards for handling and controlling acid-forming and toxic materials consistent with 30 CFR 780.18(b)(7).

*14.46* Rules II 3b(10) and XXIII 2a(1) require the assessment of probable hydrologic consequences specified in 30 CFR 780.21(c). Rule II 3a(6)(h) requires baseline data describing seasonal fluctuations of water quantity and quality. The State resubmission is consistent with the Federal requirements for such assessments.

*14.47* Rule I 2(46) defines "land use" as specific uses or management-related activities consistent with 30 CFR 701.5.

*14.48* The State considers it unnecessary to readdress the postmining land use if it is to be the same as the premining land use (Rule II 3b(12)(b)). As discussed under Finding 12.1, this is considered equivalent to the Federal requirements.

*14.49* Rules II 2b(3)(b)(iii) and II 3b(1)(b)(iv) for permanent water impoundments are consistent with the requirements of 30 CFR 780.25(a).

*14.50* Rule II 3b(1)(h)(iv) requires the maps and cross sections for diversions as specified in 30 CFR 780.29. Rule II 2b(3)(d) also obtains diversion design information in the permit application. The resubmission is consistent with the Federal requirements.

*14.51* Rule II 3a(6)(c)(vi) requires identification of locations where mining is prohibited pursuant to Rule XIII 1a(5). and Rule XIII 1a(5)(c) limits mining in public parks and historic places listed in the National Register of Historic Places. The resubmission is consistent with 30 CFR 780.31.

*14.52* Rules VII 1a and VII 1b(1) require baseline information on all environmental characteristics required under 30 CFR 783.11 (except overburden to the extent that the requirement was remanded by the district court decision of May 16. 1980. at 12), for areas disturbed either by surface activities related to an underground mine or by subsidence. The Wyoming information requirements for underground mines are the same as those for surface mines but additionally require information on subsidence and other environmental characteristics sensitive or pertinent to the effects of underground mining. This is consistent with 30 CFR 783.11. See discussion above under "General Background" concerning the decision on Wyoming provisions based on remanded Federal provisions. These rules are no less stringent that Sections 507 and 508 of SMCRA.

*14.53* W.S. 35–11–415(b)(xii) requires replacement of the water supply of an owner of interest in "accordance with State water law," in order to mesh with State water law. The Secretary finds this combination of administrative and regulatory responsibilities acceptable and consistent with the permanent Federal regulatory program.

*14.54* Rules VII 1c(1), VII 1a, amd VII 1b require a general operations plan consistent with 30 CFR 784.11. Rule VII 1c(1) adds mine development wastes to the list of "facilities" to be discussed. All other requirements are met by the incorporation by reference of Rule II into the underground mining rules. The State resubmission is therefore consistent with the Federal requirements.

*14.55* Rules VII 1c(2) and VII 2b(1) provide protection equivalent to 30 CFR 784.14(d) against uncontrolled or polluting gravity discharges. This has been discussed previously in Findings 13.37 and 13.107.

*14.56* The State has promulgated rules to require that underground mine waste be disposed of in a manner that ensures stability. Rule VII 1c(1) requires a narrative of mine waste disposal methods. Rules VII 1a and VII 1b apply all pertinent parts of Rule II to underground mining. Rule VII 2a(5) applies Rules IV to underground mining. Rule II 2b(3)(b)(v) requires that backfilling and grading plans demonstrate the adequacy of procedures for assuring stability. Rule IV 3c(1)(d)(iv) requires development wastes (excess spoil) to be disposed of in stable structures, which requires geotechnical analysis. The resubmission is consistent with the requirements of 30 CFR 784.19 for design, operation, maintenance and reclamation of underground development of waste piles.

*14.57* Rule VII 1c(3) requires a subsidence control plan which includes "measures to be taken in the mine to reduce the likelihood of subsidence, including backfilling of voids and leaving areas in which no coal is removed" (VII 1c(3)(c)). This includes the pertinent requirements of 30 CFR 784.20(b). The remaining requirements of 30 CFR 784.20(b) are included in Rule VII 1c(3)(d).

*14.58* Rules VII 1a(1) and VII lb require descriptions of the land and effects of subsidence in compliance with the similar requirements of 30 CFR 784.20. The Wyoming program does not limit analyses to renewable resource lands and therefore could provide more stringent requirements for the lands that may potentially be affected, if any of these lands were not renewable resource lands. It is likely, however, that all lands laying over underground mine workings are renewable resource lands in terms of vegetation and water supplies (see definition of renewable resource lands in 30 CFR 701.5).

*14.59* Rule II 3b(13)(b) contains an exclusion from the requirements for hydrologic monitoring (using wells) if backfilled material is placed pneumatically. This is consistent with the requirements of 30 CFR 784.25(e).

*14.60* Rules VII 1b and II 3a(5)(a)(i) require an air quality control plan for underground mining operations consistent with 30 CFR 784.26. Air quality controls are also discussed in Finding 13.56.

*14.61* Rule VII defines the special case of surface coal mining operations designated "special bituminous coal mines." This special class of mine is subjected to the same procedural requirements, including a written finding, as are all other types of mines (see Rule VIII 2a which requires the application to contain all information required by the Act). The resubmission is consistent with 30 CFR 785.12 in this regard. Performance standards for special bituminous coal mines are addressed in Finding 13.R (13.125).

*14.62* See Finding 14.D below.

*14.63* Rule IX 2a requires approval of the Director of OSM for any experimental "variance" or practice consistent with 30 CFR 785.13(d).

*14.64* The State did not promulgate rules to provide for an "operator window" or variance from the rules, as originally proposed, based on unusually harsh conditions, since such conditions are not a valid basis for variances. Thus. a potential conflict between the State and Federal requirements did not materialize and the resubmission is consistent with Federal requirements.

*14.65* Rule IX 1a(2)(b)(i) implements W.S. 35–11–601(q), which limits experimental practice to that number, area or size required to determine effectiveness, and Rule IX 1a(2)(b)(iv), which imposes special monitoring requirements on experimental practices. The resubmission is consistent with the Federal requirements of 30 CFR 785.13(e)(3) and (e)(5).

*14.66* The State has addressed steep slope mining as a "State window" and has prohibited coal mining operations on steep slopes. See discussions in Findings 12.3 and 13.S (13.126).

*14.67* Rule I 2(86) defines "steep slope" in a manner consistent with 30 CFR 701.5. The resubmission prohibits placement of excess spoil on an overall slope that exceeds 20 degrees (Rule IV 3c(1)(b)(i)). This was also discussed in Finding 13.S (13.126).

*14.68* Rules II 3a(6)(g)(i), III 1b, V 1b(3), and XIII 1a(6)(b) specifically include the Department of Agriculture in prime farmland determinations. Rule II 3a(6)(g)(i) requires that negative determinations regarding prime farmland be conducted according to the Soil Conservation Service regulations (7 CFR 657). Rule III 1b states that the Soil Conservation Service is considered to function as the Secretary of Agriculture's representative in accordance with the Memorandum of Understanding between the State Soil Conservation District and the U.S. Department of Agriculture. Rule V 1b(3) includes the Soil Conservation Service in "Small acreage exclusion" determinations. Rule XIII 1a(6)(b) requires adequate consideration of Soil Conservation Service recommendations on soil reconstruction revisions. The resubmission is consistent with 30 CFR 785.17(c) and 785.17(d)(2). This is also discussed below in Finding 14.114.

*14.69* Rule V 2b(3) exempts areas permitted prior to August 3, 1977, from prime farmland reconstruction standards in a manner consistent with Section 510(d)(2) of SMCRA. This is also mentioned in Finding 13.120.

The Wyoming program requires prime farmland information in any case where prime farmland soils exist (Rule II 3a(6)(g)) within the permit area. The Wyoming program also requires compliance with performance standards for all prime farmland except where (1) there are small acreages determined to be uneconomical to mine and (2) "where permits were issued prior to August 3, 1977" (Rule I 28). The permit includes all operations conducted during the "entire life of the operation," and thus the areas exempted should include those involving contiguous operations and normal renewals or revisions of existing "permits" in the Federal program.

The Secretary believes that the State has adequately considered the current Federal requirements and that the State program resubmission is consistent with the Federal requirements.

*14.70* As noted in Finding 14.68 above, the State has promulgated rules requiring consultation with the U.S. Soil Conservation Service in matters involving prime farmlands. Thus, the types of soil surveys required (see 30 CFR 785.17(b)(1)) will be subject to USDA review. Further, the State incorporated a soils guideline (No. 1) in its submission. This guideline requires, as good practice, soil surveys in accordance with the National Cooperative Soil Survey (USDA Handbooks 436 and 18). The resubmission is consistent with the requirements of 30 CFR 785.17(b)(1) through the use of the guidelines which are an integral part of the program.

*14.71* Rule V 4a requires combined surface and underground mines to comply with the requirements of Rules IV and VII. Rules IV 3c(1) (a) and (b) require off-site storage of spoil ("excess spoil") to be in compliance with the State equivalents of 30 CFR 816.71–816.74. The resubmission is consistent with the requirements of 30 CFR 785.18(c)(7) for off-site storage of spoil.

*14.72* Rule XIII 1a(7) ensures that the regulatory authority will make appropriate findings regarding variances for delays in contemporaneous reclamation. W.S. 35–11–406(n) requires the regulatory authority to make findings, regarding permit approvals, in writing. The resubmission is consistent with the appropriate parts of 30 CFR 785.18(d).

*14.73* W.S. 35–11–403(a)(ii) empowers the regulatory authority to fix bond amounts. The amount of bonds is established pursuant to Rule XIII 2a(1). The bond amount is to be based on all costs expedient or incidental to proper reclamation. W.S 35–11–410(c) requires the regulatory authority to determine the bond amount for the first year and to receive the bond prior to issuing a license to mine. The State resubmission is consistent with 30 CFR 785.18(d)(8).

*14.74* W.S. 35–11–411 requires annual reports on the status of mining and reclamation and which should contain reports on the status of variances. Rule IV 2b requires the operator to report the results of special monitoring in the annual report. The resubmission is consistent with 30 CFR 785.18(e).

*14.75* Rule XIII 1a(1) identifies the two criteria that will be used to make alluvial valley floor assessments. These two—unconsolidated, streamlaid material and sufficient water for irrigating—are consistent with the Federal requirements of 30 CFR 785.19.

*14.76* Rule III 2b(11) requires "such other information which the administrator shall require to determine the importance of the alluvial valley floor to farming and to characterize the essential hydrologic functions." The State program resubmission incorporates Guideline No. 9 ("Alluvial Valley Floors", which also incorporates OSM's draft Alluvial Valley Floor Technical Guidelines dated August 25, 1978). The guidelines are to be used as indicators of "good faith" compliance with Wyoming's Act. The use of guidelines was discussed in Finding 14.22. The resubmission is consistent with 30 CFR 785.19.

*14.77* The State has modified Guideline No. 9 (Alluvial Valley Floors) to require "analysis of anticipated changes to suface waters and ground waters * * * (which) should include consideration of the accumulation (sic) effect * * * and also include an estimation of the potential changes that may occur in productivity, soil conditions and availability of water * * *." Wyoming intends this guidance to provide access to, and to require, when appropriate, the "Crop Salt Tolerance" technique reported by Maas and Hoffman (30 CFR 785.19(e)(3)(i)). This approach is consistent with 30 CFR 785.19(e) (ii) and (iii).

*14.78* Rule III 2d was modified to limit the use of the equation $p = 3 + 0.0014x$ to farms with total production of less than 5,000 animal units (or an equivalent measure of capacity) and to use another criterion of 10 percent of the farm's total agricultural production for larger farms. In view of the district court's remand of 30 CFR 785.19(e)(2), (the Federal definition of "significance on farming"), the Wyoming resubmission provides detail not currently in the Federal regulations. The resubmission is more specific than the current Federal regulations and therefore may, on occasion, be more stringent than the Federal requirements. See discussion above under "General Background" concerning remanded Federal regulations. The rule is, however, consistent with Section 510(b)(5) of SMCRA.

*14.79* Rules III 5a (1) and (2) require applications for permits to conduct auger mining to contain appropriate technical information on the coal resource and to determine whether the resources have been depleted or are limited in thickness or extent, and compliance with the environmental protection performance standards of Rule V 5, which provides the necessary additional standards. The resubmission is in compliance with 30 CFR 785.20. The Federal requirement for findings to be in writing (30 CFR 785.20(c)) is fulfilled by W.S. 35–11–406(n).

*14.80* W.S. 35–11–103(e)(xx) defines surface coal mining operations to include "leaching or other chemical or physical processing, and the cleaning, concentrating or other processing, preparation * * * or coal." Thus, all

applications involving coal processing and support facilities must comply with Rule II 3b(2) and will thus be within a permit area since all operations affecting lands and water must be within the permit area (see Rule I 2(56) for definition of "permit area"). The Wyoming program does not provide a special permit information category for coal processing facilities as in 30 CFR 785.21, but rather requires the same information through the definition of "surface coal mining operations." This rule also incorporates Rule IV 3k requirements (protection of the environment) into the standards for coal processing facilities.

*14.81* See Finding 13.129 above.

*14.82* Rule XVII 2d(1)(a) defines "willful violation" as proposed in the initial State program submission. The State has not promulgated a definition of "irreparable damage to the environment," nor was such proposed in the original submission. Rather, the common meaning of the term will be used and this meaning is consistent with the Federal definition in 30 CFR 786.5.

*14.83* W.S. 35–11–406(j) requires that public notice of a complete application be given for four consecutive weeks, starting within fifteen days of filing the completed application. Based on Wyoming's resubmission, Wyoming is providing a four week notice of the filing of a "complete application." A "complete application" is defined in W.S. 35–11–103(e)(xxii) to mean an application "acceptable for further review rather than approvable" as in 30 CFR 770.5. W.S. 35–11–406(k) provides 30 days after the last (fourth) publication for filing of comments and is consistent with the Federal requirements. These provisions are consistent with the Federal requirements. See Finding 14.A (14.1) for further discussion of the definition of "complete application."

*14.84* Rule XIII 1a(2)(b) requires the regulatory authority to send the public notice required by W.S. 35–11–406(j) to Federal agencies with jurisdiction over, or an interest in, the proposed operation or permit area. This rule is consistent with the requirements of 30 CFR 786.11(c)(1). Further, the resubmission specifically requires consultation in the course of scoping fish, wildlife, and habitat studies with State and Federal fish and wildlife agencies (Rule II 3a(6)(e)), which will involve the U.S. Fish and Wildlife Service (when that agency has jurisdiction).

*14.85* Rules XIII 1a(2)(b) and II 3a(5) comply with 30 CFR 786.11(c)(4). The State has also provided MOUs between the Land Quality Division and the Water Quality and Air Quality Divisions of the Department of Environmental Quality, the State Engineer, the Wyoming Recreation Commission and the Wyoming Game and Fish Department. These MOUs further ensure coordination. The MOUs were discussed in Finding 6.

*14.86* W.S. 35–11–406(n)(iv) ensures that permits will not be issued in conflict with Section 522(e) of SMCRA (Section 522(e) is incorporated by reference in the Wyoming statutes). Rule XIII 1a(5) reiterates this provision. Rule XIII 1a(5)(a) prohibits mining in national parks. Rule II 3a(5), as noted in Finding 14.85 above, requires consultation with permitting and approving authorities such as those responsible for air and water qulaity, while Rule XIII 1a(2)(b) requires notice to be sent to Federal agencies. The resubmission is consistent with SMCRA requirements for notice and coordination with the National Park Service.

*14.87* W.S. 35–11–406(k) does not limit filing of written comments on applications to objections but will accept other comments. The State does not intend the term "file written objections" to prohibit the filing of written comments that may not be objections (Vol. 3A of the resubmission, p. 229). This interpretation satisfies the requirements of 30 CFR 786.12 and 786.13, and is consistent with the Federal requirements.

*14.88* W.S. 35–11–406(k) allows 30 days for filing comments (Finding 14.87), and is thus consistent with 30 CFR 786.13(a).

*14.89* Rule III 1f, in the Department of Environmental Quality's Rules of Practice and Procedure, involves applicability of the rules to, and maintaining a record of, informal conferences. Rule III 3a (Rules of Practice and Procedure) allows the conference to be held at the locality of the operation or at the State capitol and implies, at a minimum, that the requestor may ask to have the informal conferences held at either location. The Federal requirements mandate holding the conference at the mine site if so requested (30 CFR 786.14(b)(1)). Rule III 3a is logically read to require hearings in the locality of the mine site if requested. The Secretary assumes that if a request were made for the hearing to be held in the locality, the regulatory authority would honor the request and this portion of the State program is consistent with pertinent Federal requirements.

*14.90* Chapter I, Section 3, of the Wyoming Rules of Practice and Procedure provides that the applicant or any interested person may obtain a hearing.

*14.91* Rule I 2(100) defines "trade secrets" consistent with both 30 CFR 786.15, which specifies confidentiality criteria for permit applications, and 30 CFR 776.17(b) criteria for making available information contained in coal exploration applications.

*14.92* See Finding 14.E below.

*14.93* See Finding 14.F below.

*14.94* Rule II 3(b)(10) requires information supporting a determination of probable hydrologic consequences on the hydrologic regime, as was proposed in the initial submission. The State resubmission is consistent with 30 CFR 786.19(c) and 30 CFR 780.21(c).

*14.95* Rule XXIII 2a(1) provides guidance to control the effects of the proposed operation on ground and surface water quality and quantity, and Rule I 2(47) defines "material damage to the hydrologic balance" to mean a "long term or permanent adverse change to the hydrologic regime." Thus, the Wyoming provisions are consistent with 30 CFR 786.19(c), concerning prevention of material damage to the hydrologic balance outside the permit area.

*14.96* W.S. 35–11–401(d) requires submission of permanent program permit applications within 2 months, consistent with the Federal requirements. Enacted W.S. 35–11–406(e) requires the regulatory authority to make a determination of completeness within sixty days. This time is generally adequate when only a few plans are submitted at any time. The Secretary need make no finding at this time as to whether this schedule would be appropriate for Federal lands where an environmental impact statement or environmental assessment may be required. This issues is being considered in the context of the rulemaking on Wyoming's proposed permanent program cooperative agreement. See discussion above under "Introduction."

*14.97* Rule XIII 1a(4) requires that proposed operations be consistent with other surface coal mining and reclamation operations proposed or contemplated in pending or approved mining permits. This is consistent with the requirements of 30 CFR 786.19(j) in that it prohibits partitioning of a mine tract into land ownership segments which, while interdependent, are separated to try to circumvent analysis of cumulative effects.

*14.98* Rule II 3b(2) requires a description of existing structures and an explanation of whether they meet the requirements of Rule IV (performance standards). There is no specific requirement for reconstruction to meet environmental protection performance standards. Rather Rule II 3b(2) requires that the structures meet the

environmental performance standards of Rule IV, or removal of the structures, or a plan for modifying the structures to meet the standards. The district court opinion that pre-existing structures which meet performance standards shall be exempted from reconstruction design requirements is complied with in that there is no requirement, in the State program, to modify such structures, unless they do not comply with the standards. The resubmission is in compliance with 30 CFR 786.21 and 701.11.

*14.99* This finding is contained in the March 31, 1980, notice at 45 FR 20965.

*14.100* Rule XIII 1a(2)(b) requires that the notice of decision concerning a permit application be sent to governmental officials in local jurisdictions and to persons who filed comments. The resubmission is consistent with the requirements of 30 CFR 786.23(e).

*14.101* W.S. 35–11–401(d) established the time period for filing permit applications as proposed in Administrative Record Documents WY–99 and WY–119. The statute is equivalent to the Federal requirement. The statutory requirement includes the requirement to file within 2 months of State program approval.

*14.102* W.S. 35–11–801(a) allows imposition of necessary conditions in approvals of permits, and Rule XIII 1a(8) implements W.S. 35–11–801(a) and requires right of entry as described by W.S. 35–11–109 as another condition of the permits. In Rule XVII 1c the State has limited the number of persons that may accompany an inspector to "a manageable number of members of that group" as proposed in the original submission. (See 30 CFR 786.27(b)(2) for comparison where "private persons" are permitted to accompany the inspector). The resubmission is consistent with 30 CFR 786.27 since the appropriate permit conditions are to be imposed and since large groups of people are not generally expected and, if they occur, can be subdivided into "manageable groups."

*14.103* Rule XIII 1a(8)(d) requires, as a permit condition, that the operator take all possible steps to minimize adverse impact to the environment or public health and safety. The resubmission is therefore consistent with 30 CFR 786.29(a).

*14.104* Rule XIII 1a(8)(a) requires the permittee to conduct all activities in compliance with a plan; Rules IV 3c(2)(a) and IV 3c(2)(g) require coal processing wastes to be disposed of in a stable, nonpolluting manner; Rule IV 3c(3) establishes standards for handling of acid-forming and toxic materials; and Rule II 3a(5)(a)(iii) requires information on solid waste land disposal facilities. Thus, the resubmission provides control of solids, sludges, filter backwash, or pollutants removed in the course of treatment or control of emissions equivalent to that required by 30 CFR 786.29(b).

*14.105* See Finding 14.G below.

*14.106* Rule I 2(57) defines "permit transfer" as a change in ownership or control. Therefore, the program encompasses the requirements of 30 CFR 788.19.

*14.107* W.S. 35–11–411 requires an annual report for all operations. W.S. 35–11–411(d) requires the regulatory authority to review the report within 60 days. The resubmission is consistent with the Federal requirements of 30 CFR 788.11.

*14.108* W.S. 35–11–405(e) requires that successive renewals be given only if the operation is in compliance with applicable laws and regulations. Since such compliance would include compliance with permit terms and conditions (Rule XIII 1a(8)) and performance standards (W.S. 35–11–406(n)(ii)), the resubmission is consistent with 30 CFR 788.16(a).

*14.109* Rule XIV 1a ("permit revisions") incorporates the definition given in Rule I 2(70) for "revised mining or reclamation operations" into the term "permit revisions" used in Rule XIV. Rule XIV 2b defines "significant deviations" in the context of identifying when notice and opportunity for public hearing is required (for all types of mining). However, Rule XIV 6a limits permit revisions for coal mines to incidental boundary changes to the 5-year mining area and requires more significant boundary changes to be processed as new permit applications. The resubmission is consistent with 30 CFR 788.12(a).

*14.110* Rule XIII 1b requires "all procedural requirements of the Act and the regulations" for review, public participation, and action on applications to apply to permit renewals. Rule XIII 1b(1) specifies that information equivalent to that listed in 30 CFR 788.14(a) must be provided for permit renewals and that applications for renewals be made at least 120 days prior to expiration of the permit term as does 30 CFR 771.21(b)(2). The State's provisions are consistent with those of the Federal program.

*14.111* Rule XIII 1b requires that all procedural requirements of the Act apply to permit revisions, amendments, renewals, and transfers. This then requires all findings to be in writing pursuant to W.S. 35–11–406(n) and thus the resubmission is consistent with 30 CFR 788.16(a).

*14.112* Rule XIII 1a(5)(d) reiterates the prohibition of 30 CFR 786.19(d)(4) and the requirements of W.S. 35–11–406(n)(iv) that no mining can be approved within 100 feet of the outside right-of-way of any public road (unless other requirements are first met). The necessary information must be in a plan pursuant to Rules II 3a(6)(c)(vi) and III 1a(5)(d). This is consistent with the requirements of 30 CFR 780.33(a).

*14.113* W.S. 35–11–406(b)(vi) requires an estimate of the total cost of reclamation, Rule II 2b requires that the information specified in the statute (Section 406(b)) be in the application, and Rule XIII 2a(1) requires that the bond estimate include all costs necessary, expedient, or incidental to proper reclamation. Thus, Wyoming obtains estimates of the cost of reclamation with the application. The information obtained under the Wyoming program is consistent with the requirements of 30 CFR 780.18(b)(2).

*14.114* With respect to 30 CFR 785.17(c) and 785.17(d)(2) (consultation with the Secretary of Agriculture on permits and incorporation in the permit of any suggestions made by the Secretary of Agriculture), the submission does not require direct consultation with the Secretary. Rather the program depends on the Soil Conservation Service (SCS) and the local conservation districts that operate under a Memorandum of Understanding between the Secretary and the Governor of the State. Thus, the Secretary is represented by the SCS in discussions on permits involving lands mapped as prime farmlands using the Department of Agriculture's criteria. See also Findings 14.68 and 14.70.

*14.115* W.S. 35–11–410(b)(i) requires that an application for a license to mine contain the name and address of the applicant. W.S. 35–11–406(a)(i) requires an application for a permit to contain the name and address of the applicant and managers, partners and executives responsible for operations. These State program requirements are consistent with 30 CFR 786.11(a)(1) for a business address. (The information is required in the plan pursuant to Rule II 2b and the forms used to obtain the "mailing addresses" are contained in Exhibits G.1.j. and G.1.k. of the program submission.)

*14.116* 35–11–406(j) identifies the notice to be provided, which is equivalent to that required by 30 CFR 786.11(a). All Federal requirements for the notice are outlined in the Wyoming statute. In addition, rule XIII 1a(2) ensures that the notice will contain detailed location information and that the notice is issued prior to taking action

on the submission. The definition of a "complete application," since that precipitates the notice, is discussed in Finding 14.A (14.1). In general, the State definition is adequate for initial notification of the public but is not adequate for identification of an application that satisfies all State requirements for an application as discussed in Finding 14.A.

*14.117* Wyoming does not specify, as an approval criterion, that proof must be submitted indicating that all abandoned mine land reclamation fees have been paid as is required by 30 CFR 786.19(h). The Secretary finds this omission unacceptable and makes promulgation of a State requirement a condition of approval of this program.

*14.118* Wyoming requires that any "surface coal mining operations" (as completely defined in W.S. 35–11–103(e)(xx)) be permitted prior to conducting operations, through W.S. 35–11–401(a). Specifically, W.S. 35–11–401(a) states that no mining of solid minerals may take place unless the mining is incidental to government highway construction (see W.S. 35–11–401(e)(ii) for highway construction exemptions) conducted in compliance with Wyoming's statutes. W.S. 35–11–401(d) requires all surface coal mining operators to apply for permits as does SMCRA. Wyoming has no exemptions from the requirements of permits for mining as expressed in 30 CFR 700.11. The Wyoming statute applies, by virtue of 35–11–401(a), to coal mined from any location and thus would include coal mined from a coal waste pile (Rule I 2(94)). Since Wyoming has no authority over coal mining on Indian lands, the State program cannot apply to Indian lands even though the program has no counterpart to 30 CFR 700.11(f). Accordingly, the Wyoming program is consistent with 30 CFR 700.11.

*14.119* Wyoming requires the information regarding air and water pollution control facilities specified in 30 CFR 780.11(b)(6) to be submitted with a permit application through Rule II 3b(2) (requiring location and plans for all control facilities to be used), Rule II 3b(1)(b)(i) (requiring water treatment and monitoring facilities), and the MOU between Divisions within the Department of Environmental Quality (see Section 4 of MOU requiring descriptions and other information on locations and duration of proposed operations necessary for evaluations). For example, the Air Quality Division must review all information necessary to find compliance with the standards listed in Section 6 of the MOU, in addition to the requirements of the Clean Air Act. The air and water monitoring requirements and standards apply to all types of "surface coal mining operations" as that term is defined in W.S. 35–11–103(e)(xx).

A question arises as to whether air quality monitoring for in-situ operations pursuant to 30 CFR 785.11 is required by Wyoming. In-situ operations must comply with all requirements of the Wyoming statute for surface coal mining operations pursuant to the statute and promulgated Rule V 3a(5). W.S. 35–11–428(a)(i) specifically requires meteorological information for in-situ operations. Thus baseline air quality and meteorological data would be required for in-situ operations, as would air quality monitoring. The Wyoming program is consistent with the Federal requirements in this regard.

*14.120* Wyoming requires, through Rule II 2a(1)(f)(iv), analysis of all mineral seams including the rock or mineral type. Wyoming also requires analyses of the coal seam (Rule II 3a(6)(b)(iv) and the lithological characteristics of each coal seam (in addition to the chemical properties of each stratum within the overburden). Acid-forming and toxic materials must be identified in order to comply with the burial or treating requirements of Rule IV 3c(3), and Rule IV 3c(3)(b) requires covering of coal seams. The Wyoming program also contains a guideline for soils and overburden information which specifies information requirements for a complete plan.

The State program does not contain specific requirements for sulfide mineral analyses of the coal as does 30 CFR 77 9.14(b)(1)(v). The Secretary found the lack of specific requirements for pyrite and marcasite analyses in the Montana program to be acceptable based on the low sulfur content of coals in the region. (See 45 FR 21564.) This general lack of acid-forming conditions in most of the western coal resource areas, including Wyoming (Administrative Record No. WY–230, pp. 2–5 and 2–6), complemented by the authority of the regulatory authority to require sulfide analysis when necessary, make the alternative acceptable.

The State of Wyoming does require analyses of plant growth materials to determine acidity, and requires adequate hydrologic measurements to enable a careful and thorough analysis of the potential effect of mining and reclamation on the hydrologic system through the rules cited above. Since the Wyoming coal resource areas are similar to the coal resources of Montana, that is, the sulfur content of the coal is quite low, the Secretary finds that Wyoming has provided adequate capability for the regulatory authority to obtain the necessary information to identify potential acid problems. The resubmission is therefore consistent with the requirements of 30 CFR 779.14(b)(1)(v).

*14.121* W.S. 35–11–406(a)(iv) requires an application to contain the names and addresses of surface and mineral owners of lands on the permit area, while 35–11–406(a)(v) requires the names and addresses of surface owners of land contiguous to the permit area. The Wyoming statute does not specifically require similar identification of mineral owners adjacent to the permit areas as does 30 CFR 778.13(e). However, Part I of Guideline No. 6, Organization of Permit Application, requires the information concerning mineral owners adjacent to the permit area. The Secretary finds this acceptable.

Following are the Secretary's findings on all provisions of the resubmission that differ significantly from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930 *et. seq.*). Also included are findings that have undergone more detailed analysis by the Department:

*14.A* Finding 14.1 the Secretary discusses the fact that Wyoming had prepared a definition of "complete application" in W.S. 35–11–103(e)(xxii). That definition has now been enacted. It specifies that a complete application "contains all the essential and necessary elements and is acceptable for further review for substance and compliance * * *." In comparison to 30 CFR 770.5, which defines a "complete application" as one containing "all information required under the Act * * * and the regulatory program," the statutory definition for the Wyoming program is not as stringent as the Federal definition. The State resubmission also specifies (W.S. 35–11–406(e)) that a period of 60 days will be used to make a first determination of "completeness," as defined in W.S. 35–11–103(e)(xxi). Then a second determination of completeness is scheduled to comply with W.S. 35–11–406(n)(1). For this second determination, the State has indicated that "complete application" will mean "that the application contains all information required by the Act and Land Quality Division regulations." The Secretary finds this language to be consistent with the Federal permanent program requirements.

However, the resubmission did not provide clear evidence that a definition of "complete application" for the

purpose of W.S. 35-11-406(n)(i) and complying with 30 CFR 770.5 was promulgated. By letter dated August 5, 1980 (Administrative Record No. WY-220), Wyoming indicated its intent to promulgate a definition of "complete application" for purposes of W.S. 35-11-406(n)(i). Therefore, the Secretary cannot approve these provisions of the Wyoming program as resubmitted until that rule is fully promulgated. Promulgation of this rule is being made a condition of approval of this program.

*14.B* In Finding 14.8, the Secretary disagreed with a commenter's suggestion that the permit application requirements only become operational upon "full" approval of the Wyoming program by the Secretary. The Secretary did determine that the operator "should not be required to review and submit applications until it is clear once and for all that the State has a fully approved program." Although the State has not adopted the commentor's suggestion, W.S. 35-11-401(d) requires "final approval" by the Secretary prior to the requirement for new applications. By letter dated August 5, 1980 (Administrative Record No. WY-220), Wyoming stated that "* * * any approval, conditional or otherwise, would be the final, appealable decision by the Secretary." The State goes on to say that a "* * * *final* decision * * * makes the new law on submitting permit applications effective." Therefore, the two month period for filing new permit applications should begin upon the date the conditional approval of the Wyoming program is effective (i.e., the date this notice is published in the Federal Register).

*14.C* As discussed in Finding 14.22, the State has promulgated a series of rules and enacted W.S. 35-11-406(a)(xv) to require environmental information for the permit area and for other areas that may be affected by operations or which are important in making assessments of the effect of proposed operations. Examples of these rules are Rule II 3a(6)(e) (fish and wildlife in those areas identified by the regulatory authority), Rule II 3a(6)(g)(ii) (surface water for the permit and adjacent areas), Rule II 3a(6)(k) (hydrology and geology in the adjacent and general area), and Rule II 3a(6)(1) (alluvial valley floors in the permit or adjacent areas). The requirements of 30 CFR Parts 779 and 780, particularly for hydrologic data adequate to assess compliance with the performance standards of SMCRA, are met by the State's permanent program resubmission.

The State program is further strengthened by the incorporation of seven guidelines in the program resubmission. These guidelines are intended to specify, for most cases, the types of information and the performance required in support of a good-faith effort on the part of an operator. While departures from the guidelines are allowed, the Wyoming resubmission states that "[d]epartures from the guideline requirements are authorized where the agency could support a similar objective from regulatory requirements."

W.S. 35-11-406(a)(xv) requires applications to contain "such other information as the administrator deems necessary or as good faith compliance with the provisions of this act require." It is therefore pertinent that the Wyoming resubmission states (p. 183, in the analysis of findings) "the application is not complete if it does not contain the information required by good faith compliance with the act." The guidelines represent the State regulatory authority's position on what information should be included in an application for good faith compliance with that Act. Thus, "good reasons for a departure must exist or the Department's decision will be subject to challenge on judicial review as arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Once the guideline information is required by the regulatory authority in the course of reviewing and correcting permit applications, the requirements become part of the approved plan and are further enforceable as part of the plan through W.S. 35-11-415(b)(ii), which requires every operator to conduct activities in compliance with the approved plan. The resubmission states that any private person may object to the lack of use of guidelines requirements on the basis that (1) the regulatory authority acted on an incomplete application, or (2) the proposed reclamation cannot be achieved without use of the guideline requirements. Thus the State intends to use the guidelines to specify the contents of the applications.

By letter dated August 5, 1980 (Administrative Record No. WY-220), Wyoming submitted a statement dated August 4, 1980, of the Attorney General's position on the enforceability of guidelines. While the State has explained its intent in using the guidelines, the program still does not contain adequate assurance that the guidelines would be enforceable if an operator or other person sought to attack them. Therefore, the Secretary finds that the State should amend the Land Quality Division's regulations to incorporate a rule based on the Attorney General's statement, and makes promulgation of the regulation a condition of approval of this program.

*14.D* In Finding 14.62 the Secretary found that Rule IX 1a of the State submission inappropriately extended the experimental practice concept to agricultural land, in contrast to the Federal requirement. Rule IX 1a(2)(a) has been promulgated to make Rule IX (variances for surface coal mining operations) applicable only to "a State standard that is more stringent than the corresponding Federal regulation" or "when the proposal promotes experimental practice" or "allowing a postmining land use in an experimental basis" (IX 1a(2)(b)).

Section 711 of SMCRA and 30 CFR 785.13(e)(2)(ii) specify that the only land uses appropriate for experimental practices are "industrial, commercial, residential, or public use (excluding recreational facilities)." Agricultural use is not included in either SMCRA or the Federal regulations. It would appear that the congressional exclusion was purposeful. The Wyoming program resubmission does not limit the land use in Rule IX 1a(2)(b) as do SMCRA and 30 CFR 785.13(e)(2)(ii). However, the appropriate limitation is reflected in W.S. 35-11-601(q). Therefore, variances are limited to land uses identical to the Federal limits.

The Secretary finds Rule IX 1a(2)(b) to be inconsistent with W.S. 35-11-601(q). Application of the land use criteria of Rule IX 1a(2)(b) is approved only as it is stated in W.S. 35-11-601(q). The implication that Rule IX 1a(2)(b) emcompasses agricultural uses is being preempted and superseded as inconsistent with Federal law under the authority of Section 504(g) of SMCRA. In any event, the Director could not approve any practice for an agricultural use, so none would occur.

*14.E* In Finding 14.92 the Secretary found that the lack of a State counterpart to 30 CFR 786.17(c)(2) (evidence of a good faith effort to comply) did not appear to reduce the degree of environmental protection or opportunity for public participation, but kept the record open for any additional information. Wyoming provided additional analysis in its resubmission.

Wyoming stated (p. 234 of resubmission) that W.S. 35-11-406(n)(vii) requires that no permit be approved unless "any violation has been or is in the process of being corrected to the satisfaction of the authority, department, or agency which has jurisdiction over the violation." This is the language of 30 CFR 786.17(c)(1). Wyoming does not request, in the rules,

a showing of good faith appeals as does 30 CFR 786.17(c)(2). Thus, the Secretary agrees with Wyoming that the resubmission contains requirements which could be considered more stringent in this case than the Federal regulations, since a showing of good faith is subjected to review by the regulatory authority and cannot stand alone.

*14.F* Rule II 3b(4)(b)(i) requires a plan for minimizing adverse impacts by protecting or enhancing "threatened or endangered species * * * under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et seq.) and their critical habitat." Rule II 3b(12)(b)(iii)(H) requires a complete application to contain "approval of measures to prevent or mitigate adverse effects on wildlife or fish * * * from appropriate State and Federal fish and wildlife management agencies." W.S. 35–11–406(n)(i) requires that the regulatory authority deny approval of a permit if the application is not complete. Therefore, if an application does not contain a plan to minimize adverse impacts, including a plan to protect or enhance threatened or endangered species and their critical habitats (Rule II 3b(4)(b)(i)), the permit cannot be issued. This was discussed in Finding 14.93 and also in Finding 14.5.

The Federal regulations require the regulatory authority to find that the proposed activities "would not affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their habitat as determined under the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*)" (see 30 CFR 786.19(o)) prior to issuing a permit. Again, W.S. 35–11–406(n)(i) requires the regulatory authority to deny approval if the plan is not complete. A complete plan must be judged against all applicable elements of Rule II, including the plan for protecting or enhancing threatened or endangered species and their critical habitat.

Since Rule II 3b(4) requires a plan which includes minimizing adverse impacts, it appears to be less stringent than the Federal requirement, which is directed more to prohibition than minimization. By letter dated August 5, 1980 (Administrative Record No. WY-220), Wyoming stated that the provisions of W.S. 35–11–406(n)(i) and Rule II 3b(4) "* * * are the equivalent of the finding in 30 CFR 786.19(o)." The Secretary finds that the Wyoming provisions are as stringent as the requirement in 30 CFR 786.19(o). This finding is based on Wyoming's statement that the State's counterpart provisions are "equivalent," which the Secretary interprets to mean that the State will not issue any permits for mining operations that would affect the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat, and the State will make an appropriate written finding for each permit application.

*14.G* In Finding 14.105 the Secretary found that the State should provide evidence that temporary relief from decisions on permit applications is provided in the State program. The State program resubmission has done so. It contains Rule III 3B (Rules of Practice and Procedures), which provides for the Environmental Quality Council to grant temporary relief identical to 30 CFR 787.11(b)(2), and is thus consistent with the Federal requirements.

*14.H* The Wyoming regulations appear to contain several inconsistencies concerning timing of review of permit renewals. Under Rule XIII 1b, Wyoming requires 120 days to file a permit renewal application. This deadline could be difficult to meet due to the other requirements found in W.S. 35–11–406(f) and Rule XIII 1a. Rule XIII 1a requires the placement of an advertisement in a newspaper once a week for four consecutive weeks (22 days) commencing within 15 days after filing of an application. W.S. 35–11–406(k) requires that the filing of a request for an informal conference be no later than 30 days after the last publication of a newspaper advertisement, and that information on the date, time and location of the hearing be advertised two weeks prior to the hearing. W.S. 35–11–406(p) requires action within 60 days from the close of the hearing. This could add up to over 127 days, which is a longer period than specified by Wyoming. The Secretary assumes that Wyoming plans to reduce the 60-day period allowed for a decision after an informal conference is held in order to meet the specified time period allowed for a decision, rather than limit the public participation opportunities under W.S. 35–11–406(g), 35–11–406(j), 35–11–406(k), and Rule XIII 1a(2). Therefore, the Wyoming provisions are acceptable.

*Finding 15*

The Secretary finds that the Land Quality Division has the authority to regulate coal exploration consistent with 30 CFR Parts 776 and 815 (coal exploration) and to prohibit coal exploration that does not comply with 30 CFR Parts 776 and 815, and the Wyoming program includes provisions adequate to do so. This finding is made under 30 CFR 732.15(b)(3).

The Wyoming program incorporates provisions corresponding to Section 512 of SMCRA and 30 CFR Parts 776 and 815 (as related to coal exploration) in Wyoming Statute 35–11–402 and Wyoming rules Chapters X, XI and IV. Part G.1 of the first volume of the program as resubmitted includes a discussion of the system for exploration license review and approval.

A discussion of significant issues raised in the review of Wyoming's coal exploration provisions follows.

In the March 31, 1980, notice (45 FR 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 15 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following findings which bear the same numbers as the tentative findings on the same subject in the March 31, 1980 notice:

*15.1* Rule XI 5k provides for minimizing disturbance to the prevailing hydrologic balance and sediment control in coal exploration activities consistent with 30 CFR 815.15(j).

*15.2* Rules XI 5 d and m are consistent with 30 CFR 815.15 (f), (j) and (i) concerning revegetation and facility removal. Rule XI 1b(5) requires coal exploration operations of 250 tons or less to comply with Rule XI 5 when there will be substantial disturbance of the land surface. Rule XI 5 contains the necessary cross-references to other vegetation and sediment control requirements.

*15.3* Rule XI 1b(5) does not contain map requirements in coal exploration of 250 tons or less. This is consistent with the district court ruling against requiring a map or evidence of right of entry (Opinion of May 16, 1980, at 54). However, Rule XI 2b(1) for coal exploration hole drilling requires areas to be explored to be shown generally on a 1:24000 map. The exploration drilling rule does not distinguish between operations removing more or less than 250 tons.

*15.4* Rule XI 3a requires notices for exploration removing more than 250 tons to be posted in the district office of the regulatory authority, and thus is consistent with 30 CFR 776.12(b).

*15.5* Rules I 2(100) and XI 3 are consistent with 30 CFR 776.17(b) concerning confidential information in

that "trade secret" pertains only to certain coal properties or characteristics and privileged communications or financial information relating to competitive rights.

*15.6* Rules XI 5m and XI 5k are consistent with 30 CFR 815.15(c)(3)(ii), (f) and (j) concerning facility removal and protection of the hydrologic balance.

*15.7* No revision to the State program was required. See Finding 14.3.

*15.8* Rule XI 4a(2) provides protection to historic, archeological, or cultural resources consistent with 30 CFR 776.13(b)(3). The rule does not distinguish between "listed sites" and sites "eligible for listing" and thus is not affected by changes made by OSM to delete "eligible for" pursuant to the district court decision (Opinion of February 26, 1980, at 23).

*15.10* Rule XI 5 provides for compliance with environmental performance standards consistent with 30 CFR Part 815, which requires application of the performance standards to coal exploration which substantially disturbs the land surface. The requirements of 30 CFR 776.11(b)(6) for a description of environmental protection activities for operations which do not remove more than 250 tons are contained in Rule XI 1b(5).

Following are the Secretary's findings concerning all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above, which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930 *et seq.):*

*15.A* In Finding 15.9, the Secretary suggested that the definition of coal exploration should be revised to be as inclusive as the Federal definition in 30 CFR 701.5. Wyoming promulgated a new definition in Rule I 2(9) which is consistent with the Federal definition since it includes mapping, geophysical data, and environmental data collection.

*15.B* Wyoming has promulgated rules to provide less stringent standards for "developmental drilling" operations than for exploration activities. This new element of the program is discussed in Exhibit G.6 of the program submission ("State windows"), but is not proposed as a "State window" according to the discussion. Instead, it is proposed as being no less stringent than the applicable provisions of SMCRA. Rule I 2(18) defines "developmental drilling" as drilling into the lowest coal seam within 500 feet of an active mine pit. Rule I 2(9) exludes developmental drilling from the definition of coal exploration (as well as exploration drilling specifically approved under a permit). Rule II 3b(8) excludes development drilling holes that will be mined through (within one year) from the description of procedures to seal or manage, and rather requires compliance with W.S. 35–11–404 (the rule is mistyped to read 35–11–407). W.S. 35–11–404 requires plugging of artesian flow, sealing with a column of mud if ground water is encountered, capping and backfilling. Rule IV 3n also cites W.S. 35–11–404 for developmental drill holes to be mined through within one year. This rule also requires temporary sealing and use of protective devices, at a minimum, for developmental drill holes.

Developmental drilling comes after exploration and before mining (if mineable coal is found). The bases for the request to allow such drilling under coal standards was that such activity occurs within a developing mine and that notice requirements are not of value and, since the holes will usually be mined through within one year, there is no justification for applying the general abandonment standards. If the drilling exceeds depths equivalent to the deepest coal seam to be mined or extends past 500 feet from the active pit, or is not mined through within one year, or is not included as analyzed in the approved plan, the drilling must be treated as exploratory. Developmental drilling must be described and analyzed to an adequate degree regarding general location, spacing, drilling methods, pollution control methods, data expected to be obtained, and must include measures to comply with W.S. 35–11–404.

The Secretary finds that the concept of developmental drilling requiring less onerous standards is valid, provided the depth, distance, time and plugging (safety and hydrology) constraints are maintained. Thus, the provisions equivalent to portions of 30 CFR 701.5, 780.18(b)(8) and 816.13–816.15 are acceptable.

*Finding 16*

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to require that persons extracting coal incidental to government-financed construction maintain information on site consistent with 30 CFR Part 707. This finding is made under 30 CFR 732.15(b)(4).

Provisions corresponding to 30 CFR Part 707 (exemptions for coal extraction incidental to government-financed highway and other construction) are found in Wyoming statute W.S. 35–11–401 and Wyoming regulation Chapter I.

Wyoming has promulgated Rule I 3b(3) to require that information be kept on-site as in 30 CFR 707.12. The regulatory authority can demand proof of the exemption and close the operation if the proof is not supplied.

*Finding 17*

The Secretary finds that the Land Quality Division has the authority and the Wyoming program includes provisions to enter, inspect, and monitor all coal exploration and surface coal mining and reclamation operations on non-Indian and non-Federal land within Wyoming consistent with the requirements of Section 517 of SMCRA (inspection and monitoring) and 30 CFR Chapter VII, Subchapter L (inspection and enforcement). This finding is made pursuant to 30 CFR 732.15(b)(5).

Provisions corresponding to Section 517 of SMCRA and Subchapter L of 30 CFR Chapter VII for inspection and monitoring of operations are found in Wyoming regulations Chapters IV and XVII. Volume I, Part G.4, of the program resubmission contains a description of the inspection program to be carried out by the Land Quality Division.

Discussion of significant issues raised in the review of the Wyoming provisions for inspection and monitoring follows:

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 17 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice: Findings 17.1, 17.3, 17.5, 17.6, 17.8, 17.9, and 17.10.

Following is the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980 notice (45 *FR* 20930 *et seq.*):

*17.A* In Finding 17.7 the Secretary requested assurance by Wyoming that inspections will be made on an irregular basis, including operations which are open on nights, weekends or holidays. The State has provided this assurance in its comment in the side-by-side to this finding, and the Secretary finds it acceptable.

*17.B* In Finding 17.4, the Secretary requested that Wyoming provide an explanation that inspectors will conduct

field enforcement for all violations observed. In a letter dated August 5, 1980 (Administrative Record No. WY-220), the State indicates that it will conduct field enforcement for all violations observed. The Secretary finds that inspectors will take all required actions based upon this discussion.

*Finding 18*

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to implement, administer, and enforce a system of performance bonds and liability insurance, or other equivalent guarantees consistent with 30 CFR Chapter VII, Subchapter J (performance bonds), subject to the discussion in Finding 18.A below. This finding is made under 30 CFR 732.15(b)(6).

Provisions corresponding to Sections 509 and 519 of SMCRA (performance bonds and insurance) and to Subchapter J of 30 CFR Chapter VII are incorporated in Wyoming statute 35-11-406, 410, 411, 417, 418, 421 and 424 and Wyoming rules Chapters XII, XIII, and XVI. Volume 1, Part G.3, of the program submission contains a narrative describing the reclamation performance bond and liability insurance requirements for the State.

Discussion of significant issues raised in the review of Wyoming's bonding and insurance provisions follows.

In the March 31, 1980, notice (45 FR 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 18 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice:

*18.3* Rule IV 3d(6) covers the requirements of 30 CFR 805.13 regarding the period of bond liability. The period of liability is to be initiated at the completion of seeding, fertilizing, irrigation, or other work to ensure revegetation. The State program is consistent with the Federal requirements for the period of liability.

*18.8* Rule XVI 4a requires inspections and evaluations of mining and reclamation work within 60 days of receipt of notification, "conditions permitting." This ensures that inspections will be conducted when conditions allow the proper information to be gathered. This is consistent with the Federal requirements of 30 CFR 807.11(d), especially in view of the short growing season in Wyoming.

*18.11* Under Rule XVI 6a, the bond is released in three phases as provided for by 30 CFR 807.12(b). Somewhat less bond than the Federal amount is released at each phase under the Wyoming program. The full bond is not released until the 10 year liability period has expired and the revegetation and other commitments are met.

Following is the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930 *et seq.*):

*18.A* In Findings 18.1, 18.5, 18.6 and 18.7 the Secretary found the Wyoming self-bonding provisions as initially proposed probably inconsistent with 30 CFR 806.11 and requested clarification in the resubmission. Of the differences noted in the initial finding, some remained and some were removed in the resubmission. As adjusted, the Secretary approves the Wyoming self-bonding submission under Section 509(c) of SMCRA as an alternative to the Federal system.

The first difference noted in the initial finding is that the Wyoming regulations do not require the operator to grant the right immediately to attach, without foreclosure, any property given as collateral. The Wyoming provisions still do not authorize such attachment. However, the Wyoming Land Quality regulations in Rule XII 2(a)(11) do provide full authority for the regulatory authority to protect its interest in any collateral.

The second difference noted in the initial finding was that under the Wyoming self-bonding provisions the administrator is given discretion to require proof of a mortgagor's possession and title to real property, whereas no such discretion exists in the Federal regulations. This difference still exists. However, the Wyoming regulations provide full authority for the regulatory authority to ascertain the value of any collateral, which would include ascertaining title and possession.

The third difference noted in the initial finding was that, as initially submitted, the Wyoming self-bonding provisions did not specify a ten year history of business operation as a requirement. Wyoming has changed its regulations to make its self-bonding provisions consistent with the ten year requirement of the Federal provisions. See Wyoming Land Quality Rule XII 2(a)(8).

The initial finding also noted that the Wyoming program did not expressly require the operator to submit a statement listing any notices issued by the Securities and Exchange Commission, or a listing of proceedings alleging failure to comply with any public disclosure or reporting requirements under the Federation securities laws. Wyoming adjusted its self-bonding provisions to make them consistent with this Federal provision. See Rule XII 2(a)(10).

The Federal self-bonding provisions at present impose four basic requirements: (1) indemnity by the operator and agency within the State for service of process, (2) a financial statement showing a ten year history of operation and financial solvency, (3) net worth of at least six times the amount of all self-bonds and (4) 100 percent collateral. The Wyoming self-bonding provisions require (1) and (2) above and *either* (3) *or* (4). See Wyoming Land Quality Rules XII and XIII 2a(3).

The Secretary finds that the Wyoming provisions meet the requirements of Section 509(c) of SMCRA and 30 CFR 806.11(c), which provide that the Secretary may approve as part of a State program an alternative bonding system if it will achieve the objectives and purposes of the bonding provisions of the Act. Such alternatives must provide (1) that should the operator fail to complete reclamation there will be sufficient resources for the regulatory authority to complete the reclamation, and (2) a substantial economic incentive for the permittee to comply with all reclamation provisions

As noted in the State program submission and this notice, the Wyoming coal mining industry is, in all but one or two cases, made up of very large mines owned and operated by the largest coal mining and energy companies in the country. Their history of operation and solvency and their assets are clearly sufficient to meet the tests of the statute and regulations. Even the one or two smaller operations are large by national standards. The substantial requirements of the Wyoming self-bonding provision, coupled with the unusual profile of the Wyoming coal mining industry, makes this alternative approvable in Wyoming.

OSM is currently studying its own self-bonding regulations and the economic and regulatory issues of self-bonding. When the study is completed, OSM expects to initiate a rulemaking to adjust its current self-bonding regulations. After doing so and after

close study with Wyoming of the implementation of this alternative, OSM and the State will review Wyoming's alternative system here approved.

*18.B* The Secretary found, in Finding 18.2, that the language Wyoming proposed in Rule XIII 2a(1) apparently would be consistent with the requirements of 30 CFR 800.11 concerning the bond amount for land which may reasonably be affected prior to filing a renewal bond. Wyoming promulgated language in Rule XIII 2a(1) that was different from that on which the Secretary made the tentative finding. The promulgated language, however, is consistent with the Federal requirements.

*18.C* The Secretary made several tentative findings in Finding 18.4. W.S. 35–11–417(c) provides for a minimum bond amount of $10,000 consistent with 30 CFR 805.12; Rule IV 3d(6) provides for a minimum 10–year revegetation bond period consistent with 30 CFR 816.116(b)(1). Rule XVI 2b provides procedures to request bond release consistent with 30 CFR 807.11. In promulgating Rule XVI 3a, Wyoming promulgated language different from the January 9, 1980, draft regulations on which the Secretary based his tentative finding. Rule XVI 3a, as promulgated, deletes all provisions for informal conferences on bond releases. This deletion does not make Rule XVI 3a inconsistent with the Federal requirements since 30 CFR 807.11(e) does not require that informal conferences on bond releases be included in the program.

*18.D* In Finding 18.9, the Secretary asked Wyoming to provide for citizen access to the mine site for informal conferences on proposed bond releases. These informal conferences are described in 30 CFR 807.11(e) and, as therein described, were remanded by the district court to incorporate, in their entirety, the *informal* conference procedures of Section 513(b) of SMCRA (Opinion of February 26, 1980, at 41–42). As discussed in Finding 18.C above, Wyoming has deleted requirements for an informal conference on proposed bond releases from Rule XVI 2b(8). Since 30 CFR 807.11(e) and Section 519(g) give discretionary authority to grant informal conferences, this is in accordance with SMCRA and consistent with the Federal regulations.

Rule XVI 2b(8) permits requests for hearings on bond deposit releases. Wyoming states in the resubmission that informational proceedings pursuant to Rule III 3a of the Department of Environmental Quality's Rules of Practice and Procedure can be held and, if held, that the regulatory authority will grant mine site access in accordance with the court's directive to include such provisions if informal hearings are held. The only difference between the initial submission and the promulgated language is deletion of the reference to informal conferences.

*18.E* Rule XVI 6a(3) specifies that, where the approved postmining land use is industrial development or residential, release of the bond or deposit can be made when the operator has successfully completed all surface coal mining and reclamation operations in accordance with the operator's responsibilities under the approved plan. This requirement is designed as Wyoming's counterpart to 30 CFR 807.12(d) which, in part, requires the regulatory authority to retain sufficient bond to complete any additional work which would be required to achieve compliance with the general standards for revegetation "in the event the permittee fails to implement the approved postmining land use plan within the two years required by [30 CFR] 816.116(b)(3)(ii)" (the cited section requires a ground cover of living plants not less than that required to control erosion).

While 30 CFR 816.116(b) has been remanded by the district court (Opinion of February 26, 1980, at 55–56), it was remanded because of the requirement for this extended bond liability period to start when the ground cover equals the approved standard rather than starting immediately after the last year of augmented seeding, fertilizing, irrigation or other work and thus 816.116(b)(3)(ii) should not be affected. Wyoming's modified Rule IV 3d(6) is consistent with section 515(b)(20) of SMCRA. Wyoming's requirements would mean that the provisions of Rule IV 3d(5), to stabilize industrial development or residential land or, if development is delayed for more than two years, revegetation in accordance with Rule II, would have to be implemented immediately after the last year of augmented seeding, fertilizing, irrigation or other work. Thus, the State resubmission is consistent with the present Federal program requirements.

*18.F* In Finding 18.12, the Secretary found the proposed bond forfeiture provisions to appear adequate. Wyoming enacted the statutory provisions which the Secretary tentatively found adequate in Finding 18.12. The statute citations are different from those in Finding 18.12. The Secretary however, finds that W.S. 35–11–401(e)(vii), W.S. 35–11–406(m)(ix), and W.S. 35–11–421(a), as enacted, are consistent with 30 CFR 808.11, regarding bond forfeiture.

*18.G* In Finding 18.14 the Secretary requested assurance that funds forfeited will be available for reclamation. This assurance is provided in the "Side-by-Side with the Secretary's Findings" (Volume 3A, p. 293) of the resubmission. There it is stated that all monies are delivered to an interest-bearing trust and agency account and are used solely for reclamation purposes, since these are "earmarked" accounts. The Wyoming statutory provisions cited in Finding 18.14 were enacted and are consistent with 30 CFR 808.14.

*Finding 19*

The Secretary finds that the Land Quality Division has the authority and the Wyoming program provides for civil and criminal sanctions for violations of Wyoming law, regulations and criminal penalties consistent with Section 518 of SMCRA (penalties) including the same or similar procedural requirements. This finding is made pursuant to 30 CFR 732.15(b)(7).

Provisions corresponding to Section 518 of SMCRA and to 30 CFR Part 845 are incorporated in W.S. 9–2–505 and 35–11–901 and Wyoming Rule XVII. Part G.5 of Volume I of the Wyoming program submission contains descriptions of the methods and procedures by which the State will enforce the administrative civil and criminal sanctions of State laws and regulations.

Discussion of significant issues raised in the review of Wyoming's provisions for civil and criminal sanctions follows.

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 19 acceptable subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative finding in the March 31, 1980, notice: Findings 19.2, 19.5, and 19.6.

Following are the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930 *et seq.*):

*19.A* In Finding 19.3 the Secretary stated that he would review Wyoming's alternative to the civil penalty system in light of the district court's decision. Additionally, the Secretary stated in Finding 19.10 that he would review the information by the State regarding the assessment of civil penalties. The district court, in its second round decision (see discussion in "General Background on State Program Review Process"), indicated that, while Section 518(i) of the Act requires a State to incorporate the penalties, the four criteria, and the procedures explicated in Section 518, the Secretary does not have authority to require States to adopt a system that will result in penalties at least as stringent as those imposed under OSM's point system.

Based on the district court's ruling, the Secretary finds the Wyoming alternative to the penalty point system acceptable.

*19.B* In Finding 19.4, the Secretary asked Wyoming to make it clear that an operator may be relieved of an abatement requirement only by a granting of temporary relief pursuant to Rule XVII 2f. In the side-by-side, the State makes this point clear, and because of enactment of W.S. 35–11–901(n) and the promulgation of this rule, the Secretary finds that the Wyoming program is consistent with Section 518(h) of SMCRA.

*Finding 20*

The Secretary finds that the Land Quality Division has the authority under Wyoming laws, and the Wyoming program contains provisions to issue, modify, terminate and enforce notices of violation, cessation orders and show cause orders consistent with Section 521 of SMCRA (enforcement) and with 30 CFR Chapter VII, Subchapter L (inspection and enforcement), including the same or similar procedural requirements. This finding is made pursuant to 30 CFR 732.15(b)(8).

Provisions corresponding to Section 521 of SMCRA and to Subchapter L of 30 CFR Chapter VII are included in Wyoming Statute W.S. 35–11–901 and 35–11–437 and in Wyoming Rules Chapter XVII. Volume I, Part G.5, of the program submission contains a description of the methods and procedures by which the State will enforce the administrative civil and criminal sanctions of State laws and regulations. Volume I, Part G.6, of the program submission contains a discussion of Wyoming's administrative and enforcement procedures for performance standards.

Discussion of significant issues raised in the review of Wyoming's provisions for notices of violation and cessation orders follows:

In the March 31, 1980, notice (45 FR 20930, *et seq.*), the Secretary tentatively found certain provisions in Finding 20 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice: Findings 20.1, 20.3, 20.7, 20.8, 20.9, 20.10, 20.12, 20.14, 20.15, 20.16, 20.18, and 20.19.

Following are the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 FR 20930, *et seq.*):

*20.A* In Finding 20.2, the Secretary asked Wyoming to clarify its provision for immediate issuance of cessation orders. In the side-by-side of Federal and State provisions, the State makes it clear that W.S. 35–11–437(a) and the regulations implementing that statute mandate an immediate issuance of a cessation order in circumstances which are the same as those in Section 521(a)(2) of SMCRA. The Secretary, therefore, finds the Wyoming provision acceptable.

*20.B* In Finding 20.4, the Secretary stated that W.S. 35–11–437(c) should be changed to replace the term "continued" with the term "affirmed." As enacted, the statute incorporates this change and, therefore, it is clear that the total time for abatement of a violation may not exceed 90 days. The Secretary finds this provision acceptable.

*20.C* In Finding 20.6, the Secretary states that an Attorney General's memorandum which describes the power of the State Attorney General may be acceptable as consistent with Section 521(c) of SMCRA and 30 CFR 843.19. The Secretary finds that this memorandum reveals that Wyoming has powers which are broader than those of OSM and, therefore, the State program is consistent with Section 521(c) of SMCRA and 30 CFR 843.19.

*20.D* In Finding 20.11, the Secretary states that he will reexamine Wyoming's provisions for service of notices of violation, cessation orders, and show cause orders upon resubmission of the program. First, the State asserts in the side-by-side that Rule 4 of the Wyoming Rules of Civil Procedure, regarding service, applies to its program. The Secretary finds that this rule, although not exactly the same as 30 CFR 843.14, provides for adequate service and is, therefore, the same or similar to 30 CFR 843.14.

*20.E* The Secretary notes that the language which he originally considered in Findings 20.16 and 20.19 differs somewhat in its enacted form from that which was proposed. However, the enacted language does satisfy the concerns expressed in these two findings.

The State, however, omits any provision comparable to 30 CFR 843.14(d) by which Wyoming may furnish copies of notices and orders to certain persons. Since the Federal provision is permissive rather than mandatory, the Secretary finds that the State is not required to have such a provision.

*20.F* Wyoming Rule XVII 2d(1), which defines "willful violation" for purposes of the section of its regulations dealing with suspension or revocation of permits for patterns of violation, provides:

> Willful violation means an act or omission which violates this Act or any regulation, and which is committed or omitted with knowledge or reason to know of its unlawfulness.

The comparable definition in OSM regulations at 30 CFR 843.13(a) is:

> Willful violation means an act or omission which violates the Act, this Chapter, the applicable program * * * committed by a person who intends the result which actually occurs.

The Wyoming definition adds the component "knowledge or reason to know of its unlawfulness."

The Secretary finds these two definitions consistent and determines that the Wyoming definition is a part of a "similiar procedural requirement" within the meaning of Section 521(d) of SMCRA. Under Wyoming law, a person is presumed to know what the law is (*Closson v. Closson,* 215, p. 485, Sup. Ct. Wyom., 1923). Moreover, the permittee and his employees actively engaged in the business of mining have "reason to know" of Wyoming's laws and regulations dealing with coal mining and with the terms of their permit which apply those laws and regulations to the particular mine. The Secretary assumes that these intepretations will prevail in the implementation of the Wyoming program. Because of this assumption, the Secretary finds that the two definitions are consistent.

*20.G* Section 525(a)(1) of SMCRA provides for administrative review at the request of any person having an interest which is or may be adversely

affected by a notice or order or by any modification, vacation, or termination of such notice or order. The comparable Wyoming provisions are W.S. 35–11–437 (c)(ii) and Chapter XVII. Under the Wyoming language, persons who may be adversely affected by a notice or order may request review. The Wyoming law and rules do not explicitly refer to persons who may be affected by a "modification, vacation or termination of such order."

The Secretary believes that the absence of this specific language does not narrow the circumstances under which any person may request review of an action in connection with a notice or order. The Secretary interprets the language to allow persons who may be adversely affected by any regulatory authority action in connection with a notice or order to apply for review if the permittee could, and that is all the Federal statute and rules require.

*Finding 21*

The Secretary finds that the Land Quality Division has the authority and the Wyoming Program contains provisions to designate areas as unsuitable for surface coal mining consistent, in part, with 30 CFR Chapter VII, Subchapter F (designations of areas unsuitable for mining). This finding is made under 30 CFR 732.15(b)(9).

Provisions corresponding to Section 522 of SMCRA and to Subchapter F of 30 CFR Chapter VII are included in W.S. 35–11–406 and 425 and Wyoming Rule XVIII. Volume 1, Part G.11, of the program submission describes the system by which petitions for designating areas unsuitable for surface coal mining will be received and processed and the establishment of a data base and inventory system.

A discussion of significant issues raised in the review of Wyoming's provisions for unsuitability designations follows.

In the March 31, 1980, notice (45 *FR* 20930, *et seq.*), the Secretary tentatively found certain provisions in Finding 21 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program submission. The Secretary finds (after considering government agency and public comments) that the language previously considered has been promulgated or enacted and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice: Findings 21.2, 21.3, 21.8, 21.9, 21.10, 21.11, 21.12, 21.13, 21.14, 21.15, 21.16, 21.17, 21.18.

Following are the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 *FR* 20930 *et seq.):*

*21.A* In Finding 21.1, the Secretary responded to a comment by the Public Lands Institute concerning inclusion of certain definitions equivalent to definitions in 30 CFR 761.5. In that finding, it was concluded that the terms "occupied dwelling," "public building," public park," and "cemetery" are sufficiently common to not require definition in Wyoming's program.

Wyoming's promulgated regulations for another two of those definitions differ from the language upon which Finding 21.1 was based. Those definitions are for "valid existing rights" (Rule I 2(106) and "public roads" (Rule I 2(63). Both definitions were remanded by the district court (Opinion of February 26, 1980, at 20–23). "Valid existing rights" is defined to include a good faith effort to obtain all permits while "public roads" is defined to require use by and maintenance with government funds. The changes are consistent with the court opinion and with SMCRA. See discussion above under "General Background" concerning remanded regulations.

*21.B* In Finding 21.4, the Secretary requested that the Wyoming program ensure that notice of a petition will be published in the State register. Wyoming does not have a State register. Rule XVIII 3b(2), however, requires that notice will be placed in the offices of the county clerks of the counties in which the area covered by the petition is located. This is acceptable and consistent with 30 CFR 764.15 (b)(2).

*21.C.* In Finding 21.5, the Secretary asked that the Wyoming program be revised to assure that governmental agencies and persons with other than a "property" interest be given notice of a public hearing on a petition. Rule XVIII 4b requires the notice to be sent to "all petitioners, intervenors, local, State and Federal agencies which may have an interest in the decision on the petition, and persons identified as having interests affected by the proposed designation or termination." This State rule is consistent with 30 CFR 764.17(b), since those with a "property interest" will be included under these with an "interest."

*21.D* In Finding 21.7 the Secretary found certain requirements for information to be more burdensome for the petitioner than is required by 30 CFR 764.13(b). In the resubmission the State deleted the requirements for information on persons contributing to the expense of the petition. The other requirements, "a precise description of the boundary of the area covered by the criterion or criteria on which the proposed designation rests, allegations of fact which tend to establish the criterion or criteria * * *, and a specific identification of the sources of supporting evidence on which the allegations of fact rest," in Finding 21.7 were retained in Wyoming Rule XVIII 2b, and three of the above requirements were retained in XVIII 2c. Also in Finding 21.7, the requirement that property interests *known to the petitioner* be identified was tentatively found to be consistent with Federal requirements. The Secretary assumes, therefore, that Wyoming will limit informational requirements to that known by or reasonably available to the petitioner, and thus finds these provisions acceptable.

*Finding 22*

The Secretary finds that the Land Quality Division has the authority under Wyoming laws, and the Wyoming program provides for public participation in the development, revision and enforcement of Wyoming laws and regulations and the Wyoming program is consistent with the public participation requirements of SMCRA and 30 CFR Chapter VII, subject to the discussions in Findings 22.C and 22.D below. This finding is made pursuant to 30 CFR 732.15(b)(10).

Provisions corresponding to public participation requirements in SMCRA and 30 CFR Chapter VII are included throughout Wyoming State statutes and rules submitted as part of the program. Volume 1, Part G.14, of the program submission describes the procedures to ensure that adequate public participation is provided throughout the development and functioning of the State program. Discussion of significant issues raised in the review of Wyoming's public participation provisions follows.

In the March 31, 1980, notice (45 *FR* 20930, *et seq.*), the Secretary tentatively found certain provisions in Finding 22 acceptable, subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in

the following tentative findings in the March 31, 1980, notice: Findings 22.2, 22.3, 22.4, 22.5, 22.6, 22.7, 22.10, 22.11, 22.12, 22.13, 22.14, 22.15, 22.17, and 22.18.

Following are the Secretary's findings on all provisions of the resubmission that differ from the initial submission and subsequent documents described in part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 *FR* 20930 *et seq.*):

*22.A* In Finding 22.1, the Secretary found that Wyoming's provisions for holding informal conferences on permit applications and providing for access to the mine area were not adequate. Rule III 3a of the Rules of Practice and Procedures is consistent with 30 CFR 784.14 concerning informal conferences. Under W.S. 35-11-406(K), an informal conference will be held if the administrator determines that the nature of the complaint or the position of the complainants indicates that an informal conference is preferable to a contested case proceeding.

*22.B* In Finding 22.8, the Secretary found that the Wyoming program did not contain a provision for prompt citizen complaint inspection. The State has enacted W.S. 35-11-701(b), which calls for a prompt citizen complaint inspection and, therefore, is the same or similar to 30 CFR 842.12(d).

*22.C* In Finding 22.9, the Secretary found that the State had not proposed or promulgated any rules which are consistent with 43 CFR Part 4 regarding the award of attorneys fees. The State has failed in its resubmission to promulgate any such rules. The Secretary finds this omission unacceptable. However, by letter dated August 5, 1980 (Administrative Record No. WY-220), Wyoming stated its intent to promulgate such rules. Promulgation of these rules is being made a condition of approval of the Wyoming program.

*22.D* In Finding 22.16, the Secretary found that the Wyoming provisions concerning citizen intervention in administrative proceedings might not be as broad as under Federal regulations. The Wyoming resubmission contains a proposed change to Chapter II, Section 7 of the Department's Rules of Practice and Procedure, which, if promulgated, would provide rights of intervention as broad as those in 43 CFR Section 4.1110. The State, however, failed to promulgate this rule and the Secretary finds this omission unacceptable. By letter dated August 5, 1980 (Administrative Record No. WY-220), Wyoming has stated its intent to promulgate a rule consistent with 43 CFR 4.1110 concerning intervention. Promulgation of this rule is being made a condition of approval.

*Finding 23*

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to monitor, review, and enforce the prohibition against indirect or direct financial interests in coal mining operations by employees of the Wyoming Land Quality Division consistent with 30 CFR Part 705 (restrictions on financial interests of State employees). This finding is made under 30 CFR 732.15(b)(11).

Provisions corresponding to Section 517(g) of SMCRA and 30 CFR Part 705 are incorporated in the Wyoming program through Wyoming Personnel Rules PPM 3.01. Volume I, Part G.12, of the program submission describes the procedures by which the Department of Environmental Quality will implement provisions for financial interest control. Discussion of the significant issues raised in the review of Wyoming's conflict of interest provisions follows.

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found Wyoming's provisions acceptable subject to review and comment by government agencies and the public. The secretary has reviewed the Wyoming program resubmission, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice: 23.1 and 23.2.

*Finding 24*

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program includes provisions to require the training, examination, and certification of persons engaged in or responsible for blasting and the use of explosives in accordance with Section 719 of SMCRA, to the extent required for approval of its program. This finding is made pursuant to 30 CFR 732.15(b)(12).

Provisions corresponding to Section 719 of SMCRA are incorporated in W.S. 35-11-415. No regulations are required at this time.

Volume 1, Part G.13, of the program submission contains a description of the cooperative effort between the State Inspector of Mines and the Department of Environmental Quality.

*Finding 25*

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program provides for small operator assistance consistent with 30 CFR Part 795 (small operator assistance). This finding is made pursuant to 30 CFR 732.15(b)(13).

Provisions granting authority supporting Section 507(c) of SMCRA and 30 CFR Part 795 are incorporated in W.S. 35-11-109 and 110. Volume 1, Part G.16, of the State program submission contains a description of the small operator assistance program within the State.

Discussion of significant issues raised in the review of Wyoming's small operator assistance program follows.

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 25 acceptable subject to promulgation of rules and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative finding in the March 31, 1980, notice: Finding 25.1.

Following is the Secretary's finding on the provision of the resubmission that differed from the initial submission and subsequent documents described in Part C above which formed the basis of his initial decision published in the March 31, 1980, notice (45 *FR* 20930 *et seq.*):

In Finding 25.2, the Secretary requested a clarification of the phrase "qualified personnel," as it is used at Rule XXIII 3b(6) of Wyoming's Land Quality Division regulations, to assure that OSM, the State regulatory authority, and laboratory personnel would logically be included. The State has provided clarification in its comment in the side-by-side to this finding, and the Secretary finds this clarification acceptable.

*Finding 26*

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program provides similar protection to that afforded Federal employees under Section 704 of SMCRA. This finding is made pursuant to 30 CFR 732.15(b)(14).

Provisions corresponding to Section 704 of SMCRA are incorporated in W.S. 35-11-901. While there is no specific reference to protection of State employees in the presentation of systems in the State program submission, the Secretary finds that incorporation of the appropriate authority is sufficient.

In Finding 26, published by the Secretary on March 31, 1980, the

Secretary indicated that the enactment of W.S. 35–11–901(m), as proposed, would be acceptable. This statute has been enacted, and the Secretary finds the Wyoming program consistent with Section 704 of SMCRA.

*Finding 27*

The Secretary finds that Wyoming has the authority under its law and the Wyoming program provides for administrative and judicial review of State program actions in accordance with Sections 525 and 526 of SMCRA (review of decision) and 30 CFR Chapter VIII, Subchapter L (inspection and enforcement). This finding is made pursuant to 30 CFR 732.15(b)(15).

Provisions corresponding to Sections 525 and 526 of SMCRA and to Subchapter L of 30 CFR Chapter VII are incorporated in W.S. 35–11–406 and 437; Wyoming Rules of Civil Procedure, Rule 27.1; Wyoming Department of Environmental Quality Rules of Practice and Procedure, Chapter 2; Wyoming Administrative Procedures Act, W.S. 9–4–107 and 114; and Wyoming rules Chapters XVII and XVIII. Volume 1, Part G.4, of the program submission contains a description of the administrative and judicial procedures which are available for the review of administrative decisions, actions and refusals to act. Additional provisions are included in Volume 1, Part G.4, of the program submission, which sets out administrative and judicial review of inspection and enforcement actions.

Discussion of significant issues raised in the review of Wyoming's administrative and judicial review provisions follows:

In the March 31, 1980, notice (45 *FR* 20930 *et seq.*), the Secretary tentatively found certain provisions in Finding 27 acceptable subject to promulgation of rules, enactment of statutes, and review and comment by government agencies and the public. The Secretary has reviewed those provisions in the Wyoming program resubmission. The Secretary finds that the language previously considered has been promulgated or enacted, has considered government agency and public comments, and approves the provisions of the Wyoming program discussed in the following tentative findings in the March 31, 1980, notice: Finding 27.1 and 27.2.

The Secretary notes that rather than enacting the language in W.S. 35–11–437(g), discussed in Finding 27.1, the State added the phrase "for other than surface coal mining operations" in enacted W.S. 35–11–701(c), which resolves the concern raised.

*Finding 28*

The Secretary finds that the Land Quality Division has the authority under Wyoming laws and the Wyoming program contains provisions to cooperate and coordinate with and provide documents and other information to the Office of Surface Mining under the provisions of 30 CFR Chapter VII. This finding is made pursuant to 30 CFR 732.15(b)(16).

Wyoming Rules XIII, XIV, and XVII were promulgated and, as discussed in the March 31, 1980, **Federal Register** notice, provide for notice of applications for permits and notice of inspection and enforcement activities. In addition, the Wyoming Administrative Procedures Act ensures that information is publicly available.

*Finding 29*

The Secretary finds that the Wyoming laws and regulations and the Wyoming program do not contain provisions which would interfere with or preclude implementation of those in SMCRA and 30 CFR Chapter VII. That finding was made pursuant to 30 CFR 732.15(c). An analysis of that finding is included in the March 31, 1980, **Federal Register** notice (45 FR 20979).

*Finding 30*

The Secretary finds that the Land Quality Division and other agencies having a role in the program would have sufficient legal, technical and administrative personnel and would have sufficient funds to implement, administer, and enforce the provisions of the program, the requirements of 30 CFR 732.15(b) (program requirements), and other applicable State and Federal laws. This finding is made pursuant to 30 CFR 732.15(d).

Volume 1, Parts I and J, contain descriptions of existing and proposed staff, and how such staff will be adequate to carry out the functions for the projected workload to ensure that coal exploration and surface coal mining and reclamation requirements of SMCRA and the Federal regulations are met. Volume 1, Part L, contains a description of the actual capital and operating budget to administer the State program for the prior and current fiscal years, and the projected annual budget for the next two fiscal years.

Wyoming's Land Quality Division has a staff of 38 full-time persons assigned to regulate coal and other minerals. The coal program consumes approximately 16.34 full-time persons from the division and 6.43 full-time persons from other agencies, i.e., Division of Water Quality, Division of Solid Waste, the Attorney General's Office, Wyoming Fish and Game Department, and the Department of Environmental Quality's Administrative Section.

The Department's analysis of Wyoming's initial program submission reflected a total workload requirement of 21.47 full-time equivalents or person-years to implement the program. Resubmission data provided by Wyoming indicate a total program personnel capacity of 22.77 full-time equivalents or person years, which satisfies total program staffing needs as required by 30 CFR 731.14(e), (f), (i), (j).

*Government Agency and Public Comments on the Wyoming Program Resubmission*

*C.1* The Fish and Wildlife Service (FWS) commented that Wyoming's resubmission failed to define the word "person" in its statute in a manner which would give the FWS status afforded to "persons." This word is clearly defined in the State's revised act (WS 35–11–103) to include "an individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility cooperative, municipality, or any other political subdivision of the state, or any interstate body, or any other legal entity." Thus, certainly, the Fish and Wildlife Service is included.

*C.2* The Environmental Protection Agency (EPA) notes that Wyoming, in its counterpart to 30 CFR 816.42(a)(7) (see Section 7 of Wyoming DEQ MOU and Rule X 4a of Water Quality Division Rules and Regulations) in its resubmission, has changed its maximum allowable total suspended solids (TSS) effluent limitation from 45 m/l in the original submission to 70 m/l. This change, EPA concludes, makes Wyoming's effluent limitation exceed the legal limitations established by EPA in Title 40.434.22. Wyoming explained these changes in a letter dated August 5, 1980. The explanation is discussed in Finding 13.C.

*C.3* It is also noted by EPA that Wyoming, in the resubmission's counterpart to 30 CFR 817.126(a), has changed its regulation as originally submitted so that underground mining activities appear to be permitted beneath or adjacent to any perennial stream regardless of the circumstances. EPA expresses the belief that Wyoming should reinstate its original language which allows such mining *only* if the regulatory authority, on the basis of detailed subsurface information, determines that subsidence will not

cause material damage to streams, water bodies and associated structures.

The Secretary finds that Rule VII 2b(3) promulgated by the State provides authority for protection of all perennial streams and all impoundments consistent with 30 CFR 817.126(a), by requiring that underground mining activities be planned and conducted to prevent subsidence from causing material damage to the land surface (see Finding 13.102).

*C.4* The Bureau of Land Management (BLM) was concerned that the size of the staff of the Wyoming Department of Environmental Quality was not sufficient to administer the program in a timely manner. BLM has reviewed the Wyoming resubmission and they now feel that the total staff capability is adequate. A similar conclusion has been reached by the Secretary in Finding 30.

*C.5* Concern was expressed by the Fish and Wildlife Service (FWS) that Wyoming, in its analogue to 30 CFR 776.13, fails to clarify whether threatened and endangered species are from the Federal list or a State list.

The resubmission contains Rule II 3b(4)(b)(i), which requires an application, in order to be complete and therefore eligible for approval, to have a plan for minimizing adverse impacts to fish, wildlife and related environmental values within and adjacent to the permit area including "threatened or endangered species of plants or animals listed by the Secretary under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and their critical habitat." Thus, it is certain that the Federal list will be consulted. This rule requires that these plans must be adhered to and that the regulatory authority must enforce the protection of species and their critical habitats as identified by the Secretary. The FWS citation of the Wyoming rules could not be verified since the page cited in the resubmission related to special permit application requirements for alluvial valleys floors. Apparently, the FWS meant to cite Rule II 2a(1)(e) (i)–(iii) which does refer to an "endangered species list" of the Wyoming Game and Fish Department (page 20 of the Land Quality Division rules). Thus, both the Federal list and the State list must be consulted. This is also discussed in Finding 14.5.

*C.6* The FWS stated that Wyoming's resubmission fails to include requirements of 30 CFR 779.20 and 783.20. Specifically, FWS comments that Wyoming's Guideline No. 5 should be required and should include habitat mapping, that the Federal list of threatened and endangered species should be consulted, that consultation on level of study should be sought in Section 2 a(1), that the vegetative type maps in Guideline No. 2 should be a requirement rather than a guideline, and, lastly, that reference to a surface water map is needed.

The Federal rules referred to by the FWS were remanded in the district court's February 26, 1980, opinion, so the State need not include analogous provisions. However, the court also ruled that the State may include these analogous provisions if they so desire. (Civil Action No. 79–1144, August 15, 1980, (Partial Stay Order of May 16, 1980, Memorandum Decision).)

Wyoming's resubmission does contain promulgated Rule II 3a(6)(e) to ensure that studies of fish and wildlife, and their habitats, are developed in consultation with Federal agencies having related responsibilities. It is certain that the FWS will be consulted. Thus, to reiterate requirements in Guideline No. 5 is not required. Wildlife habitat mapping (Rule II 3b(4)(b)(iii)) and vegetation community mapping (Rule II 3b(4)(a)) all ensure vegetation mapping in a manner reflecting wildlife habitat. Wildlife use of surface water is addressed in Rule II 2a(1)(g)(ii)(B). Thus, rules adequate to address the FWS concerns exist.

Guideline No. 5 represents those efforts the applicant should undertake to make the necessary good faith effort to comply with the State statutes (see discussion under Finding 14.C).

Wyoming has agreed to provide equivalent emphasis on investigations of the aquatic habitat in this guideline (see Findings 12.7 and 13.F (13.39)). The guideline appears to provide useful and professional directives on wildlife surveys including habitat mapping (see Section I A3 for vertebrate fauna). This is discussed in Findings 14.30 and 14.31. The Secretary has not identified reasons for further changes in the State program in this regard, since there is nothing inconsistent with SMCRA in these guidelines.

*C.7* The FWS indicates that in its resubmission Wyoming's counterpart to 30 CFR 786.11–786.14 fails to provide for fish and wildlife agency notification.

The Federal requirements to notify general governmental agencies, fish and wildlife and historic preservation agencies (30 CFR 786.11(c)(1)) of receipt of a complete application are covered by Rule XIII 1a(2)(b), which requires that public notice be sent to Federal, State and local governmental agencies "with jurisdiction over or an interest in the proposed operation or permit area." While the FWS is not cited by name, if it has jurisdiction, it must be notified. Further, the MOU between the Land Quality Division and the Wyoming Game and Fish Department (Exhibit F.2. in the resubmission) requires the regulatory authority to notify the Wyoming Game and Fish Department of the need for technical assistance in evaluation of the submission.

Further, the resubmission contains correspondence between the regulatory authority and the FWS (Exhibit G.9) which identifies the area manager as the official contact point for all requests. For all Federal lands in Wyoming, FWS is contacted by OSM and OSM will maintain this procedure. This is also discussed in Finding 14.84. The Secretary believes that proper notification will be given to the FWS.

*C.8* Concern was expressed by the FWS that Wyoming's analogue to 30 CFR 786.19 (m) and (o) in its resubmission contains no provision to require approval of measures affecting fish, wildlife, environmental values, and threatened or endangered species as provided in 30 CFR 816.133 or 817.133.

The Federal requirements are for (1) postmining land uses to be approved (30 CFR 786.19(m)) and (2) the regulatory authority to find that the activities would not affect the continued existence of endangered or threatened species or result in destruction or adverse modification of their critical habitat (30 CFR 786.19(o)). The resubmission contains the first requirement for approval of measures to prevent or mitigate adverse effects on wildlife or fish from the appropriate State and Federal fish and wildlife management agencies (Rule II 3b(12)(b)(iii)(H)) if there is to be a change in the postmining land use. The Secretary finds this equivalent to 30 CFR 816.133(c)(8). See discussions in Findings 13.89 and 14.84.

Concerning the second requirement, W.S. 35–11–406(n)(i) requires that a plan be complete to be approvable and the rule (II 3b(4)) requires a plan to show how such species and habitat will be protected. By letter dated August 5, 1980 (Administrative Record No. WY–220), Wyoming has provided assurance that it interprets its provisions to be equivalent to 30 CFR 786.19(o). The Secretary finds this consistent with the Federal provisions. See Finding 14.F.

*C.9* The FWS pointed out that Wyoming's regulation IV 2a(2), analogous to 30 CFR 816.97, appears to be weakened by a revision which now allows the administrator to determine what restoration is possible on public as well as private lands.

The FWS cited Rule "IV 2(s)(2)." It is presumed they were referring to Rule IV 2a(2), which does not apply to coal lands by virtue of the conflict with Rule IV 3p, which prevails under Rule IV 1

("For surface coal mining operations, if the requirements of Section 2 and Section 3 conflict, Section 3 shall be controlling."). This has been the source of much confusion to reviewers. The end result is that Section 2 of Rule IV applies to mining other than coal in this case. Thus, the program is not affected by the rule change cited by the FWS and the provision has not been weakened. An ancillary issue is discussed in Finding 13.63.

*C.10* The FWS stated that Wyoming's Rules IV 2d(5) and IV 3d(2), analogous to 30 CFR 816.112, are still deficient as they appear in the State's resubmission. The State's analogue, FWS believes, neither encourages nor requires the use of native plant species compatible with the plant and animal species of the region.

The FWS' concerns are eliminated by Rule IV 3p which requires selection of plant species and shrubs to enhance the nutritional and cover aspects of fish and wildlife habitat when such habitat is part of the postmining land use, and Rules IV 2d (4) and (5), which team to generally require native species unless more suitable species are shown, by revegetation test plots, to be of superior value for reclamation purposes (which purposes include self-renewing, diverse, productive, and seasonal variety). This is also discussed in Finding 13.83.

*C.11* The FWS comments that Wyoming's Rules IV 3d(6), analogous to 30 CFR 816.116, in its resubmission is deficient. The establishment period to measure revegetative success is shorter in the State regulation than it is in the Federal regulation, FWS notes, and the term "populated density" is undefined.

This is discussed in Findings 13.81 and 13.82. The Secretary found the resubmission adequate with respect to these two requirements.

In its comments FWS notes that Wyoming, in its resubmission, has no analogue to 30 CFR 817.97 regarding the protection of fish and wildlife and related environmental values as applicable to underground mining activities.

This is the complex cross-referencing issue that has been discussed in Finding 13.109. As pointed out there, the resubmission contains Rule VII 2a(5) which applies all requirements of Chapter IV to underground operations, and Rules VII 1 a and b, which apply Rule II to underground operations. The States analogue to 30 CFR 817.97 then becomes Rule IV 3p and other portions of Rules II and IV.

*C.12* The U.S. Soil Conservation Service (SCS) was concerned by the apparent obligation of local conservation districts and the SCS to review and comment on the issues which involve prime farmland. The SCS further commented that the program is not clear on how the local conservation districts and the SCS will coordinate on prime farmland determinations. The SCS would like to know how much time will be required to carry out their program obligations.

The Wyoming Department of Environmental Quality (DEQ) must notify the local conservation district and the SCS that written determinations on prime farmland subjects are requested. The local conservation district shall make recommendations, suggestions, or decisions only with input and required concurrence of the SCS. The Memorandum of Understanding between the Secretary of Agriculture and the Governor of Wyoming shall determine the procedure the State and Federal conservationists shall follow in making recommendations, suggestions, or decisions. Findings 14.68 and 14.114 give an explanation of how the Department of Agriculture will be included in specific prime farmland determinations.

In regard to time and workload questions posed by the commentor, OSM can only estimate these at this time. Wyoming regulations include the SCS in four facets of review processes. SCS will be involved in the following:

(1) Negative determinations for prime farmland on pre-application investigations of proposed permit areas;

(2) Review of mineplan applications in prime farmland areas for topsoil handling, revegetation techniques, soil moisture bulk density measurements, pre-mining productivity measurements, etc.;

(3) Small acreage exemptions from prime farmland requirements for uneconomical croplands; and

(4) Soil reconstruction methods or requirements included as stipulations to regular mineplan requirements.

The State program projects five new mineplan reviews for 1980 and three mine plan amendment reviews. For 1981, at least three new mine plan reviews are anticipated by DEQ. OSM Region V has made estimates of man-hours needed for mineplan reviews. Subjects dealing with prime farmland take from two to eight hours with an average of four hours for a mineplan completeness review. A technical and environmental analysis takes from two to seven hours with an average of four hours on prime farmland subjects. These estimates are for prime farmland subjects only, while topsoil and revegetation topics require an average of 132 man-hours for a complete mineplan review and environmental analysis. OSM can furnish a more complete table of man-hour estimates by job function on mineplan review upon request.

*C.13* The Public Lands Institute (PLI) noted that Wyoming's Rule XVII 1a(1) in the State's resubmission provides for an inspection of every operation "every month, averaging at least one [complete inspection] quarterly." PLI asserts that Section 517(c) of SMCRA and 30 CFR 840.11 require three partial and one complete inspection quarterly. Wyoming explains in Part G.4 that monthly inspections will be conducted during each month *not* covered by a quarterly inspection. The Secretary finds that Wyoming proposes to conduct the requisite number of complete and partial inspections.

*C.14* PLI pointed out that the Secretary has stated that, "[a]n explanation * * * is needed to clarify Wyoming's provision that inspectors will conduct field enforcement and will pursue enforcement actions for all violations observed," but that Wyoming, in its side-by-side comparison, only refers to Part G.5 of the narrative. The narrative, the commenter continues, does not clarify this matter but merely restates the statutory provision requiring issuance of citations when the necessary "determination" is made and does not state that inspectors are required to make that determination in the field. Under W.S. 35-11-437, the issuance of notices of violation and cessation orders is mandatory for violations observed by inspectors. Officials of OSM discussed this issue with Wyoming officials by telephone on July 9, 1980, and were provided an oral assurance by the State (Administrative Record No. WY-211). The PLI asserted that such oral assurance was not acceptable. In a letter dated August 5, 1980 (Administrative Record No. WY-220), the State indicates that it will conduct field enforcement. The Secretary finds this written assurance acceptable. See Finding 17.B

*C.15* In their comments, PLI, the Environmental Policy Institute (EPI), and the Powder River Basin Resource Council (PRBRC) stated that the Wyoming regulations do not require all inspections *per se* to be unannounced, but permit advance notice "as the representative deems necessary." PLI asserts that Section 517 of the Act and 30 CFR Part 840 absolutely prohibit advance notice, and that Wyoming cannot deviate from this requirement.

In the March 31, 1980, Federal Register notice, in Finding 17.5, the Secretary stated that Wyoming regulations require that all inspections be unannounced. Prior notice is to be given only in special circumstances such as during the annual

inspection when all records are made available for complete review. The Secretary, therefore, finds Wyoming Rule XVII 1a(1) to be acceptable.

*C.16* PLI indicated that Wyoming has not met its burden of demonstrating that its civil penalty assessment system meets the requirements of SMCRA 503(a) and 518(i), i.e., the State does not demonstrate that civil penalties will be assessed in the same circumstances they would be assessed under Federal law, nor does it guarantee a level of fines as high as would be assessed under Federal law. PLI asserted that the opinion *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79-1144, May 16, 1980), on this matter is incorrect as a matter of law, and that if the decision is reversed, Wyoming will be required to make numerous changes in its civil penalty provisions to meet the requirements of the Act.

The Secretary is convinced that the civil penalty assessment system proposed by Wyoming is consistent with Federal requirements and is acceptable pursuant to the court's decision with which the Secretary is complying (see Finding 19.A).

*C.17* It is asserted by PLI that the Wyoming provision for a civil penalty bond, rather than prepayment into escrow, is illegal. The commenter stated that escrow payments are required under Section 518(c) of SMCRA, and pursuant to Section 518(i), the same or similar procedure is required for Wyoming.

The Secretary is convinced that the State's use of a bond, as opposed to placing the amount of the contested penalty in escrow, provides the same degree of certainty that an assessed penalty will eventually be paid by a violator if the State prevails in a contested action. (See Finding 19, above and Finding 19.9 in the March 31, 1980, Federal Register notice.)

*C.18* PLI expressed concern that Wyoming has combined the discretionary and mandatory show cause orders in 30 CFR 843.13 into one provision, W.S. 35-11-409(c), thereby reducing the range of possible permit suspension and revocation situations. PLI contended that this scheme does not meet the Federal requirement that the State suspension or revocation provision be at least as stringent as the Federal provisions in 30 CFR 843.13 and Section 521(a)(4) of SMCRA.

Wyoming's Rule XVII 2d(2) states that the Director of the Department of Environmental Quality shall explain in writing if he or she fails to issue a show cause order where the director finds that there are violations of the same or related requirements during three or more inspections in any 12-month period. Thus, a presumption is created that the director will find that a pattern of violations exists in such circumstances (See Finding 20.9 in the March 30, 1980, **Federal Register** notice.)

*C.19* PLI contended the W.S. 35-11-437(a), which imposes affirmative obligations when "necessary," is not adequate since it does not prescribe when such obligations are necessary as in SMCRA Section 521(a) and 30 CFR Part 843.

The Secretary found in the March 30, 1980, **Federal Register** notice, Finding 20.16, that W.S. 35-11-437(a) and Rules I 2(16) and Rules XVII 2(a) taken together are consistent with Federal requirements because affirmative obligations will be included in a cessation order when they would be required under the Federal standards.

*C.20* PLI noted that Wyoming does not provide an automatic right to informal permit conferences, as required by 30 CFR 840.15.

In Finding 22.A, above, the Secretary found that Wyoming's provisions for holding informal conferences on permit applications and for providing access to the mineplan areas are acceptable. Under W.S. 35-11-406(k), an informal conference will be held if the administrator determines that the nature of the complaint or the position of the complainants indicates that an informal conference is preferable to a contested case proceeding. Wyoming has promulgated language in Rule III 3a of the Rules of Practice and Procedure which are consistent with 30 CFR 784.14 concerning informal conferences.

*C.21* PLI and EPI noted that Wyoming provides for publication of a "notice of intended action" rather than proposed rules. PLI asserted that this scheme is not in accordance with SMCRA 501, which requires proposed rules to be published, and that this practice will interfere with the public's right to comment on proposed regulations.

Wyoming's notice of intended action is in fact similar to proposed rules in that it sets forth the text or substance of the rulemaking. While Wyoming does not publish a document similar to the Federal Register, the State publishes a "notice of intended action" in a newspaper of general circulation, and sends copies of such notices to county clerks and individuals who request such mailings for the purpose of public comment. (See Administration Record No. WY-211.) The Secretary finds the Wyoming practice consistent with Section 501 of SMCRA.

*C.22* PLI pointed out that under 30 CFR 842.12(a) a citizen has the right to orally request an inspection which is followed by a written statement. Wyoming, however, allows only written complaints, thus allegedly restricting citizen rights and, in the event of an imminent hazard, endangering the public and the environment.

The Secretary finds Wyoming Rule XVII 1b to be consistent with 30 CFR 842.12(as) as further explained in Finding 22.7 in the March 31, 1980, **Federal Register** notice. Both Federal and State processes require a written statement.

*C.23* PLI contended that Wyoming provides only for a "prompt" inspection in response to citizen complaints. PLI stated that an outer time limit of 10 days to inspect and 15 days to deny an inspection should be established as required by 30 CFR 842.12(d), to insure that there is no question of what constitutes a "prompt" response.

The Secretary believes that such time limits need not be set for the Wyoming program to be consistent with the Federal requirements, since it is unlikely that a period longer than 10 or 15 days would be deemed a "prompt" response. In any case, "prompt" may be a more stringent test than 10 days.

*C.24* PLI noted that 30 CFR 842.15 and SMCRA 517(h)(1) require that the informal review of citizen complaints results in a written determination with an explanation of the underlying reasons, but that Wyoming provides only that the citizen be informed of the "results" of the review.

The Secretary believes that Wyoming Rule XVII 1c will operate in a manner that is consistent with the Federal requirements in that the citizen will be informed of the results of the inspection and may proceed to appeal, if he or she so desires.

*C.25* In its comments, PLI noted that the Secretary has stated that Wyoming's failure to provide implementing regulations consistent with 43 CFR 4.1290 *et seq.*, regarding the award of costs and expenses in administrative proceedings, "may create an inconsistency with the Federal requirements." PLI contended that this failure will result in a serious inconsistency and, to obtain approval, a State program not only must authorize the award of fees, as does Section 525(e) of SMCRA, but also must contain provisions similar to those contained in 43 CFR 4.1290 *et seq.* To date, the comment concludes, Wyoming has made no attempt to promulgate rules consistent with the Federal regulation and, thus, has set *no* standards for the award of such fees.

In Finding 22.9 in 45 FR 20930 (March 31, 1980), the Secretary found that the State had not proposed or promulgated any rules which are consistent with 43 CFR Part 4 regarding the award of attorneys fees. The State has failed in its resubmission to promulgate any such rules. The Secretary found this portion of the resubmission unacceptable, and explains that a correction of this deficiency will be a condition of approval. (See Finding 22.C.)

*C.26* PLI indicated that the Wyoming citizen suit provision is deficient in several respects. First, under W.S. 35–11–902, the 60 day notice of intent to sue provision applies not only to suits against the State for failure to enforce (as in SMCRA 520(a)(2)) but also to suits for violations (such as SMCRA 520(a)(1)). Under the Federal scheme, notice of intent to sue is required only in the non-enforcement situation (Section 520(b)), and Wyoming cannot restrict access to State court.

The commenter incorrectly stated that the 60 day notice applies only to Section 520(a)(2) under SMCRA. Section 520(b) applies the 60 day notice period to all citizen actions under Section 520(a), with the exception of an imminent threat to health or safety of the plaintiff or an immediate effect on a legal interest of the plaintiff. W.S. 35–11–902(c)(i) parallels the Federal section and is consistent with it.

Second, PLI contended that the State must make it clear that Wyoming's standing provision, "any person having an interest which is or may be adversely affected," is as broadly interpreted as it is under Federal law.

Neither SMCRA nor the Wyoming statute contains a definition of "person having an interest which is or may be adversely affected." The Wyoming regulatory definition in Rule XVIII 1(5) appears to be as broad as OSM's regulatory definition in 30 CFR 700.5.

Third, PLI and EPI noted that Wyoming must make it clear that attorney's fees can be awarded against citizens or citizen groups only if the action is initiated or pursued in bad faith.

The proposed program, W.S. 35–11–902(e), provides for the award of attorney fees. SMCRA is silent on the circumstances under which attorney fees may be assessed against citizens, and the Secretary has no reason to believe that the State will not award attorneys fees consistent with the Federal standards. As discussed in Finding 22.C, promulgation of rules concerning the award of attorneys fees in administrative hearings is being made a condition of this approval.

Fourth, PLI claimed that Wyoming "impermissibly" restricts the operation of its citizen suit provision to the status of Federal law on August 3, 1977, stating that, as the body of Federal law grows, especially with respect to SMCRA 520, States likewise must be able to grow to conform, if their program is not to become less stringent than required and be subject to withdrawal of approval or repeated amendment. Therefore, PLI concludes, the phrase "only to the extent" should be changed to "at least to the extent."

The Secretary is evaluating the Wyoming program on the basis of what the Federal requirements are today. PLI has indicated no change in the law since August 3, 1977, that would make the Wyoming requirement inconsistent with the Federal requirement.

The Secretary will require appropriate changes in the State provisions if such changes are required by Act of Congress or by other developments.

*C.27* The PLI and EPI contended that it should be made clear in Rule II 7b of the DEQ Rules of Practice and Procedure that interest in the "outcome" of the proceeding includes an interest in a significant legal determination which may be reached and which might affect the person's ability to protect his interest in subsequent proceedings (43 FR 34378 (August 3, 1978)). PLI also noted that it should be made clear that intervention at less than full party status is permissible only upon request of the person seeking intervention, at least for mandatory intervention. In the March 31, 1980, **Federal Register** notice, the Secretary found this rule did not provide broad enough rights of intervention in administrative proceedings. As discussed in Finding 22.D, promulgation of rules for intervention is being made a condition of this approval.

*C.28* Concern was expressed by PLI that Wyoming permits council members to have a financial interest, direct or indirect, in matters before it. Regardless of the Secretary's regulations on conflict of interest, PLI contended that the Secretary cannot approve any State program which, unlike the Federal program, violates the constitutional due process right to an impartial decisionmaker. Council members with any interest whatsoever in the outcome, or even the appearance of any interest, cannot participate, under prevailing constitutional case law, the comment concluded.

In a letter dated August 5, 1980 (Administrative Record No. WY–220), the State indicates that council members with any interest or the appearance of any interest in the outcome of a proceeding cannot participate in such proceeding.

*C.29* It is noted by the EPI and PRBRC that in Rule XVII 2e, a cessation order may be mailed to an operator. PRBRC noted that the State is required to deliver such an order immediately by hand to the operator.

The State has indicated in a letter dated August 5, 1980 (Administrative Record No. WY–220) that it will conduct field enforcement. The Secretary finds that Wyoming will immediately hand-deliver such an order as part of its field enforcement. (See Finding 20.A, above.)

*C.30* Regarding Rule I 6 of Wyoming's Rules of Practice and Procedure, PRBRC and EPI expressed the opinion that the Environmental Quality Council should not be permitted to charge an interested citizen for the cost of a hearing transcript. Such an expense, it is contended, effectively dissuades the average citizen from exercising his or her constitutional right to petition the government for redress of grievances.

Nothing in SMCRA (Title V) or the regulations (30 CFR Chapters G or L) would require the State to provide copies of hearing transcripts to interested citizens free of charge. The Secretary notes that States are required under 30 CFR 700.14 to make such transcripts available for public inspection, and the cost of a transcript could be covered under W.S. 35–11–902(e) and W.S. 35–11–437(f) regarding the award of costs.

*C.31* EPI asserted that the changes in the narrative on public participation, which Wyoming agreed to in its January 15, 1980, memorandum must be formally incorporated into the State program through a detailed description, as required by 30 CFR 731.14(g)(14), and, where appropriate, through regulatory changes.

Wyoming agreed to send copies of proposed statutory and regulatory changes to all interested parties in response to previous public comments (Administrative Record WY–99 and WY–211). Wyoming promulgated rulemaking procedures in its Rules of Practice and Procedure. The Wyoming program provides all of the citizen access required by the Act in the key areas identified in the preamble at 44 FR 14965. The Secretary believes that Wyoming has adequately provided for public participation in the development and revision of the State regulations and the State program and that it is not necessary for the State to provide a detailed description or make regulatory changes.

*C.32* EPI contended that Wyoming should be required to publish in the

State register, a notice of the receipt of a complete petition to designate land unsuitable, as required by 30 CFR 764.15(b)(2).

The Secretary finds that the publication of a notice of a petition in the offices of the county clerks of the counties in which the petition is concerned satisfies the Federal requirements of 30 CFR 764.15(b)(2), since the State does not have a State register and all other public notification requirements meet the Federal requirements.

*C.33* It is asserted by EPI that, regarding 30 CFR 764.13(b) (designation of lands unsuitable for coal mining), Wyoming still has not provided adequate assurances that the requirement that a petitioner identify specific sources of supporting evidence on which allegations of fact rest are to apply only to the extent known and that it cannot serve as a basis for the rejection of a petition as incomplete. EPI also contended that XVIII 2d(4), requiring the identification of the criterion on which the proposed designation rests, is more burdensome on the petitioner than the Federal requirements.

As noted above in Finding 21.D of this notice, the Secretary finds that the criteria or criterion and supporting evidence to the criteria, would be limited to the information known to the petitioner.

*C.34* EPI argued that Wyoming has not presented adequate justification that their enforcement personnel numbers are sufficient to carry out the projected work load under their State program, as required under 30 CFR 731.14(i) and (j).

Wyoming has resubmitted data which indicates a total program personnel capacity of 22.77 full-time employees. The Secretary found on the basis of this resubmitted data that the total program staffing needs as required by 30 CFR 731.14(e), (f), (i), and (j) are met (see Finding 30).

*C.35* PRBRC expressed concern with Wyoming's definition of "adjacent area," which the State limits to one-half mile beyond the proposed permit boundaries. PRBRC commented that groundwater hydrology is unlikely to respect a presumptive limitation of one-half mile and contended that the definition is arbitrary and unjustified.

The Secretary has found Wyoming's definition of "adjacent area" in Rule I 2(3) to be consistent with the Federal definition in 30 CFR 701.5. See Finding 14.13, above. The presumptive limit provides some initial indication of the extent of information-gathering activities. The PRBRC is correct that it is unlikely that all groundwater effects will occur only within the one-half mile limit. However, the effects of mining on groundwater will often extend less than one-half mile (e.g., up gradient along the potentiometric surface). In addition, Wyoming has promulgated Rule II 3a(6)(k) to require hydrologic and geologic information for the adjacent and general areas sufficient to assess the probable hydrologic consequences. The Secretary has found (Findings 14.13 and 14.23) the promulgated rules consistent with the Federal requirements.

*C.36* The PRBRC noted that Rule II 2a(1)(j)(ii) of the Wyoming resubmission requires a permit applicant to list all existing water wells, including all wells filed with the State Engineer, PRBRC suggested that the State Engineer's records may not be current, and that applicants should be required to undertake serious research into existing local water wells.

The cited rule requires submission of a list of "all existing water wells on the proposed permit area and adjacent area, including all wells filed with the State Engineer's office three miles or less from the proposed permit area." Thus, any wells that may be affected must be inventoried, regardless of whether they are listed in the State Engineer's records. The Secretary believes that the concerns of the PRBRC have been taken into account.

*C.37* Referring to the same section of Wyoming's rules, PRBRC commented that surveys of premining water levels should be mandatory, rather than optional, as provided in the Wyoming resubmission. It is essential that a premining data base be established, the comment contended, in order to assess the cumulative effects of coal surface mining on groundwater hydrology.

Again, Rules II 3b(10) and (11) require adequate information to evaluate the hydrologic impacts of the proposed operations. Wyoming's Guideline No. 8 (hydrology), in Section IV A, 2, requires a description of the potentiometric surface which includes premining surveys of water levels wherever the proposed operations may affect groundwater. The surveys are, therefore, mandatory.

*C.38* Concern was expressed by the PRBRC regarding the formula used by Wyoming for determining the importance of an alluvial valley floor to farming. PRBRC expressed the belief that this formula, which appears in Wyoming's analogue to 30 CFR 822.12, is difficult for the layman to understand, is capriciously based on ownership, and fails to consider the maximum productive potential of the alluvial valley floor.

The formula represented in Rule III 2d ($P=3.+0.0014x$) is an alternative measure of the significance of an alluvial valley floor and, as such, considers the maximum productive potential of an alluvial valley floor. The formula is used only on small farms, where the total agricultural production or its equivalent is 5000 animal units or less. On these small farms, the total agricultural units of production represent "x" in the formula. The "P" value represents the maximum number of animal units that could be affected by the removal of an alluvial valley floor by mining and still be considered insignificant. In those cases then where mining would adversely affect the productivity of a small farm (i.e., where the "P" value would be exceeded) mining would be prohibited.

The Federal regulation for determining "significance" (30 CFR 785.19(e)(2)) has been remanded by the district court (Opinion of February 26, 1980, at 51–52). Accordingly, there are no Federal minimum standards with which to compare Wyoming's specific test. The court found that the Federal regulations emasculate the statutory exemption of Section 510(b)(5)(A) of SMCRA, specifically, the "small acreage" exemption, and directed the Secretary to allow mining on an alluvial valley floor that results in a negligible impact on the farm's production. The State program allows mining on alluvial valley floors where the above formula shows a negligible impact consistent with Section 510(b)(5)(A) of SMCRA.

The Wyoming provisions for alluvial valley floors are addressed in Findings 12.4 and 13.116. The Secretary has found these provisions consistent with the Federal requirements.

*C.39* The PRBRC asserted that a provision should be added to Wyoming's rules and regulations requiring a permit application to include specific plans for the entire coal surface mining facility, including haul roads, loadout facilities, and waste and refuse areas. PRBRC contended that the State appears to have taken the position that all facilities involved in the mining operation must be permitted, but not necessarily at the same time. Requiring an applicant to present all necessary facilities at once would help to eliminate poorly-planned development and its associated disruptions.

Wyoming has defined the term "permit area" to mean the entire area of land and water affected during the "entire life of the operation" (Rule I 2(56)). Thus, all operations included within the defined term "surface coal mining operation" (W.S. 35–11–

103(e)(xx)) are included within the permit area.

*C.40* The PRBRC is concerned that mining operations may be permitted without review of the necessary facilities and cites the Ash Creek mine in Wyoming as an example. According to PRBRC, this mine has been inactive for one and one-half years because it was permitted without any transportation facilities.

W.S. 35-11-405(d) requires termination of a permit if permitted operations have not been initiated within 3 years (unless good cause exists). Rule IV 3s requires a complete plan for reclamation if the operation is ceased for more than 30 days. While Rule IV 3a(1)(c) allows additional time for backfilling and grading, additional time is permissible only if it is demonstrated to be necessary on the basis of mining conditions. Thus, while it is not possible to completely ensure that all mining operations continue to completion, the type of problem described by the commenter would have to be resolved to allow reclamation. The Secretary does not believe Wyoming needs to place an additional requirement in its program.

*C.41* The Belle Fourche Pipeline Company (BFPC) contended that Wyoming's resubmission does not adequately insulate lawful surface users, such as oil, gas and water wells, oil, gas and coal slurry pipelines, and various other public interest users from possible damage or expense caused by surface mining operations.

In particular, BFPC contends the State program should define "surface owner" to include one with interests such as easements or tenancies in the surface. The Wyoming rules do require that "all operations be conducted so as to minimize disruption of any services provided by facilities located on, under or through the permit area," unless otherwise approved (Rule IV 3k). The Wyoming statutes also provide for surface owner protection (W.S. 35-11-416). W.S. 35-11-406(b)(xiii) requires the operator to avoid endangering property. Rule II 3a(6)(n) requires a complete application to show the location of man-made features such as pipelines, water, oil or gas wells, and public or private rights-of-way or easements.

Neither the Federal regulations nor the Wyoming program defines "surface owner." Although the commenter cited 30 CFR 742.13, that section of the Federal program pertains to Federal lessee protection on Federal lands only and is not required of the State for non-Federal lands.

The Secretary believes that the concerns of the commenter appear properly addressed by the State program and other applicable laws, and that damage to the property interests described by the commmenter will be avoided or compensated for wherever appropriate.

*C.42* The Pittson Coal Company disagrees with Finding 14.18 that W.S. 35-11-406(b)(xi) is similar to Section 510(b)(6) of SMCRA. Although W.S. 35-11-406(b)(xi) is different from the Federal statute, it is not inconsistent with Federal program requirements.

Federal law requires consent of the surface owner to the extraction of coal by surface mining methods only if the owner of the mineral estate does not already have that right by conveyance or operation of State law. Wyoming requires consent of the surface owner to the extraction of coal by surface methods *and* that a mining and reclamation plan be approved before the State may issue a permit, if the landowner meets the definition of "resident or agricultural landowner" in W.S. 35-11-406(xi)(A) and (B). In this case, the Wyoming statutes have included a provision that is additional to the Federal requirements.

Section 505(b) of SMCRA states that any State law which provides for more stringent land use and environmental controls and regulation of surface coal mining and reclamation operations than do the provisions of SMCRA shall not be construed to be inconsistent with the Act. The Wyoming requirement that "resident or agricultural landowners" consent to mining operations on their land is a more stringent land use and environmental control. The Secretary, therefore, finds that W.S. 35-11-406(b)(xi)(A) and (B) are not inconsistent with the Federal requirements.

*C.43* The Pittson Coal Company further commented that W.S. 35-11-406(b)(xi), which allows certain landowners to veto mining and reclamation plans, would effectively result in depriving the mineral estate owner of his constitutional protection against a taking of his property without just compensation or due process of law.

The statutes of the Environmental Quality Act that the commenter is questioning became effective in Wyoming on July 1, 1973. The issue raised by the commenter is not a direct result of the passage of SMCRA or of the State program review. The Secretary believes that under Section 505(a) of SMCRA the Wyoming provisions are not inconsistent with the provisions of the Federal Act.

*C.44* The Pittson Coal Company also requests clarification on parts of W.S. 35-11-406(b)(xi) and (xii). The company questions (a) whether or not W.S. 35-11-406(b)(xi) is subject in all respects to W.S. 35-11-406(b)(xii), (b) whether or not W.S. 35-11-406(b)(xii)(c) imposes a condition that may override new subsection (E), and (c) whether or not subsection (c) also imposes a condition that may override the legal authority which the mineral estate owner has under the conveyance he holds.

The Secretary suggests that the commenter contact the Wyoming Department of Environmental Quality to obtain clarification on the exact function of W.S. 35-11-406. This comment is not pertinent to the Secretary's approval of Wyoming's program. See comment 43.

*C.45* Three Wyoming coal operators, Kerr McGee, Sunedco, and Amax, have asked that the Secretary disapprove portions of the Wyoming program containing provisions remanded or suspended in the district court decisions.

The May 16, 1980, memorandum order *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79-1144) required the Secretary to affirmatively disapprove those segments of a State program that incorporate suspended or remanded regulations. On August 15, 1980, the court stayed its decision to allow the Secretary, upon the voluntary request of a State, to approve a State program which incorporates suspended or remanded regulations. The court also clarified that its May 16 memorandum did not affect the validity of provisions in a State program based on State law adopted prior to the SMCRA or provisions adopted by rulemaking proceedings conducted subsequent to the court's ruling. A State may independently adopt a regulation that the court has ruled the Secretary is without power to require.

In a letter dated August 5, 1980 (Administrative Record No. WY-220), the Governor of Wyoming voluntarily requested that the Secretary not disapprove any of the State's regulations on the basis of the decision in *In re: Permanent Surface Mining Regulation Litigation*. Therefore, pursuant to the stay order, the Secretary will not disapprove any of Wyoming's regulations on the basis that they are counterparts to remanded or suspended Federal regulations.

*C.46* The Amax Coal Company states that Section 4 of the 1980 amendment to the Wyoming Environmental Quality Act limits the addition of conditions to the final program approval. Additionally, the commenter states that the use of any such conditions could jeopardize the triggering to the permit application process.

The Secretary disagrees with the commenter's analysis of Section 4 of the 1980 amendment to the Wyoming Environmental Quality Act concerning "final" approval of the State program. Governor Herschler stated, in response to OSM comments, that "any approval, conditional or otherwise, would be the final, appealable decision by the Secretary. Under the recently promulgated statutes governing surface coal mining operations, a *final* decision under Pub. L. 95–87 makes the new law on submitting permit applications effective." (Administrative Record No. WY–220). The Secretary has relied upon this interpretation in conditionally approving the Wyoming program.

*C.47* Sunedco comments specifically on the State's adoption of the remanded Federal effluent standards that apply to runoff from reclaimed lands released as point source discharges from required sedimentation ponds. The company believes the State's use of these effluent standards for runoff from reclaimed lands is unjustified in light of the lack of current research data and in light of the district court opinion, *In re: Permanent Surface Mining Regulation Litigation* (May 16, 1980, Opinion at pp. 19–20).

Wyoming has, and will continue to use, these effluent limits as long as point source discharges from sediment ponds exist. This procedure is based on W.S. 35–11–301. However, Wyoming has promulgated Rule IV 3g(1), which will effectively make the effluent limitation applicable until baseline water quality is achieved in runoff from revegetated areas. The Secretary is not required to disapprove this State provision (*In re: Permanent surface Mining Reclamation Litigation, Civil Action No. 79–1144, August 15, 1980 (Partial Stay of May 16, 1980 Opinion)).*

F. Secretary's Decision

*Background on Conditional Approval*

The Secretary is fully committed to two key aims which underlie SMCRA. The Act calls for comprehensive regulation of the effects of surface coal mining on the environment and public health and safety and for the Secretary to assist the States in becoming the primary regulators under the Act. To enable the States to achieve that primacy, the Secretary has undertaken many activities of which several are particularly noteworthy.

The Secretary has worked closely with several State organizations such as the Interstate Mining Compact Commission, the Council of State Governments, the National Governors Association and the Western Interstate Energy Board. Through these groups OSM has frequently met with State regulatory authority personnel to duscuss informally how the Act should be administered, with particular reference to unique circumstances in individual States. Often these meetings have been a way for OSM and the States to test new ideas and for OSM to explain portions of the Federal requirements and how the States might meet them. Alternative State regulatory options, and the "State window" concept, for example, were discussed at several meetings of the Interstate Mining Compact Commission and the National Governors Association.

The Secretary has dispensed over $6.9 million in program development grants and over $37.6 million in initial program grants to help the States to develop their programs, to administer their initial programs, to train their personnel in the new requirements, and to purchase new equipment. In several instances OSM detailed its personnel to States to assist in the preparation of their permanent program submissions. OSM has also met with individual States to determine how best to meet the Act's environmental protection goals.

Equally important, the Secretary structured the State program approval process to assist the States in achieving primacy. He voluntarily provided his preliminary views on the adequacy of each State program to identify needed changes and to allow them to be made without penalty to the State. The Secretary adopted a special policy to insure that communication between him and the States remained open and uninhibited at all times. This policy was critical to avoiding a period of enforced silence with a State after the close of the public comment period on its program and has been a vital part of the program review process (see 44 FR 54444, September 19, 1979).

The Secretary has also developed in his regulations the critical ability to approve conditionally a State program. Under the Secretary's regulations, conditional approval gives full primacy to a State even though there are minor deficiencies in a program. This power is not expressly authorized by the Act; it was adopted through the Secretary's rulemaking authority under 30 U.S.C. 201(c), 502(b), and 503(a)(7).

The Act expressly gives the Secretary only two options—to approve or dissapprove a State program. Read literally, the Secretary would have no flexibility; he would have to approve those programs that are letter-perfect and disapprove all others. To avoid that result and in recognition of the difficulty of developing an acceptable program, the Secretary adopted the regulation providing the authority to approve conditionally a program.

Conditional approval has a vital effect for programs approved in the Secretary's initial decision: It results in the implementation of the permanent program in a State months earlier than might otherwise be anticipated. While this may not be significant in States that already have comprehensive surface mining regulatory programs, in many States that earlier implementation will initiate a much higher degree of environmental protection. It also implements the rights SMCRA provides to citizens to participate in the regulation of surface coal mining through soliciting their views at hearings and meetings and enabling them to file requests to designate lands as unsuitable for mining if they are fragile, historic, critical to agriculture, or simply cannot be reclaimed to their prior productive capability.

The Secretary considers three factors in deciding whether a program qualifies for conditional approval. First is the State's willingness to make good faith efforts to effect the necessary changes. Without the State's commitment, the option of conditional approval may not be used.

Second, no part of the program can be incomplete. As the preamble to the regulations says, the program, even with deficiencies, must "provide for implementation and administration for all processes, procedures, and systems required by the Act and these regulations" (44 FR 14961). That is, a State must be able to operate the basic components of the permanent program: the designation process; the permit and coal exploration systems; the bond and insurance requirements; the performance standards; and the inspection and enforcement systems. In addition there must be a functional regulatory authority to implement the other parts of the program. If some fundamental component is missing, conditional approval may not be used.

Third, the deficiencies must be minor. For each deficiency or group of deficiencies, the Secretary considers the significance of the deficiency in light of the particular State in question. Examples of deficiencies that would be minor in virtually all circumstances are correction of clerical errors and resolution of ambiguities through an attorney general's opinion, revised regulations, policy statements, and changes in the narrative or the side-by-side.

Other deficiencies require individual consideration. An example of a deficiency that would most likely be major would be a failure to allow

meaningful public participation in the permitting process. Although this would not render the permit system incomplete because permits could still be issued, the lack of any public participation could be such a departure from a fundamental purpose of the Act that the deficiency would most likely be major.

The use of a conditional approval is not and cannot be a substitute for the adoption of an adequate program. Section 732.13(i) of Title 30 of the regulations gives the Secretary little discretion in terminating programs where the State, in the Secretary's view, fails to fulfill the conditions. The purpose of the conditional authority power is to assist States in achieving compliance with SMCRA, and not to excuse them from that responsibility.

*Conditional Approval*

The Wyoming program is in compliance with and has fulfilled all the requirements of SMCRA and in all other respects meets the criteria for approval, except for those deficiencies listed below.

1. Wyoming has failed to promulgate a definition of "complete application" for purposes of its determination in the permit process that all parts of the application are acceptable and the application is ripe for public notice, public comment and final decision. This definition is important because of its relation to the thoroughness and efficiency of the State review. The necessity of adopting such a definition results from procedural aspects of Wyoming's permit system which the Secretary did not impose. Wyoming's failure to adopt the definition was an oversight on its part. While the absence of this definition should be remedied, it is not so major as to require disapproval because the permit process can proceed for 270 days after program approval without the definition. The State has agreed to conduct rulemaking to promulgate such a rule; it would prefer ordinary but will undertake emergency rulemaking to make the rule effective immediately, if necessary.

2. Wyoming Rule I 2(98) defines toxic materials as those having "lethal" effects, while the Federal rule (30 CFR 701.5) uses the test of "detrimental" effects. This definition is important because it forms the basis for special treatment of various materials uncovered during mining. If the material is toxic then it must be kept away from water and ultimately buried rather than left on or near the surface. If the test is "lethal," there is too great a risk to fish and wildlife. While the difference between the tests merits correction, it is not so major as to require disapproval of the program. In most circumstances the results would be the same and the borderline cases in which the definition would make a difference are not likely to occur before the change is made. The State has agreed to promulgate by ordinary rulemaking an amendment to the Wyoming rule which would make it consistent with the Federal rule.

3. The existing Wyoming rules are inconsistent with the Federal regulations allowing intervention and the awarding of attorneys' fees in administrative proceedings. Both of these Federal regulations implement the strong public participation requirements of the Act. Attorneys' fees are specifically provided for in the Act in both administrative and judicial proceedings. However, this deficiency does not require disapproval; it is very unlikely that any circumstances will arise, before the State makes the correction, that will lead to inconsistent results. The State has agreed to undertake an ordinary rulemaking to promulgate an amendment to the Wyoming rule which would make it consistent with the Federal rule and, prior to final promulgation, to the extent possible, to interpret its existing administrative intervention rules to be consistent with the broad right of intervention in the Federal regulations.

4. Wyoming must require permit applicants to compy with certain portions of its permit application guidelines in order for Wyoming's program to be consistent with portions of the Federal Act and regulations. Without the authority to require compliance with its guidelines, the State could not legally insist on certain permit application information necessary, for instance, to identify fully alluvial valley floors and assure the protection of their hydrological function. The State has failed to demonstrate adequately that it may require compliance with its guidelines. While this deficiency should be corrected, it can be corrected by emergency rulemaking prior to the filing of permit applications and the State has agreed to exercise its discretion to obtain the information in the meantime if the need should arise. Wyoming has also agreed to promulgate a regulation by emergency rulemaking that would demonstrate its authority to require the necessary information.

5. The Wyoming provision for release of bonds at the conclusion of reclamation does not require that the revegetation measurements be made during the last two years of the bond period. This is important because revegetation can sometimes be successful immediately after fertilizing and watering but fail several years later when unaided. Thus, if success were measured in the early rather than last two years, bonds might be released despite revegetation failure. While this should be corrected, it is not so major a deficiency as to require disapproval. There is more than ample time to make the adjustment before any revegetation measurement or bond releases occur. The State has agreed to undertake an ordinary rulemaking to make its rule consistent with the Federal requirement that successful revegetation be measured during the two years immediately preceding bond release.

6. Wyoming has failed to require that, prior to approval of a permit, the applicant demonstrate that all reclamation fees required by 30 CFR Chapter VII, Subchapter R, have been paid. This is necessary to assure that the applicant has paid the tonnage fees on mined coal to the Abandoned Mine Reclamation Fund.

7. Wyoming has no provision governing judicial granting of temporary relief in accordance with Section 526(c) of SMCRA. Title 30 CFR 732.15(b)(15) provides that a State program may be approved only if it "[p]rovides for administrative and judicial review of State program actions, in accordance with sections 525 and 526 of the Act and subchapter L of this chapter." This omission in the State program may be corrected through rulemaking or through a demonstration that applicable State law is in accordance with Sections 525 and 526 of SMCRA.

Given the nature of these deficiencies and their magnitude in relation to all the provisions of the Wyoming program, the Secretary has concluded that they are minor deficiencies. Accordingly, the program is eligible for conditional approval under 30 CFR 732.13(i) because:

1. The deficiencies are of such a size and nature as to render no part of the Wyoming program incomplete since all other aspects of the program meet the requirements of SMCRA and 30 CFR Chapter VII and these deficiencies, which will be promptly corrected, will not directly affect environmental performance at coal mines;

2. Wyoming has initiated and is actively proceeding with steps to correct the deficiencies; and

3. Wyoming has agreed, by letter dated September 15, 1980, to correct regulation deficiencies 1, 2, 3, and 5, 6, and 7 within 4 months and deficiency 4 within 30 days.

Accordingly, the Secretary is conditionally approving the Wyoming program. This approval shall terminate

if the seven deficiencies identified are not corrected by the above times.

This approval is effective November 26, 1980. Beginning on that date, the Wyoming Department of Environmental Quality shall be deemed the regulatory authority in Wyoming and all surface coal mining and reclamation operations on non-Federal and non-Indian lands and all coal exploration on non-Federal and non-Indian lands in Wyoming shall be subject to the permanent regulatory program.

On non-Federal and non-Indian lands in Wyoming the permanent regulatory program consists of the State program approved by the Secretary.

On Federal lands, the permanent regulatory program consists of the Federal rules made applicable under 30 CFR Chapter VII, Subchapter D, Parts 740–745. As discussed above under "Introduction," consideration of a Federal/State cooperative agreement for the Federal lands program is the subject of a separate rulemaking.

The Secretary's approval of the Wyoming program relates at this time only to the permanent regulatory program under Title V of SMCRA. The approval does not constitute approval of any provisions related to implementation of Title IV, the abandoned mine lands reclamation program. In accordance with 30 CFR Part 884, Wyoming may submit a State reclamation plan now that its permanent program has been approved. At the time of such a submission, all provisions relating to abandoned mine reclamation will be reviewed by the Secretary.

*Additional Findings*

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 approval.

The Secretary has determined that this document is not a significant rule under Executive Order 12044 or 43 CFR Part 14, and no regulatory analysis is being prepared on this approval.

Dated: November 20, 1980.

**Joan M. Davenport,**

*Assistant Secretary of the Interior.*

A new Part, 30 CFR Part 950, is adopted to read as follows:

## PART 950—WYOMING

Sec.
950.1 Scope.
950.10 State program approval.
950.11 Conditions of State program approval.

**Authority:** Pub. L. 95–87, Section 503 (30 U.S.C. 1253).

**§ 950.1 Scope.**

This Part contains all rules applicable only within the State of Wyoming which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

**§ 950.10 State program approval.**

The Wyoming State program, as submitted on August 15, 1979, and resubmitted on May 30, 1980, is approved, effective November 26, 1980. Copies of the approved program are available at:

Wyoming Department of Environmental Quality,
Land Quality Division,
Hathaway Building,
Cheyenne, Wyoming 82002.

Wyoming Department of Environmental Quality, Land Quality Division, Field Office, 30 East Grinnell Street, Sheridan, Wyoming 82801.

Wyoming Department of Environmental Quality, Land Quality Division, Field Office, 933 Main Street, Lander, Wyoming 82520.

Office of Surface Mining, Brooks Tower, 1020 15th Street, Denver, Colorado 80202; telephone: (303) 837–5421.

Office of Surface Mining, Department of the Interior, Room 153, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

**§ 950.11 Terms and conditions of State program approval.**

The approval of the State program will terminate unless the following conditions are fulfilled by the dates indicated:

(a) On or before four months after November 26, 1980, Wyoming must assure the Secretary that it is implementing a definition of "complete application" for purposes of W.S. 35–11–406, which is consistent with 30 CFR 770.5.

(b) On or before four months after November 26, 1980, Wyoming must promulgate an amendment to its rule defining toxic materials, to require only a showing of "deterimental" effects, or make other changes in its program to achieve the same result.

(c) On or before four months after November 26, 1980, Wyoming must establish requirements which are consistent with the Federal attorneys' fees and intervention regulation in 43 CFR Part 4.

(d) On or before 30 days after November 26, 1980, Wyoming must make its guidelines as enforceable as its rules.

(e) On or before four months after November 26, 1980, Wyoming must require revegetation productivity measurements in the *last* two consecutive years of the responsibility period, consistent with 30 CFR 816.116(b)(1)(ii).

(f) On or before four months after November 26, 1980, Wyoming must require that applicants for a permit demonstrate that all reclamation fees required by 30 CFR Chapter VII, Subchapter R, have been paid.

(g) On or before four months after November 26, 1980, Wyoming must demonstrate that its law and practice is in accordance with Section 526(c) of SMCRA with respect to its judicial grant of temporary relief, or, if it cannot so demonstrate, change its law or regulations to make them in accordance with Section 526(c).

[FR Doc. 80–36780 Filed 11–25–80; 8:45 am]
BILLING CODE 4310–05–M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[A-5-FRL 1680–7]**

### Approval and Promulgation of Implementation Plans, Ohio

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** This action revises the Federally promulgated Ohio State Implementation Plan for sulfur dioxide as it applies to the Ohio Edison North Avenue Plant in Mahoning County. This emission limitation revision is based upon ambient monitoring and emissions data provided by the Ohio Environmental Protection Agency and submitted to USEPA by the Ohio Edison Company. The ambient monitoring and emissions data demonstrate that the revised emission limitation will ensure the attainment and maintenance of the National Ambient Air Quality Standards.

**EFFECTIVE DATE:** December 26, 1980.

**FOR FURTHER INFORMATION CONTACT:** Debra Marcantonio, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, Telephone (312) 886–6039.

**SUPPLEMENTARY INFORMATION:** On August 27, 1976 (41 FR 36324), the USEPA promulgated regulations establishing a State Implementation Plan (SIP) for the control of sulfur dioxide ($SO_2$) in Ohio. This final rule will amend that SIP as is applies to the Ohio Edison North Avenue Plant in Mahoning County.

Since the current regulations were promulgated, there has been a substantial reduction in the $SO_2$ emissions in the Mahoning River Valley (Mahoning and Trumbull Counties) with a significant improvement in the air quality. Consequently, on October 9, 1979 (44 FR 57929), the USEPA redesignated Mahoning and Trumbull Counties as attainment areas for sulfur dioxide.

On March 18, 1980, the Ohio Edison Company requested a revision to the sulfur dioxide plan for its North Avenue steam heating plant in Mahoning County, Ohio. Since the National Ambient Air Quality Standards are currently being protected, Ohio Edison requested a limit that reflects status quo emissions. This request was supported by ambient monitoring and emissions data for the area which were provided by the Ohio Environmental Protection Agency. The data, which compares emissions with air quality data in the years 1974 and 1978, indicates that the reduction in $SO_2$ ground-level ambient air quality concentrations is commensurate with the reduction in $SO_2$ emissions. Therefore, the current attainment status of the area will not be threatened by regulating the North Avenue Plant at status quo emissions. Further, the data demonstrates that the 24 hour and annual primary standards are more constraining than the 3 hour secondary standard. Thus, an emission limitation designed to protect the primary standards will also protect the secondary standard.

Section 163 of the Clean Air Act contains specific allowable deterioration increments for increases in ambient sulfur dioxide concentrations in attainment areas. Since the existing SIP is based on a rollback analysis, a screening based on rollback techniques was made to approximate PSD increment consumption. This analysis indicates that the SIP revision will not consume all of the available PSD increment. As discussed below, a modeling analysis was not performed because of source-terrain interaction problems.

On July 25, 1980, USEPA proposed approval of this revision (45 FR 49599). A 30 day public comment period was provided. During the public comment period, one comment was received which addressed several issues. Each issue raised in this comment is addressed below.

### 1. Coal Consumption

The commentor was concerned about the USEPA's claim that the proposed limit reflects status quo emissions. The commentor argued that to maintain the same $SO_2$ emission rate, the increase in emission limitation must be offset by a reduction in the amount of coal consumed. The commentor claimed that the only effective way to ensure a reduction in the quantity of fuel burned is by operation below capacity. The commentor maintained that a reduction through a curtailment in the hours of operation is not acceptable, since there could still be periods with the source emitting above current emission levels (e.g., operation at full load using 4.75 lbs/MMBTU coal). Thus, to ensure the same lbs/hr emission level, the increase in the lbs/MMBTU limit should be balanced by a decrease in the MMBTU/hr value.

The USEPA appreciates the commentor's concern but wishes to point out that although the proposed revision constitutes a paper relaxation in $SO_2$ emissions, it does not represent a change in actual emissions. In other words, the revision seeks to change the allowable emission level to reflect the actual emission level. This can be seen by examining two factors: fuel characteristics and fuel consumption.

The proposed emission limitation is based on monthly average fuel data from 1977, 1978, and 1979. The chosen limit (i.e., 4.75 lbs/MMBTU) reflects the typical percent sulfur and BTU/lb values of the coal burned over this three-year period. Thus, the source is being regulated at their typical status quo fuel characteristics. (Note, even though the limit was based on monthly averages, the limit was evaluated and will be enforced as a 24-hour average value.)

Although the revised regulation does not address coal consumption, the USEPA's analysis of $SO_2$ emissions and monitoring data considered the maximum annual coal usage in recent years. Recent coal usage figures were used since no increase in consumption is anticipated as a result of this revision. This analysis demonstrated that the NAAQS will be protected at the proposed limit even with the North Avenue Plant burning its maximum actual amount of coal.

A fuel monitoring requirement would serve little purpose in light of the expected maintenance of current coal consumption. Thus, the USEPA feels that it is unnecessary to apply strict monitoring requirements on the amount of coal burned.

### 2. Interim Enforcement Policy

The commentor questioned how the USEPA's Enforcement Policy for Sulfur Dioxide Emission Limitations in Ohio (published February 11, 1980, 45 FR 9101) affects this emission limitation.

The means of determining compliance with emission limits under the SIP is still a stack test conducted in accordance with 40 CFR Part 60, Appendix A, Method 6. The purpose of the enforcement policy is to focus resources on those sources presenting the greatest environmental threat. The policy represents a screening process for prioritizing cases in need of Federal enforcement action. This enforcement policy is not intended to modify the $SO_2$ emission limits applicable to any source. Thus, the enforceable emission limit for the North Avenue Plant is 4.75 lbs/MMBTU.

### 3. Use of Rollback Techniques

The commentor objected to the use of rollback techniques in establishing emission limitations since adequate modeling techniques are available to account for the source-terrain interaction problems in this area.

USEPA disagrees that appropriate reference modeling techniques exist for this area. In developing the original Federal $SO_2$ SIP for Ohio, an attempt was made to apply the CDM model to Youngstown. An acceptable calibration, however, could not be achieved.

Consequently since no other reference models were determined to be appropriate, dispersion modeling could not be used to set emission limitations in the Youngstown area. In lieu of appropriate modeling methodology, USEPA guidelines permit the use of rollback techniques. Thus, the application of rollback for the North Avenue Plant is approvable, since appropriate reference modeling methodology is not available or applicable.

Based upon the Agency's review of the technical documentation submitted, USEPA has determined that approval of this SIP revision will not jeopardize the attainment and maintenance of the National Ambient Air Quality Standards. Therefore, USEPA is revising the emission limitation of the Ohio Edison North Avenue Plant.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels these other regulations, "specialized". I have reviewed this proposed regulation pursuant to the guidance in USEPA's response to Executive Order 12044, "Improved Environmental Regulations," signed March 29, 1979 by the Administrator and I have determined that it is a specialized regulation not

subject to the procedural requirements of Executive Order 12044.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final action is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

(Sec. 110, Clean Air Act as amended (42 U.S.C. 7410))

Dated: November 18, 1980.

**Douglas Costle,**

*Administrator.*

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

## Subpart KK—Ohio

1. Section 52.1881 is amended by revising paragraph (b)(40)(iv) as follows:

**§ 52.1881 Control Strategy: Sulfur Oxides (sulfur dioxide).**

* * * * *

(b) Regulations for the control of sulfur dioxide in the State of Ohio

* * * * *

(40) in Mahoning County

* * * * *

(iv) The Ohio Edison Company or any subsequent owner or operator of the North Avenue Steam Plant located in Mahoning County shall not cause or permit the emission of sulfur dioxide from any stack at the North Avenue Steam Plant in excess of 4.75 pounds of sulfur dioxide per million BTU of actual heat input.

* * * * *

[FR Doc. 80-36895 Filed 11-25-80; 8:45 am]
BILLING CODE 6560-38-M

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## 40 CFR Part 180

**[PH-FRL 1683-1; PP OF2277/R276]**

## Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; 1-Naphthaleneacetic Acid

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of the plant growth regulator 1-naphthaleneacetic acid to permit application of either 1-naphthaleneacetic acid or the ethyl ester of 1-naphthaleneacetic acid in or on the raw agricultural commodities apples and pears at 1.0 ppm and olives at 0.1 ppm. Tolerances have previously been established for 1-naphthaleneacetic acid on apples and pears at 1.0 ppm and olives at 0.1 ppm. This regulation was requested by Union Carbide Co. This regulation will permit the use of the ethyl ester of 1-naphthaleneacetic acid in or on apples, pears, and olives.

**EFFECTIVE DATE:** Effectice on November 26, 1980.

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

**FOR FURTHER INFORMATION CONTACT:** Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-359, 401 M St. SW., Washington, D.C. 20460 (202-755-2196).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice that was published in the Federal Register of December 4, 1979 (44 FR 69726) that Union Carbide Co., Inc., 300 Brookside Avenue, Amber, PA 19002, had filed a pesticide petition (OF2277) with the EPA. The petition proposed the establishment of tolerances for residues of the plant regulator 1-naphthaleneacetic acid in or on the raw agricultural commodities apples and pears at 1.0 ppm, and olives at 0.1 ppm resulting from the application of 1-naphthaleneacetic acid or the ethyl ester of 1-naphthaleneacetic acid.

The data submitted in the petition and other relevant material have been evaluated. The toxicology data evaluated included an acute oral $LD_{50}$ rat (1-NAA) with a $LD_{50}$ of 1 milligram (mg)/kilogram(kg); an I.P. $LD_{50}$ (rat) (1-NAA) with a $LD_{50}$ of 100 mg/kg; a 3-generation mouse (methyl ester of 1-NAA) with a no-observable-effect-level (NOEL) of 600 ppm (highest dose); a 90-day rat feeding study (1-NAA) with a NOEL of 100 mg/kg; a 90-day dog feeding (1-NAA) with a NOEL of 10 mg/kg; a 2-year rat feeding study (methyl ester of 1-NAA) with a NOEL of 2,500 ppm; several mutagenicity tests including an Ames test and a dominant lethal assay (all negative); a teratology study (rat) (technical 1-NAA) with a NOEL of 50 mg/kg/day; an eye irritation study (rabbits) (technical ethyl ester of NAA)—washed and unwashed eyes scored 0.0 on the Draize Scale; an acute inhalation $LC_{50}$ study (rats) (technical ethyl ester of NAA) with a $LC_{50}$ of greater than 206.5 mg/liter(1); an acute dermal $LD_{50}$ study (rabbits) (technical ester of NAA) with a $LD_{50}$ greater than 5,000 mg/kg; an acute oral $LD_{50}$ study (rats) (technical ethyl ester of NAA) with a $LD_{50}$ of 3,580 mg/kg; an acute dermal $LD_{50}$ study (rabbits) (formulation) with a $LD_{50}$ greater than 5,000 mg/kg; an eye irritation study (rabbits) (formulation) showing corneal opacity, iritis, and conjunctivitis in washed and unwashed eyes at day 7; an acute inhalation $LC_{50}$ study (rats) (formulation) with a $LC_{50}$ greater than 217.1 mg/l; an acute oral $LD_{50}$ study (rats) (formulation) with a $LD_{50}$ of 5,585 mg/kg; an oncogenicity study (mice) (1-NAA) which was negative at 215 mg/kg; a 90-day feeding (rats) (technical NAA) with a NOEL of 150 mg/kg/day; and a 6-month dog feeding study (NAA technical) which did not show a NOEL.

Data desirable but lacking are a repeat of the 6-month dog study and a teratology study on a second species. These studies are not necessary for this action because the current tolerance is being amended by the inclusion of an additional formulation, the ethyl ester, of 1-naphthaleneacetic acid in the tolerance regulation and new tolerances are not being proposed. The 6-month dog study will be necessary for any new or additional tolerances.

Tolerances have previously been established for 1-naphthaleneacetic acid on apples, pears, and quinces at 1.0 ppm and olives at 0.1 ppm. A tolerance of 0.05 has been established on pineapples resulting from the application of the sodium salt. This regulation permits use of the ethyl ester of 1-naphthaleneacetic acid on apples, pears, and olives. The published tolerances utilize 14.18 percent of the maximum permissible daily intake (MPI). Because no new tolerances are being added, the (MPI) does not change with this action. The allowable daily intake (ADI) of 0.005 mg/kg/day is based on the 90-day feeding study with a 2,000-fold safety factor.

There are no regulatory actions pending against the continued registration of this chemical, and the nature of the residue is adequately understood. An adequate analytical method (liquid chromatography and ultraviolet absorption) is available for enforcement. Since no residues are expected in feed items, it is concluded that no residues are likely to occur in eggs, milk, and meat of livestock. It is concluded that the tolerances will protect the public health. Therefore, 40 CFR Part 180 is amended as set forth below.

Any person adversely affected by this regulation may, on or before December 26, 1980, file written objections with the Hearing Clerk, EPA, Rm. M-3708 (A-110), 401 M St. SW., Washington, D.C. 20460. Such objections should be

submitted in quintuplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. If a hearing is granted, the objections must be legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This rule has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective date: November 26, 1980.

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

Dated: November 19, 1980.

**Edwin L. Johnson,**

*Deputy Assistant Administrator for Pesticide Programs.*

Therefore, Subpart C of 40 CFR Part 180 is amended by revising the introductory text under § 180.155 to read as follows:

**§ 180.155 1-Naphthaleneacetic acid; tolerances for residues.**

Tolerances are established for residues of the plant growth regulator 1-naphthaleneacetic acid in or on the raw agricultural commodities applies and pears at 1.0 ppm and olives at 0.1 ppm resulting from the application of 1-naphthaleneacetic acid or the ethyl ester of 1-naphthaleneacetic acid.

* * * * *

[FR Doc. 80-36881 Filed 11-25-80; 8:45 am]
BILLING CODE 6560-32-M

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**40 CFR Part 180**

**[PP OF2305/R286; PH-FRL 1683-2]**

## Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Nuclear-Polyhedrosis Virus of Heliothis Zea

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes an exemption from the requirement of a tolerance for residues of the microbial insecticide *Nuclear Polyhedrosis Virus* of *Heliothis zea* in or on all growing crops attacked by larvae of *Heliothis zea* or *Heliothis virescens*, including: beans, corn, lettuce, okra, pepper, sorghum, soybeans, tobacco, and tomatoes. The regulation was requested by Sandoz, Inc. This regulation eliminates the need to establish a maximum permissible level for residues of *Nuclear Polyhedrosis Virus* of *Heliothis zea* of *Heliothis virescens*.

**EFFECTIVE DATE:** Effective on November 26, 1980.

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

**FOR FURTHER INFORMATION CONTACT:** Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-341, 401 M St., SW., Washington, D.C. 20460, (202-755-1150).

**SUPPLEMENTARY INFORMATION:** EPA issued a notice that was published in the Federal Register of August 5, 1980 (45 FR 51854) that Sandoz, Inc., 480 Camino Del Rio South, San Diego, CA 92108, had filed a pesticide petition (PP OF2305) with EPA. This petition proposed an extension of an exemption from the requirement of tolerance for residues of the *Nuclear Polythedrosis Virus* of *Heliothis zea* or *Heliothis virescens* for use in or on all growing crops including: beans, corn, lettuce, okra, pepper, sorghum, soybeans, tobacco, and tomatoes. No comments or request for referral to an advisory committee were received in response to this notice of proposed rulemaking.

The data submitted or referenced in this petition, as well as related petitions (3F1304, 8F0697, and 8G0697) and other relevant material have been evaluated. The toxicological data considered in support of the proposed exemption from requirement of a tolerance included:

(a) Oral, Subcutaneous and Respiratory Exposure of Rhesus Monkeys to *Heliothis Nuclear Polyhedrosis Virus* (H/NPV) (26 weeks). No adverse effects.

(b) Two-year Mouse Chronic Feeding Study. No carcinogenic potential.

(c) Health monitoring of personnel associated with virus production. No health hazards found; negative clinical and serological data, lack of hypersensitivity, or x-ray examination.

(d) Teratology study in rats. No teratogenesis observed.

(e) Ninety-day studies in rats and dogs exposed to H/NPV by the oral and inhalation routes, and by subcutaneous injection. No adverse effects.

(f) Tissue culture studies. Primary African green monkey kidney cells, human embryo kidney cells, Hela-cells, and WI-38 cells were exposed to H/NPV. No cytopathic effects noted.

(g) Human feeding studies. No adverse effects following feeding H/NPV for a 5-day period.

(h) Toxicity-pathogenicity to mice and guinea pigs exposed to H/NPV by feeding. Free virions were also administered to guinea pigs by the Interperitional route and to mice intravenously and intracerebrally (60-90-day studies). No adverse effects.

(i) Acute rat feeding studies with H/NPV. Feces, urine, blood and stomach content were examined frequently following exposure. No adverse effects.

The *Heliothis* NPV only infects caterpillars of the genus *Heliothis*. Six species of *Heliothis* are known to be susceptible to the H/NPV: *H. Virescens, H. armingera, H. Phoxiphaga, H. punctigera*, and *H. Obtectus*, and *H. zea*.

The NPV of *Heliothis* sp. is the first NPV insecticide to be granted an exemption from the requirement of a tolerance, and consequently was subjected to safety testing to determine the human risk potential in accordance with the testing guidelines for conventional pesticides. The agency will shortly issue proposed guidelines for registering "biorational" pesticides in the United States. These new guidelines will, in most cases, reduce the testing requirements for biorational pesticides in accordance with a tier system of testing. A biorational pesticide which yields a negative toxicity potential and a negative infectivity potential in the first tier of testing, which includes acute oral infectivity, acute dermal infectivity, acute inhalation infectivity, acute intravenous infectivity, primary dermal irritation, hypersensitivity, and cellular immune response studies and tissue culture tests, will be eligible for registration without further testing.

No effect could be detected as a result of administration of NPV except a greater frequency of hyperplasia of lymph nodes in the treated animals (2/6 controls and 13/15 treated animals). Hyperplasia of the spleen was also observed somewhat more frequently in treated animals (2/4 control; 10/13 treated). Lymphoid tissue was analyzed in a bioassay (neonatal larva test) for the presence of NPV but isolation of infectious inclusion bodies did not occur.

No new toxicity data were submitted with the present application. Sandoz, Inc. states that toxicity data presented in 3F1304, 8F0697, and 8G0697 which resulted in the granting of a permanent exemption from tolerance for the NPV of *Heliothis zea* for bollworm and budworm on cotton would be adequate to allow expansion of the tolerance exemption to include all growing crops attacked by larvae of *Heliothis zea* or

*Heliothis virescens.* Crops included in the proposed expanded tolerance exemption were: beans, corn, lettuce, okra, peppers, sorghum, soybeans, tobacco, and tomatoes.

The toxicity studies previously submitted with 3F1304, 8F0697, and 8G0697, demonstrate the lack of human hazard associated with expansion of the exemption from the requirement of a tolerance for *Heliothis zea* NPV to all growing crops attacked by larvae of *Heliothis zea* of *Heliothis virescens*, including beans, corn, lettuce, okra, pepper, sorghum, soybeans, tobacco, and tomatoes.

Any person adversely affected by this regulation may, on or before December 26, 1980, file written objections with the Hearing Clerk, EPA, 401 M St. SW., Rm. 3708 (A-110), Washington, D.C. 20460. Such objections should be permitted in quintuplicate and specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issue for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective date: November 26, 1980.

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

Dated: November 19, 1980.

**Edwin L. Johnson,**

*Deputy Assistant Administrator for Pesticide Programs.*

Therefore, Subpart D of 40 CFR Part 180 is amended by revising paragraph (c) under § 180.1027 to read as follows:

**§ 180.1027 Nuclear polyhedrosis virus of Heliothis zea; exemption from the requirement of a tolerance.**

* * * * *

(c) Exemptions from the requirement of a tolerance are established for the residues of the microbial insecticide *nuclear polyhedrosis virus* of *Heliothis zea*, as specified in paragraphs (a) and (b) of this section, in or on all raw agricultural commodities including: corn, cottonseed, beans, lettuce, okra, peppers, sorghum, soybeans, tobacco, and tomatoes.

[FR Doc. 80-36880 Filed 11-25-80; 8:45 am]
BILLING CODE 6560-32-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### 43 CFR Public Land Order 5777

[I-3823]

### Idaho; Withdrawal of Snake River Birds of Prey Area

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws approximately 64,865 acres from operation of the mining laws, but not the mineral leasing laws, and approximately 417,775 acres from operation of the agricultural land laws and State selection statutes, to protect the Snake River Birds of Prey Area in Ada, Canyon, Elmore and Owyhee Counties, Idaho.

**EFFECTIVE DATE:** November 26, 1980.

**FOR FURTHER INFORMATION CONTACT:**
Dave Almand, Division of Wildlife and Endangered Species, Bureau of Land Management, U.S. Department of the Interior, Washington, D.C. 20240, (202) 343-6792; or
Guy Baier, Chief, Division of Resources, Idaho State Office, Bureau of Land Management, Room 398, Federal Bldg., 550 West Fort Street, Box 042, Boise, Idaho 83724, (208) 384-1484.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is hereby ordered as follows:

1. Subject to valid existing rights, the essential nesting habitat of the Snake River Birds of Prey Area, as depicted on a map entitled "Snake River Birds of Prey National Conservation Area" dated March 12, 1980, comprising approximately 64,865 acres in Ada, Canyon, Elmore, and Owyhee Counties, Idaho, is withdrawn from location or entry under the Mining Law of 1872, as amended and supplemented (30 U.S.C. 22 et seq.).

2. Subject to valid existing rights, the remaining portions of the Snake River Birds of Prey Area, as depicted on a map entitled "Snake River Birds of Prey National Conservation Area" dated March 12, 1980, comprising approximately 417,775 acres in Ada, Canyon, Elmore, and Owyhee Counties, Idaho, are withdrawn from entry, application, or selection under the Desert Land Act (43 U.S.C. 351 et seq.), the Carey Act (43 U.S.C. 641), the State of Idaho Admissions Act (26 Stat. 215), Revised Statute section 2775, as amended (43 U.S.C. 851), and Revised Statute section 2776 (43 U.S.C. 852).

3. The map referred to in the preceding paragraphs is on file with the aforementioned Bureau of Land Management, Division of Wildlife and Endangered Species, Washington, D.C. 20240; the Bureau of Land Management Idaho State Office, Division of Resources, Boise, Idaho 83724; and with the Bureau of Land Management, Boise District Office, 230 Collins Road, Boise, Idaho 83702.

4. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

**Cecil D. Andrus,**

*Secretary of the Interior.*

November 21, 1980.

[FR Doc. 80-36860 Filed 11-25-80; 8:45 am]
BILLING CODE 4310-84-M

## FEDERAL MARITIME COMMISSION

### 46 CFR Part 500

### Statements of Employment and Financial Interest; Supplementary Statements

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Maritime Commission is amending its regulations to change the filing date for supplementary statements of employment and financial interest from December 31 of each year to May 15 of the year following the reporting period. Experience has shown that the present deadline of December 31 of each year does not allow enough time for those affected employees to compile last minute data, thus causing delays in the filings. This new date will allow the employees more time to put together this last minute data and thus should obviate the necessity of filing additional statements.

**EFFECTIVE DATE:** November 26, 1980.

**FOR FURTHER INFORMATION CONTACT:**
Thomas Panebianco, Ethics Counselor, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5740.

**SUPPLEMENTARY INFORMATION:** The Commission's regulations prescribing procedures for statements of employment and financial interests establish at 46 CFR 500.735-33 that annual supplementary statements shall be filed as of December 31 of each year. It has been the experience of the Commission that this filing deadline, which falls on the last day of the reporting period (*i.e.*, the calendar year), has caused a hardship on some employees resulting in inevitable delays in filing the supplementary statements. Some employees require additional time following the reporting period to accumulate the necessary data reflecting their financial holdings as of the final day of the reporting period. Also, employees who file their statements a few weeks prior to December 31, occasionally have to file additional statements for the same period to reflect employment or financial interest changes in the last days of the calendar year. Thus, it is apparent that a filing date some time after the end of the reporting period would be sensible.

The May 15 date has been chosen to coincide with the filing date of Standard Form 278, which is required of certain agency employees under the Ethics in Government Act of 1978 (5 U.S.C. 201). It is the Commission's opinion that identical filing dates will be more convenient for those Commission employees who must file both statements every year.

Therefore, it is ordered that 46 CFR 500.735-33 is amended as follows:

**§ 500.735-33 Supplementary Statements.**

Changes in, or additions to, employment and financial interests shall be reported in a Supplementary Statement to be filed no later than May 15 of each year, the reporting period being the previous calendar year, except that Special Government Employees shall submit such Supplementary Statements no later than 15 calendar days following any change in, or addition to, their employment and financial interests. If no changes or additions occur, a negative report must nevertheless be filed as of May 15 of each year.

By the Commission November 12, 1980.

**Francis C. Hurney,**

*Secretary.*

[FR Doc. 80-36825 Filed 11-25-80; 8:45 am]

**BILLING CODE 6730-01-M**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 74 and 78

**[Docket No. 21505; RM-2536; FCC 80-604]**

### Cable Television Relay Service and Television Auxiliary Broadcast Service; Type Acceptance of Broadcasting Equipment

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule (Second Report and Order).

**SUMMARY:** The FCC has adopted certain rules requiring transmitting equipment used in TV auxiliary broadcast stations be "type accepted" for the first time. (Type acceptance is an equipment authorization issued by the Commission for equipment to be used pursuant to a station authorization.) Equipment is type accepted to certain standards to ensure the efficient use of the radio spectrum. Because the standards adopted are generally a reflection of equipment now being marketed, it is not evisioned that this requirement will be burdensome to any party. Type acceptance for newly manufactured equipment will become effective October 1, 1981.

Also, similar technical standards for transmitting equipment used in the band allocated to TV auxiliary broadcast and Cable Television Relay stations were adopted to minimize the potential to cause harmful interference. In addition, standards were adopted to control the directivity of radiation from transmitting antennas operating in that band.

**DATES:** Effective Date: December 12, 1980, except for §§ 74.655(e) and 78.107(b)(1) which are effective October 1, 1981; and, § 74.655(f) which is effective October 1, 1985.

**FOR FURTHER INFORMATION CONTACT:** Melvin Murray, Spectrum Utilization Branch, Office of Science and Technology, Federal Communications Commission, Washington, D.C. 20554, (202) 653-8168.

In the matter of amendment of Parts 2 and 78 of the Commission's rules and regulations to expand the frequencies available for use by Cable Television Relay Service Stations and, amendment of Parts 74 and 78 of the Commission's rules and regulations to set aside 13.15-13.20 GHz for usage by Television and Cable Television Relay Service Pickup Stations on a co-equal basis, Docket No. 21505, RM-2208; and an inquiry to determine public interest and need to establish similar technical standards for both the Cable Television Relay Service and the Broadcast Auxiliary Service in the 12.7-13.20 GHz band, and, amendment of Subpart F of Part 74 to require type acceptance of equipment used in television auxiliary broadcast stations, RM-2536.

### Second Report and Order

Adopted: October 21, 1980.

Released: November 14, 1980.

1. A Notice of Proposed Rule Making and Notice of Inquiry in Docket No. 21505 was adopted by the Commission on December 21, 1977.[1] In that Notice, the Commission proposed expanding the Cable Television Relay Service (CARS) from 12.7-12.95 GHz to 12.7-13.20 GHz with co-equal sharing of the entire band with TV Auxiliary Broadcast Stations (Subpart F of Part 74). This allocation (12.7-13.20 GHz) was adopted May 17, 1979, by the Commission in the First Report and Order in Docket 21505.[2] The Inquiry section of the Notice of Proposed Rule Making and Notice of Inquiry in Docket 21505 requested that the public submit information relative to the merits of establishing like technical standards for both the Cable Television Relay and TV auxiliary Broadcast services. A *Further Notice of Proposed Rule Making*,[3] adopted May 17, 1979, considered comments submitted relative to the *Inquiry* section and proposed type acceptance for transmitters used in Television Auxiliary Broadcast stations operating in bands A, B, and D, pursuant to Section 74.602, and certain technical standards for both Cable Television Relay and Television Auxiliary Broadcast Services. This Second Report and Order accordingly adopts rules which establish similar technical standards for both the Cable Television Relay and TV Auxiliary Broadcast services as well as requires equipment used in Television Auxiliary Broadcast stations (Subpart F of Part 74) to be type accepted.

### Frequency Coordination

2. In the *Further Notice* we proposed that all applicants for Cable Television relay and TV auxiliary Broadcast stations undertake frequency coordination by submitting a statement indicating all entities with which the technical proposal was coordinated. The intent of such a proposed rule was to reduce, as much as possible, the likelihood of harmful interference to existing, or proposed facilities.

3. Comments received in response to the *Further Notice* indicate difficulties in coordinating stations in congested areas. In contrast, a group of 24 cable

[1] 43 FR 9500, March 8, 1978.

[2] 44 FR 32377, June 6, 1979.

[3] 44 FR 32420, June 6, 1979.

system operators (hereinafter "Respondents") suggest that frequency coordination procedures as proposed are unnecessary in uncongested, rural areas and would prove burdensome to cable operators. Teleprompter (TPT) recommended that an applicant be required only to submit a statement certifying that there would be no harmful interference with other systems and to set forth the basis for such a determination.

4. In the *Memorandum, Opinion and Order* in this proceeding we indicated that our present rules state that each grant of authorization to operate either a CARS or TV Auxiliary station is subject to the condition that no harmful interference is caused to other CARS or TV Auxiliary stations authorized at the time of such grants. Accordingly, applicants are to cooperate with existing licensees and/or other applicants to coordinate their facilities so that the level of any interference will not be harmful to others. We believe this procedure to be practical. It will ease the burden on both the Commission and the applicants. Consequently, we are not adopting any additional frequency coordination procedure; and we are modifying §§ 74.604 and 78.19 accordingly.

## Power Limitations

5. *Fixed stations.* For TV Auxiliary bands A (1990–2500 MHz) and B (6875–7125 MHz), we proposed in this proceeding a limit of 20 watts; for the shared band: TV Auxiliary and CARS (12.7–13.20 GHz) a 5 watt limit was proposed. In an associated paragraph of that proposed rule we indicated that a higher output power, up to fifty (50) watts, would be authorized provided sufficient justification for it was supplied. Several parties submitting comments interpreted this proposal to mean that our intent was to set the limits at 50 watts. However, our intent is that applicants use the least amount of power for reliable communications so as to minimize interference to others; therefore, to discourage the use of higher transmitter output powers, we are deleting this proposal. In cases where permission is sought to operate with a power higher than the limit set out in the Rules, a request for waiver will be entertained.[4] Accordingly, the power limits as proposed for fixed stations are herein adopted. (See §§ 74.636 and 78.101.)

6. *Mobile stations.* For TV Auxiliary bands A and B a 20 watt limit was proposed. A 250 milliwatt limit was proposed for the shared 12.7–13.20 GHz band. In reviewing the licenses of TV Auxiliary Mobile stations now operating in bands A and B, we find that most are operating at levels of 12 watts or less. Since we see no need to raise this level to that proposed, we are accordingly setting the power limit for mobile stations which operate in bands A and B at 12 watts. We received numerous comments on the power limit of 250 milliwatts for the shared 12.7–13.20 GHz band. Only NCTA agreed that the proposed limit is sufficient. All others suggested that the limit be raised. They contend that higher power is necessary to overcome attenuation from operating over long path lengths and frequently from buildings which are used to reflect the signal. Several parties indicated that multi-band operation in already congested bands A and B would be necessary if a higher power limit were not allowed for band D. CBS recommended a power limit of one watt for pickup stations.

7. We concur with the submitted comments and believe that the power limit would be raised from the proposed 250 milliwatt level. We are adopting 1.5 watts (transmitter output power) as the limit for mobile (i.e., pickups) TV auxiliary and CARS transmitters; this limit, we feel, should be sufficient to permit the transmission of signals over path lengths appropriate for mobile operations.

8. For purposes of conforming the technical standards of Part 74 with those of Part 78, several changes were proposed. In § 74.637, entitled *Emission and Bondwidth* the reference level for measuring the attenuation of emissions was proposed to be changed from "decibels below the unmodulated carrier" to "decibels below the mean power of emission." NBC filed the only comment opposing the proposed rule change claiming the existing rules provide a very simple means of measuring the performance of the transmission system on an absolute basis. It contends the alternative proposed by the Commission is dependent upon the type of emission employed and would be quite difficult to apply in practice. NBC states "the existing method works well and there is no valid reason to tamper with it."

9. The method of measurement, as proposed, is not difficult to apply in practice. It is used in measurements of equipment requiring type acceptance under other radio services including CARS. Accordingly, we are changing the reference level to read "the mean power of the emissions" for purpose of conformance.

## Frequency Stability

10. It was proposed to upgrade the stability from 0.02% to 0.005% for FM equipment used in CARS. No objections were received; it is accordingly adopted. With respect to Section 74.661(a) which proposed that the licensee maintain the operating frequency of its TV auxiliary broadcast station so that 99 percent of the sideband energy falls within the assigned channel. CBS filed comment contending this measurement may prove impractical. CBS feels that a "more meaningful method would be require all emissions outside of the allocated channel to be consistent with the proposed requirements of § 74.637."

11. Section 74.661(a) requires a measurement to show that the transmitter's occupied bandwidth meets or exceeds the definition set out in § 2.202(a). In contrast, § 74.637 requires a measurement to determine that the transmitter's spectral output is attenuated sufficiently outside the assigned channel. Each measurement is required to accomplish a different objective. The former measurement is to assure that the transmitter's output energy is conformed to a given standard; while the latter is to assure that generated spurious emissions are attenuated to another given standard. These proposed rules are accordingly adopted.

## Modulation Limits

12. In § 74.663(a) we proposed to limit negative modulation peaks to 100% for equipment using amplitude modulation. In its comments, NAB pointed out that it is impossible to achieve anything greater than 100 percent negative modulation. We agree that negative modulation cannot exceed 100 percent, which would be zero carrier, or carrier cut off. The proposed rule, however, applies to *peaks* of the modulating signal producing negative modulation. If the modulating signal drives the RF (radio frequency) signal into carrier cutoff, then harmonics are generated which would cause interference to adjacent channels. Since this is an undesirable condition, § 74.663(a) is being adopted as proposed.

13. Regarding proposed § 74.663(b), NAB stated it appeared that this rule was redundant with proposed § 74.637 The former proposed rule required stations using FM transmission to maintain the total excursion of the RF carrier under modulation and the maximum modulation frequency such that the authorized bandwidth is not exceeded in operation. Proposed § 74.637, entitled "Emissions and Emission Limitations", set certain levels

[4] See § 1.3 of the Commission's rules.

for suppression of spurious emissions. We concur that if a transmitter meets or exceeds the standards required by § 74.637, then the requirements proposed in § 74.663(b) are redundant. As suggested then, we have deleted § 74.663(b); similarly, § 78.115(b) also has been deleted.

Antenna Requirements

14. For TV auxiliary broadcast and CARS stations we proposed that the radiation pattern of the corresponding antenna system conform to certain specified limits. In areas of congestion, use of a more directive category "A" antenna would be employed; whereas in other less congested areas, a less directive category "B" antenna would be allowed. No performance standards were proposed for pickup stations except that they employ directional antennas. Also addressed was the matter of periscope antenna systems. We proposed that their radiation characteristic in a horizontal plane meet or exceed standards proposed for conventional antennas. A time period of ten years was proposed after which all such stations would be required to be in compliance.

15. Comment regarding the proposed antenna requirements was received from various broadcast and cable interests. NAB felt that more definite guidelines were needed for applicants to determine whether a particular area is frequency congested or not. We have attempted to resolve this matter by qualifying the proposed rule. A licensed station will be permitted continued usage of a category "B" antenna in any area until an applicant for a new TV auxiliary broadcast or CARS station or another licensee makes a showing indicating that the use of the existing category "B" antenna limits a proposed project because of interference and that the use of a category "A" antenna would remedy the interference thus allowing the project to be realized.

16. CBS and NBC felt that non-standard antennas should be allowed in exceptional cases based on a well-documented showing of need. Both cite as an example the World Trade Center in New York City where separation between the main columns of the buildings' outer walls is 28 inches. This physical restraint accordingly prohibits the use of a category "A" antenna. We agree that in certain circumstances it may not be possible to install the required category antenna. As an exception then to using antenna systems that do not comply with the standards we are adopting herein, we will individually entertain requests for exceptions where the applicant has clearly indicated in detail why an antenna system complying with the required standards cannot be installed and demonstrating that frequency coordination, pursuant to § 74.604 or § 78.19, as appropriate, has been carried out.

17. Regarding pickup stations, the majority of comments requested that non-directional antennas be allowed. It was contended that flexibility to meet the varying exigencies of ENG operations would be impaired if the proposed rule requiring directional antennas were adopted. As examples, the employment of helicopters, blimps and back pack cameras often necessitate the use of omnidirectional antennas. We agree with the comments and are adopting a rule exempting pickup stations from using directional antennas. However, we caution licensees that pickup stations generally operate on a secondary basis; accordingly, they should take measures to protect primary stations from receiving any harmful interference due to their operations.

18. The issue concerning periscope antenna drew much comment. Opposition to the rule proposing that such antennas systems meet or exceed the standards proposed for conventional antennas came primarily from cable television operators. They indicated that rural areas will never have the degree of frequency usage that would require use of a category "A" or "B" antenna. A group of cable operators, hereafter called "Respondents", claim that associated interference problems resulting from a lack of antenna standards could be worked out during the coordination period. Gabriel Electronics, a manufacturer of antennas used in TV auxiliary and CARS supports *in toto* the proposed technical standards. A manufacturer of periscope antenna systems, Microflect, claims its products comply with the proposed technical standards for category "A" antennas. As a compromise, Teleprompter and Viacom have suggested that licensing of new periscope antenna systems be prohibited except upon submission of a specific showing that no frequency congestion exists in the area of proposed use. To protect against future congestion and interference, each authorization permitting use of a periscope antenna could be expressly conditioned to require conversion to a conventional antenna if and when congestion occurs.

19. It is our intention *not* to impose economic burdens upon licensees by adopting standards that require antenna systems that are costly. Our desire is to provide standards now to avert future difficulties resulting from a greater number of licensees operating within the same spectrum space. Accordingly, we are adopting the standards as proposed; but, we are also providing exceptions as suggested in the comments. In particular, under § 74.641(b) and § 78.105(b), requests for use of periscope antenna systems may be approved where a persuasive showing is made that no frequency congestion exists in the area of proposed use. Approvals will be conditioned so as to require use of a standard antenna when an applicant of a new TV auxiliary broadcast or Cable Television Relay station indicates that the use of the existing antenna system will cause interference and the use of a category "A" or "B" antenna will remedy the interference.

Type Acceptance

20. In the Further Notice of Proposed Rule Making we proposed implementation of type acceptance for equipment used in TV auxiliary stations to assure certain technical standards are met. As we pointed out, adherence to the proposed standards would minimize interference to other users and maximize the use of the radio frequency spectrum. In its comments ABC contends that deregulatory licensing policies should be adopted. It explains that ENG operations should be licensed as an overall system rather than on a unit by unit basis. It continues, "For example, an applicant could ask for an authorization permitting five to ten TV pickup units to be activated as circumstances require so long as all equipment has been type accepted. This sensible deregulatory action would help alleviate current backlog problems being experienced in this service and eliminate the unnecessary paper work for licensees". Secondly, it suggests that the Commission allocate sufficient staff resources to handle any increased workload. It states, "Such measures would help assure that new regulations are not accompanied by increased regulatory delays".

21. We are not considering these comments at this time as they do not appear pertinent to the proposal.

22. In its comments, CBS Inc. requested the Commission to grandfather all equipment that would be operational prior to the date on which type acceptance would be required. It also recommended that an elapse of one year be allowed before the requirement for type acceptance becomes effective. "This would allow manufacturers sufficient time in which to file for and receive type acceptance". In the

proposed rules provision was made for the use of non-type accepted equipment by the licensee or its successors or assignees; however, no provision was made for the marketing of such equipment after the rules were to become effective.

23. In reviewing this matter we are choosing not to burden ourselves with the establishment of a grandfather list, as was suggested, but are adopting a procedure that is equitable and should be acceptable to all. Accordingly, to allow manufacturers sufficient time to comply with the new standards herein being adopted, type acceptance requirements will not become effective until October 1, 1981. Non-type accepted equipment which was manufactured and/or marketed before October 1, 1981, may be marketed until October 1, 1985, to permit the depletion of existing inventories. After that date, it may not be further marketed; however, the licensee may continue to use the equipment, as long as it does not cause interference. We feel this change will permit manufacturers sufficient time to deplete existing stock and then to design equipment to comply with the standards being adopted herein. Users are accordingly being allowed about five years to either sell and replace existing equipment with equipment that will be type accepted to the standards herein adopted or continue to use existing equipment subject to the provisions that it does not cause harmful interference due to its failure to comply with the technical standards and that it may not be marketed for reuse under Parts 74 or 78.

24. Also proposed was a rule that would have permitted the immediate use of equipment under Part 74 provided the equipment had been previously type accepted under other part(s) of the Rules. In reviewing this proposal, we envision the possibility that changes in the standards for TV broadcast auxiliary equipment (i.e., Part 74) may be different in the future from those required for equipment used in other services. Accordingly, we have not adopted this rule.

25. However, a manufacturer desiring to acquire type acceptance under Part 74 for equipment previously type accepted under other parts of the Rules need not file a new type acceptance application for inclusion under Subpart F of Part 74 if the equipment meets or exceeds all the technical standards adopted herein and other requirements as appropriate. Instead, FCC Form 731 requesting the addition of Subpart F of Part 74 to their existing grant of type acceptance should be sent to the FCC, Office of Science and Technology, P.O. Box 429, Columbia, Maryland 21045. If upon examination the equipment is found to be in compliance, a new grant of type acceptance which includes Subpart F of Part 74 will be issued.

26. As an exemption to the requirement for type acceptance, pickup stations operating in excess of 250 mW licensed pursuant to applications accepted for filing prior to October 1, 1980, may continue operation subject to periodic renewal. NAB suggested that this "grandfather" provision should also appear under the rule sections entitled "Power limitations". We do not believe that such redundancy is necessary. This provision accordingly appears only under the rule sections entitled "Type acceptance".

27. In its comments NBC recommended that low-powered equipment (i.e., 250 mW or less output power) be exempted from type acceptance requirements for TV auxiliary broadcast bands "A" and "B" just as we proposed a similar exemption for Band "D". We feel this is a reasonable request as we don't expect these lower-power equipments to significantly cause harmful interference; accordingly we have adopted that recommendation herein.

28. In a separate petition for rule making (RM-2536), Fletcher, Heald, Rowell, Kenehan and Hildreth, a communications law firm, requested that equipment used under Subpart F of Part 74 be subject to type acceptance requirements. It contended that administrative requirements would be simplified. Since this proceeding provides for this request, the Petition as filed is herein being granted.

29. Accordingly, pursuant to authority contained in Section 4(i) and 303 of the Communications Act of 1934, as amended, it is ordered that Parts 74 and 78 are amended as shown in Appendix B. It is further ordered that proceedings in Docket 21505 are terminated.

30. For additional information contact: Mel Murray, Federal Communications Commission, Office of Science and Technology, 2025 "M" Street, NW., Washington, D.C. 20554. Telephone (202) 653-8168.

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

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

Appendix A

I. The following parties, arranged into three groups for convenience, filed comments in response to the Further Notice of Proposed Rule Making in Docket No. 21505:

A. *Broadcast Interests*

American Broadcasting Companies, Inc. (ABC)
CBS Inc. (CBS)
National Association of Broadcasters (NAB)
National Broadcasting Company, Inc. (NBC)

B. *Cable Interests*

Gabriel Electronics Incorporated
Joint comments—24 parties—(Respondents)
Microflect
National Cable Television Association (NCTA)
Teleprompter Corporation (TPT)
Viacom International Inc.

II. Reply comments in the proceeding were filed by: American Broadcasting Companies, Inc.

Appendix B

Parts 74 and 78 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

## PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

1. Section 74.604 (a) is revised as follows:

**§ 74.604 Frequency selection to avoid interference.**

(a) Applicants for new television pickup, television STL, television intercity relay and television translator relay stations shall endeavor to select frequency assignments which will be least likely to result in mutual interference with other licensees in the same area since the FCC itself does not undertake frequency coordination. Consideration should be given to the relative locations of receiving points, normal transmission paths, and the nature of the contemplated operation.

* * * * *

2. Section 74.636 is revised to read as follows:

**§ 74.636 Power limitations.**

Transmitter peak output power shall not be greater than necessary, and in any event, shall not exceed the power listed in the table below;

| Band | Power limit | Class of station |
|---|---|---|
| A | 20 Watts | Fixed. |
| | 12 Watts | Mobile. |
| B | 20 Watts | Fixed. |
| | 12 Watts | Mobile. |
| D | 5 Watts | Fixed. |
| | 1.5 Watts | Mobile. |

3. Section 74.637 headnote and text are revised to read as follows:

**§ 74.637 Emissions and emission limitations**

(a) TV auxiliary broadcast stations operating on frequencies above 1,000 MHz may be authorized to employ any

type of emission suitable for the transmission of the visual and aural and operational signals as may be permitted under the rules of this subpart. Continuous radiation of the carrier without modulation is permitted provided harmful interference is not caused to other authorized stations.

(b) The channels assigned to TV auxiliary broadcast stations are designated by upper and lower frequency limits. Emissions outside of these frequency limits shall be attenuated as follows:

(1) Any emission appearing on a frequency above the upper channel limit or below the channel limit by between zero and 50% of the assigned channel width shall be attenuated at least 25 dB below the mean power of the emission.

(2) Any emission appearing on a frequency above the upper channel limit or below the channel limit by between 50% and 150% of the assigned channel width shall be attenuated at least 35 dB below the mean power of the emission.

(3) Any emission appearing on a frequency above the upper channel limit or below the lower channel limit by more than 150% of the assigned channel width shall be attenuated at least 43 + 10 $\log_{10}$ (power in watts) dB below the mean power of the emission.

(c) In the event that interference to other stations is caused by emissions outside the authorized channel, the FCC may require greater attenuation than that specified in paragraph (b) of this section.

4. A new § 74.641 is added to read as follows:

**§ 74.641 Antenna Systems**

(a) For fixed stations operating in Band D the following rules apply:

(1) Fixed TV auxiliary broadcast stations shall use directional antennas that meet the performance standards indicated in the following table. Upon adequate showing of need to serve a larger sector, or more than a single sector, greater beamwidth or multiple antennas may be authorized. Applicants shall request, and authorization for stations in this service will specify the polarization of each transmitted signal.

**Antenna Standards**

| Frequency (in megahertz) | Category | Maximum beem-width to 3 dB (included angle in degrees) | Minimum radiation suppression et engle in degrees from centerline of main beam in decibels— | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | 5° to 10° | 10° to 15° | 15° to 20° | 20° to 30° | 30° to 100° | 100° to 140° | 140° to 180° |
| 12,700 to 13,200 .................... | A | 1.0 | 23 | 28 | 35 | 39 | 41 | 42 | 50 |
| | B | 2.0 | 20 | 25 | 28 | 30 | 32 | 37 | 47 |

NOTE.—Stations in this service must employ an antenna thet meets the performance standards for cagetory A, except that, in areas not subject to frequency congestion antennes meeting standerds for category B mey be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

(2) New periscope antenna systems will be authorized upon a certification that the radiation, in a horizontal plane, from an illuminating antenna and reflector combination meets or exceeds the antenna standards of this section. This provision similarly applies to passive repeaters employed to redirect or repeat the signal from a station's directional antenna system.

(3) The choice of receiving antennas is left to the discretion of the licensee. However, licensees will not be protected from interference which results from the use of antennas with poorer performance than identified in the table of this section.

(4) The transmitting antenna system of stations employing maximum equivalent isotropically radiated power exceeding +45 dBW in the frequency band between 12.70 and 12.75 GHz shall be orientated so that the direction of maximum radiation of any antenna shall be at least 1.5° away from the geostationary satellite orbit taking into account the effect of atmospheric refraction.[1]

(5) Pickup stations are not subject to the performance standards herein stated. The provisions of this paragraph are effective for all new applications accepted for filing after October 1, 1981.

(b) Any fixed station licensed pursuant to applications accepted for filing prior to October 1, 1981, may continue to use its existing antenna system, subject to periodic renewal until October 1, 1991. After October 1, 1991, all licensees are to use antenna systems in conformance to the standards of this section. TV auxiliary broadcast stations located in areas subject to frequency congestion are to employ a category A antenna when:

(1) a showing by an applicant of a new TV auxiliary broadcast station or Cable Television Relay Service (CARS) station, which shares the 12.7–13.20 GHz band with TV auxiliary broadcast, indicates that use of a category B antenna limits a proposed project because of interference, and

(2) that use of a category A antenna will remedy the interference thus allowing the project to be realized.

(c) As an exception to the provisions of this Section, the FCC may approve requests for use of periscope antenna systems where a persuasive showing is made that no frequency conflicts exist in the area of proposed use. Such approvals shall be conditioned to a standard antenna as required in paragraph (a) of this section when an applicant of a new TV auxiliary broadcast or Cable Television Relay station indicates that the use of the existing antenna system will cause interference and the use of a category A or B antenna will remedy the interference.

(d) As a further exception to the provision of paragraph (a) of this section, the Commission may approve antenna systems not conforming to the technical standards where a persuasive showing is made that:

(1) indicates in detail why an antenna system complying with the requirements of paragraph (a) of this section cannot be installed, and

(2) includes a statement indicating that frequency coordination as required in § 74.604 (a) was accomplished.

5. A new § 74.655 is added to read as follows:

**§ 74.655 Type acceptance.**

(a) Type acceptance is *not* required for transmitters used in conjuction with TV pickup stations operating with a peak output power not greater than 250 mW. Pickup stations operating in excess of 250 mW licensed pursuant to applications accepted for filing prior to October 1, 1980, may continue operation subject to periodic renewal. If operation of such equipment causes harmful interference the FCC may, at its

[1] See Chapter I, Article 1, Section III of the (International) Radio Regulations (Geneva, 1959), as amended, for Technical Characteristics Term and Definitions. Additional information and methods for calculating azimuths to be avoided may be found in the following: Report 393, International Radio Consultative Committee (C.C.I.R.); "Geostationary Orbit Avoidance Computer Program, "Report CC-7202, Federal Communications Commission, available from the National Technical Information Service, Springfield, VA 22151, in printed form (PB-211 500) or source card deck (PB-211 501).

discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

(b) The licensee of a TV auxiliary station may replace transmitting equipment with type accepted equipment, without prior FCC approval, provided the proposed changes will not depart from any of the terms of the station or system authorization or the Commission's technical rules governing this service, and also provided that any changes made to type accepted transmitting equipment is in compliance with the provisions of Part 2 of the FCC rules concerning modification to type accepted equipment.

(c) Any manufacturer of a transmitter to be used in this service may apply for type acceptance following the procedure set forth in Part 2 of the FCC Rules.

(d) An applicant for a TV auxiliary broadcast station may also apply for type acceptance for an individual transmitter by following the type acceptance procedure set forth in Part 2 of the FCC Rules and Regulations. Individual transmitters which are type accepted will not normally be included in the FCC's Radio Equipment List.

(e) Type acceptance by the FCC is required for all transmitters first licensed, or marketed as specified in § 2.803 of the FCC Rules, except as provided for in paragraph (a) (Refer to subpart I of Part 2 of the Commission's Rules and Regulation). This paragraph is effective October 1, 1981.

(f) All transmitters marketed for use under this Subpart must be type accepted by the Federal Communications Commission. TV auxiliary broadcast station transmitting equipment authorized to be used pursuant to an application accepted for filing prior to October 1, 1985, may continue to be used by the licensee or its successors or assignees, provided, that if operation of such equipment causes harmful interference due to its failure to comply with the technical standards set forth in this subpart, the FCC may, at its discretion require the licensee to take such corrective action as is necessary to eliminate the interference. However, such equipment may *not* be further marketed for reuse under Parts 74 or 78. This paragraph is effective October 1, 1985.

(g) Each instrument of authority which permits operation of a TV auxiliary broadcast station or system using equipment which has not been type accepted will specify the particular transmitting equipment which the licensee is authorized to use.

6. Section 74.661, paragraph (a) is revised to read as follows:

**§ 74.661 Frequency tolerance**

(a) The licensee of a TV auxiliary broadcast station shall maintain the operating frequency of its station so that 99% of the sideband energy shall fall within the assigned channel.

* * * * *

7. Section 74.663, headnote and text are revised to read as follows:

**§ 74.663 Modulation limits.**

If amplitude modulation is employed, negative modulation peaks shall not exceed 100%.

8. In § 74.665 paragraphs (d)(1) and (d)(2) are revised to read as follows:

**§ 74.665 Operator requirements.**

* * * * *

(d) TV pickup stations may be operated in accordance with the following:

(1) Stations operating on frequencies in Bands A, B, or D with less than 250 mW, may be operated by any person whom the licensee shall designate. Pursuant to this provision, the designated person shall perform as the licensee's agent and proper operation of the station shall remain the licensee's responsibility.

(2) Television pickup stations operating in Band A, B, or D with nominal transmitter power in excess of 250 mW, may be operated by any person whom the licensee shall designate, provided a person holding a valid radiotelephone first-class or radiotelephone second-class license is on duty at the receiving end of the circuit to supervise operation and immediately institute measures sufficient to assure prompt correction of any condition of improper operation that is observed.

* * * * *

9. A new § 74.669 is added to read as follows:

**§ 74.669 Station inspection.**

The licensee of each TV auxiliary broadcast station shall make the station available for inspection by representatives of the Commission at any reasonable hour.

## PART 78—CABLE TELEVISION RELAY SERVICE

1. Section 78.19(a) is revised to read as follows:

**§ 78.19 Interference.**

(a) Applications for CARS stations shall endeavor to select an assignable frequency or frequencies which will be least likely to result in interference to other licensees in the same area since the FCC itself does not undertake frequency coordination.

* * * * *

2. In § 78.101, paragraphs (a) and (b) are revised to read as follows and paragraph (c) is removed.

**§ 78.101 Power limitations.**

(a) With the exception of pickup stations, transmitter peak output power shall not be greater than necessary, and in no event, shall exceed 5 watts on any channel. For CARS pickup stations, the transmitter peak output power shall not exceed 1.5 watts.

(b) LDS stations shall use for the visual signal-vestigial sideband AM transmission. When vestigial sideband AM transmission is used the peak power of the visual signal on all channels shall be maintained within 2 dB of equality. The mean power of the aural signal on each channel shall not exceed a level of 7 dB below the peak power of the visual signal.

3. In § 78.104, paragraph (b)(1) is revised to read as follows and paragraph (b)(2) is removed and reserved.

**§ 78.104 Authorized bandwidth and emission designator.**

* * * * *

(b) * * *

(1) The frequency stability of the transmitting equipment to be used will permit compliance with § 78.103(b)(1) and, additionally, will permit 99 percent of the total radiated power to be kept within the frequency limits of the assigned channel.

(2) [Reserved.]

(c) * * *

4. Section 78.105, headnote and text are revised to read as follows:

**§ 78.105 Antenna systems.**

(a) For fixed stations the following rules apply:

(1) Fixed CARS stations shall use directional antennas that meet performance standards indicated in the following table. Upon adequate showing of need to serve a larger sector, or more than a single sector, greater beamwidth or multiple antennas may be authorized. Applicants shall request and authorization for the stations in this service will specify the polarization of each transmitted signal.

**Antenna Standards**

| Frequency (in megahertz) | Category | Maximum beam-width to 3 dB (included angle in degrees) | Minimum radiation suppression to angle in degrees from centerline of main beam in decibels— | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | 5° to 10° | 10° to 15° | 15° to 20° | 20° to 30° | 30° to 100° | 100° to 140° | 140° to 180° |
| 12,700 to 13,200 | A | 1.0 | 23 | 28 | 35 | 39 | 41 | 42 | 50 |
| | B | 2.0 | 20 | 25 | 28 | 30 | 32 | 37 | 47 |

NOTE.—Stations in this service must employ an antenna that meets the performance standards for category A, except that, in areas not subject to frequency congestion antennas meeting standards for category B may be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

(2) New periscope antenna systems will be authorized upon a certification that the radiation, in a horizontal plane, from an illuminating antenna and reflector combination meets or exceeds the antenna standards of this section. This provision similarly applies to passive repeaters employed to redirect or repeat the signal from a station's directional antenna system.

(3) The choice of receiving antennas is left to the discretion of the licensee. However, licensees will not be protected from interference which results from the use of antennas with poorer performance than defined in paragraph (a) of this section.

(4) The transmitting antenna system of stations employing maximum equivalent isotropically radiated power exceeding +45 dBW in the frequency band between 12.70 and 12.75 GHz shall be oriented so that the direction of maximum radiation of any antenna shall be at least 1.5° away from the geostationary satellite orbit, taking into account the effect of atmospheric refractions.[1]

(5) Pickup stations are not subject to the performance standards herein stated. The provisions of this paragraph are effective for all new applications accepted for filing after October 1, 1981.

(b) Any fixed station licensed pursuant to applications accepted for filing prior to October 1, 1981, may continue to use its existing antenna system, subject to periodic renewal until October 1, 1991. After October 1, 1991, all licensees are to use antenna systems in conformance to the standards of this Section. CARS stations located in areas subject to frequency congestion are to employ a category A antenna when:

(1) A showing by an applicant of a new CAR service or TV auxiliary broadcast, which shares the 12.7–13.20 GHz band with CARS, indicates that use of a category B antenna limits a proposed project because of interference, and

(2) That use of a category A antenna will remedy the interference thus allowing the project to be realized.

(c) As an exception to the provisins of this Section, the FCC may approve requests for use of periscope antenna systems where a persuasive showing is made that no frequency conflicts exist in the area of proposed use. Such approvals shall be conditioned to require conversion to a standard antenna as required in paragraph (a) of this section when an applicant of a new TV auxiliary broadcast or Cable Television Relay station indicates that the use of the existing antenna system will cause interference and the use of a category A or B antenna will remedy the interference.

(d) As a further exception to the provision of paragraph (a) of this section the Commission may approve antenna systems not conforming to the technical standards where a persuasive showing is made that:

(1) Indicates in detail why an antenna system complying with the requirements of paragraph (a) of this section cannot be installed, and

(2) Includes a statement indicating that frequency coordination as required in § 78.18a was accomplished.

5. In § 78.107, paragraphs (b), (c) and (d) are revised and a new paragraph (e) is added, to read as follows:

**§ 78.107 Equipment and installation.**

(a) * * *

(b) Applications for new cable television relay stations will not be accepted unless the equipment specified therein has been type accepted for use pursuant to the provisions of this subpart.

(1) All transmitters first licensed or marketed shall comply with technical standards of this subpart. This paragraph (b)(1) is effective October 1, 1981.

(2) Type acceptance is not required for transmitters which have a output power not greater than 250 mW used in a CARS pickup station operating in the 12.7–13.20 GHz band and for transmitters used under a developmental authorization.

(c) Cable television relay station transmitting equipment authorized to be used pursuant to an application accepted for filing prior to October 1, 1981, may continue to be used, provided, that if operation of such equipment causes harmful interference due to its failure to comply with the technical standards set forth in this subpart the Commission may, at its discretion, require the licensee to take such corrective action as is necessary to eliminate the interference.

(d) The installation of a CARS station shall be made by or under the immediate supervision of a qualified engineer. Any tests or adjustments requiring the radiation of signals and which could result in improper operation shall be conducted by or under the immediate supervision of an operator holding a valid first- or second-class radio-telephone operator license.

(e) Simple repairs such as the replacement of tubes, fuses, or other plug-in components which require no particular skill may be made by an unskilled person. Repairs requiring replacement of attached components or the adjustment of critical circuits or corroborative measurements shall be made only by a person with required knowledge and skill to perform such tasks.

6. In § 78.111 the table is removed and the text is revised to read as follows:

**§ 78.111 Frequency tolerance.**

(a) Cable television relay stations shall maintain the operating frequency so that 99% of the sideband energy shall fall within the assigned channels.

(b) Cable television relay stations shall maintain the carrier frequency of each authorized transmitter within 0.005% of the operating frequency.

(c) Cable television relay stations that employ vestigial sideband AM transmission shall maintain their operating frequency within 0.0005% of the visual carrier, and the aural carrier shall be 4.5 MHz±1 kHz above the visual carrier frequency.

[1] See Chapter I, Article 1, Section III of the (International) Radio Regulations (Geneva, 1959), as amended, for Technical Characteristics Terms and Definitions. Additional information and methods for calculating azimuths to be avoided may be found in the following: Report 393, International Radio Consultative Committee (C.C.I.R.); "Geostationary Orbit Avoidance Computer Program," Reort CC-7220, Federal Communications Commission, available from the National Technical Information Service, Springfield, VA 22151, in printed form (PB-211 500) or source card deck (PB-211 501).

**§ 78.115 [Amended]**

7. In § 78.115 paragraph (b) is removed.

[FR Doc. 80-36781 Filed 11-25-80; 8:45 am]
BILLING CODE 6712-01-M

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## 47 CFR Part 2

[FCC 80-547]

## Frequency Allocations and Radio Treaty Matters; Convenient Method for Handling Frequency Assignments for Space Research Earth Stations In a Certain Frequency Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule and order.

**SUMMARY:** Footnote US 111 to the Table of Frequency Allocations allows Government use of a certain frequency band on a secondary basis. It lists nine locations utilized by the National Aeronautics and Space Administration (NASA) space research earth stations for tracking, ranging and telecommand purposes. In addition, it specifies eleven frequencies as being authorized at these locations.

This area of research is a dynamically changing one, resulting in rapid outdating of specific frequencies and locations. New frequencies and locations require constant changes to US 111 through the rule making process. This is time consuming and cumbersome to administer. To achieve a greater measure of Administrative economy, NASA has requested, and the FCC has agreed to, a revision of US 111 to delete the listing of specific frequencies and locations.

**EFFECTIVE DATE:** November 13, 1980.

**ADDRESS:** Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Eugene J. Cea, Office of Science and Technology, 2025 M Street NW., Washington, D.C. 20554, (202) 653-8177, Room 7328.

### Order

Adopted: September 25, 1980.

Released: October 31, 1980.

In the matter of Amendment of Footnote US 111 in Part 2 of the Commission's Rules and Regulations to provide a more convenient method for handling frequency assignments for space research earth stations in the band 1990-2120 MHz.

By the Commission:

1. Footnote US 111 to the Table of Frequency Allocations allows Government use of the band 1990-2120 MHz on a secondary basis. It lists nine locations utilized by the National Aeronautics and Space Administration (NASA) space research earth stations for tracking, ranging and telecommand purposes. In addition, it specifies eleven frequencies in the band 1990-2120 MHz, as well as the band segment 2110-2120 MHz as being authorized at these locations.

2. This area of research is a dynamically changing one, resulting in rapid outdating of specific frequencies and locations. New frequencies and locations require constant changes to US 111 through the rule making process. This is time-consuming and cumbersome to administer. To achieve a greater measure of administrative economy, NASA has requested a revision of US 111 to delete the listing of specific frequencies and locations.

3. NASA concurs that authorizations for specific frequencies and locations will continue to be coordinated with the FCC through the Government's Frequency Assignment Subcommittee mechanism on a case-by-case basis with appropriate conditions applied as necessary. Further, such authorizations shall be secondary to present and future non-Government use of this band and NASA will, if necessary, discontinue transmissions causing interference to licensees.

4. Under the conditions imposed, there should be no adverse present or future impact on non-Government licensees. We, therefore, anticipate no comments in this matter. For these reasons, prior notice and effective date provisions of the Administrative Procedures Act, 5 U.S.C. 533 are found to be unnecessary. Accordingly, pursuant to authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, IT IS Ordered that, effective November 13, 1980, Footnote US 111 to the Table of Frequency Allocations, § 2.106 of the Commission's Rules, IS Amended as set forth in the Appendix.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; 47 U.S.C. 154, 303, 307)

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

### Appendix

Part 2 of Chapter I of Title 47 of Code of Federal Regulations is amended as follows:

In § 2.106, Footnote US 111 is revised to read as follows:

**§ 2.106 [Amended]**

* * * * *

US 111 In the band 1990-2120 MHz, Government space research earth stations may be authorized to use specific frequencies at specific locations for earth-to-space transmissions. Such authorizations shall be secondary to non-Government use of this band and subject to such other conditions as may be applied on a case-by-case basis.

[FR Doc. 80-36942 Filed 11-25-80; 8:45 am]
BILLING CODE 6712-01-M

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## 47 CFR Part 73

[BC Docket No. 80-73; RM-3263]

## FM Broadcast Stations in Central City, Nebr., and Yankton, S. Dak.; Changes Made in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action taken herein assigns a Class C FM channel to Central City, Nebraska, and substitutes one Class C channel for another at Yankton, South Dakota, in response to a petition filed by Nebraska Rural Radio Association. The station could render significant first and second service to the rural areas in addition to providing Central City with its first fulltime local aural broadcast service.

**EFFECTIVE:** Date: December 26, 1980.

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

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

**SUPPLEMENTARY INFORMATION:**

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations. (Central City, Nebr., and Yankton, S. Dak.), BC Docket No. 80-73, RM-3263.

### Report and Order—Proceeding Terminated

Adopted: November 10, 1980.

Released: November 24, 1980.

1. The Commission has under consideration a *Notice of Proposed Rule Making,* 45 FR 13147, published February 28, 1980, proposing the reassignment of Channel 262 from Yankton, South Dakota, to Central City, Nebraska, and the substitution of Class C FM Channel 226 for Channel 262 at Yankton, in response to a petition filed by Nebraska Rural Radio Association ("petitioner"), licensee of Stations KRVN(AM) and KRVN-FM, Lexington, Nebraska. Petitioner submitted supporting comments reaffirming its intent to apply for the channel, if assigned. Sorenson Broadcasting Corp.,

permittee for a new station on Channel 262 at Yankton, filed comments.

2. Central City (pop. 2,803),[1] seat of Merrick County (pop. 8,751), is located in the east central portion of Nebraska, approximately 168 kilometers (105 miles) west of Omaha. It has no local aural broadcast service.

3. Petitioner asserts that Central City, the county's largest community, showed a population increase of 16.5% from 1960 to 1970, with a projection of continuing growth. It further states that the proposed station would bring first FM service to 8,330 persons, a second FM service to 10,890 persons, a first nighttime aural service to 1,570 persons, and a second nighttime aural service to 7,040 persons.

4. Sorenson Broadcasting Corp. has raised no objection to the proposal provided its permit for Channel 262 is modified to specify Channel 226.

5. We have given careful consideration to the proposal and believe that Channel 262 should be assigned to Central City, and Channel 226 substituted for Channel 262 at Yankton. The Yankton site is restricted 16 kilometers (10 miles) to the south. Although a community the size of Central City is not normally assigned a Class C channel, the proposed assignment would provide substantial first and second service. As stated in the *Notice*, Stanton, Nebraska would be precluded as a result of the assignment of Channel 226 to Yankton. However, since there has been no interest in a station at Stanton, and it receives service from two stations in Norfolk, Nebraska, we believe that that fact should not foreclose a needed first local service to Central City.

6. Accordingly, pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules, it is ordered, that effective December 26, 1980, the FM Table of Assignments (§ 73.202(b) of the Commission's Rules) is amended with respect to the communities listed below:

| City | Channel No. |
|---|---|
| Central City, Nebr. | 262 |
| Yankton, S. Dak. | 226,281 |

7. It is further ordered, that effective December 26, 1980, pursuant to Section 316(a) of the Communications Act of 1934, as amended, the outstanding permit held by Sorensen Broadcasting Corp. for Channel 262, Yankton, South Dakota, is modified to specify operation on Channel 226 subject to the following:

(a) The permittee shall inform the Commission in writing by no later than December 26, 1980, of its acceptance of this modification;

(b) At least 30 days before operation on Channel 226, the permittee shall submit to the Commission the technical information normally required of an applicant for a construction permit on Channel 226;

(c) At least 10 days prior to commencing operation on Channel 226, the permittee shall submit the measurement data required of an applicant for an FM broadcast station license; and

(d) The permittee shall not commence operation on Channel 226 without prior Commission authorization.

8. It is further ordered, that this proceeding is terminated.

9. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083 (47 U.S.C. 154, 303, 307))

Federal Communications Commission.

**Henry L. Baumann,**

*Chief, Policy and Rules Division, Broadcast Bureau.*

[FR Doc. 80-36887 Filed 11-25-80; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures are taken from the 1970 U.S. Census.

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**47 CFR Part 73**

**[BC Docket No. 80-147; RM-3424]**

## FM Broadcast Station in Manchester, Vt.; Changes Made in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action taken herein assigns FM Channel 274 to Manchester, Vermont, in response to a petition filed by Northshire Communications, Inc. The station would provide a first local aural broadcast service to Manchester and a first and second FM service to the surrounding area.

**EFFECTIVE DATE:** December 26, 1980.

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

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

**SUPPLEMENTARY INFORMATION:** In the matter of amendment of § 73.202(b) *Table of Assignments*, FM Broadcast Stations (Manchester, Vermont), BC Docket No. 80-147, RM-3424.

### Report and Order—Proceeding Terminated

Adopted: November 10, 1980.

Released: November 20, 1980.

1. On April 7, 1980, the Commission adopted a *Notice of Proposed Rule Making*, 45 FR 28774, published April 30, 1980, in response to a petition filed by Northshire Communications, Inc. ("petitioner"), which proposed the assignment of FM Class B Channel 274 to Manchester, Vermont, as that community's first FM assignment. Supporting comments were filed by North County Communications, Inc., in which it stated its intent to apply for the channel, if assigned.

2. Manchester (pop. 2,919)[1] in Bennington County (pop. 29,282), is located approximately 149 kilometers (93 miles) south of Burlington, Vermont. It has no local aural broadcast service.

3. As stated in the *Notice*, a wide area coverage Class B facility would permit expanded FM service to unserved areas by providing a first FM service to 9,235 persons, a second FM service to 50,448 persons and a second nighttime aural service to 9,235 persons.

4. Although a community of this size is not normally assigned a Class B channel, the proposed assignment would provide significant first and second services to a substantial population. Therefore, we believe it would be in the public interest to assign Channel 274 to Manchester, Vermont, as its first FM channel assignment. Although petitioner has not replied to our *Notice*, we do have an expression of interest in the channel from another party.

5. This assignment has been agreed to by Canada as a specially negotiated short-spaced allocation.

6. Accordingly, pursuant to authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the

[1] Population figures are taken from the 1970 U.S. Census.

Commission's rules, it is ordered, that effective December 26, 1980, the FM Table of Assignments (§ 73.202(b) of the Commission's rules) is amended with regard to the community listed below:

| City | Channel No. |
|---|---|
| Manchester, Vt | 274 |

7. It is further ordered, that this proceeding is terminated.

8. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083 (47 U.S.C. 154, 303, 307))

Federal Communications Commission.

**Henry L. Baumann,**

*Chief, Policy and Rules Division, Broadcast Bureau.*

[FR Doc. 80-36868 Filed 11-25-80; 8:45 am]

BILLING CODE 6712-01-M

# Proposed Rules

Federal Register
Vol. 45, No. 230
Wednesday, November 26, 1980

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 95

### Wool, Hair, and Bristles; Import Restrictions

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document would amend certain restrictions applicable to the importation of wool, hair, or bristles taken both from live animals and animals at the time of slaughter. The amendment would permit the unrestricted importation of hair and Bristles removed from live animals when such products are free fom animal manure; it would restrict the importation of wool taken from live animals to wool taken from the upper part of the body of such live animals, and it would permit the importation of wool, hair, and bristles taken from animals that have been slaughtered when such wool, hair and bristles are free from animal manure. This action would be necessary to clarify the regulations and achieve uniform interpretation of the requirements for the entry of such products into the United States. The intended effect of this action would be to revise and clarify the regulations by deleting terms and provisions which are confusing.

**DATE:** Comments on or before January 26, 1981.

**ADDRESS:** Written comments to Deputy Administrator, USDA, Aphis, VS, Room 815, Federal Building, 6505, Belcrest Road, Hyattsville, MD 20782.

**FOR FURTHER INFORMATION CONTACT:** Dr. J. C. Davidson, USDA, APHIS, VS, Federal Building, Room 824, 6505 Belcrest Road, Hyattsville, MD 20782. (301) 436–8379. A Draft Impact analysis describing the options considered in developing this proposed rule and the impact of implementing each option is available on request from Program Services Staff, VS, APHIS, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8695.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that, pursuant to section 2 of the Act of February 2, 1903, as amended; and sections 2, 3, 4, and 11 of the Act of July 2, 1962 (21 US.C. 111, 134a, 134b, 134c, and 134f), the Animal and Plant Health Inspection Service is considering amending Part 95, Title 9, Code of Federal Regulations. This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "not significant".

The regulations presently in 9 CFR 95.7(b) provide that wool or hair clipped from live animals or pulled wool or hair may be imported without restrictions provided the said wool or hair is reasonably free from animal manure in the form of dung locks or otherwise. Use of the term "reasonably" has caused confusion and lact of uniformity in interpretation of the requirement. To clairfy the intent of the regulation and to eliminate questions as to what constitutes "reasonably," the term "reasonably" would be deleted. Further, to simplify the regulation the terms "clipped" and "pulled" would be changed to "taken," and the phrase "in the form of dung locks or otherwise" would be deleted. Also, the term "bristles" would be added to clarify that hair includes bristles, and the body area from which wool could be taken for unrestricted entry would be specified.

Additionally, section 95.7(b) would be separated into two parts (b) (1) and (2), to reflect the difference in the restrictions on the importation of wool from live animals as opposed to the restrictions on the importation of hair and bristles from live animals. The amendment proposes to modify the regulation so that wool which is clipped from the area of the animal to which manure mormally adheres, i.e., the belly or underparts, may not be imported into the United States without further restriction. It is proposed not to allow wool from the lower part of the body of the live animals to be imported because the wool being nautrally greasy, becomes contaminated with manure when the live animals lie on the ground. It is proposed to require that a certificate be issued by a National Government official having jurisdiction over the health of animals in the country of origin to certify that the wool was only taken from the upper part of the body of the animals. Such certified wool would be subject to inspection at the port of entry to verify compliance with this restriction. Wool found to contain manure would be subject to the handling and treatment provisions of § 95.8 (9 CFR 95.8).

The current entry procedcure on what is called "greasy" ("unscoured") wool from countries declared affected by foot-and-mouth disease or rinderpest is to perform a visual inspection. Any wool which is "reasonably free" of animal manure is allowed to enter. Enforcement problems arise for two reasons: the individual inspector in each case must determine what constitutes a "reasonably free" level, and often the shipments are packaged in such a way that discovery of manure in the wool is quite difficult. Consequently, shipments contaminated by large amounts of manure have been inadvertently permitted entry and appear to constitute an unacceptable risk of introduction of foot-and-mouth disease into the United States. The regulations in 9 CFR 95.7(c) that provide for the importation of wool, hair, or bristles taken from sheep, goats, cattle, or swine when such animals were slaughtered in a specified abattoir and were free from anthrax, foot-and-mouth disease, and rinderpest at the time of slaughter and that a certificate accompany such products certifying that the specified requirements were met would be amended to provide that unrestricted entry would be permitted only if such products are free from animal manure.

The proposed action, restricting imports of wool from upper portions of the body of live animals to which manure does not normally adhere, and to require other wool, hair, and bristles to be free of animal manure would reduce the risk of disease transmission while providing minimum inteference with international trade.

Accordingly, Part 95 Title 9, Code of Federal Regulations, would be amended in the following respects:

1. In § 95.7, paragraph (b), would be revised to read:

**§ 95.7 Wool, hair, and bristles; requirements for unrestricted entry.**

* * * * *

(b)(1) Hair or bristles taken from live animals may be imported if free from animal manure.

(2) Wool taken from live animals may only be imported when accompanied by an offical certificate issued by a National Government official having jurisdiction over the health of aimals in the country of origin in which the wool originated. The certificate shall show that the wool was only taken from the upper part of the body of the animal (wool known in the trade as "full skirted" or "farm skirted"). Notwithstanding such certifcation, inspection shall be made at the port of entry of all wool imported under the provisions of this Part.

2. Section 95.7(c) would be amended to add the phrase "when such wool, hair or bristles are free from animal manure," in lieu of the phrase "without further restriction" in the 16th line of the section.

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 824, Hyattsville, Maryland, during regular hours of business (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue of the **Federal Register.**

Done at Washington, D.C., this 20th day of November 1980.

Norvan L. Meyer,

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 80-36861 Filed 11-25-80; 8:45 am]

BILLING CODE 3410-34-M

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Ch. I

### Petitions for Rulemaking; Issuance of Quarterly Report

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Issuance of quarterly report.

**SUMMARY:** The Nuclear Regulatory Commission has issued the September 30, 1980, Quarterly Report on Petitions for Rulemaking. This report is issued in accordance with 10 CFR 2.802 and is a quarterly summary of petitions for rulemaking that are pending final action.

**ADDRESSES:** A copy of this report, designated NRC Petitions for Rulemaking—September 30, 1980, is available for inspection and copying at the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

Requests for single copies of this report, or a request to be placed on an automatic distribution list for single copies of future reports, should be made in writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** John Philips, Chief, Rules and Procedures Branch, Office of Administration, Telephone 301-492-7086.

Dated at Bethesda, Md., this 19th day of November, 1980.

For the Nuclear Regulatory Commission.

J. M. Felton,

*Director, Division of Rules and Records, Office of Administration.*

[FR Doc. 80-36749 Filed 11-25-80; 8:45 am]

BILLING CODE 7590-01-M

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### 10 CFR Part 31

### NRC's Jurisdiction Over Persons Using Byproduct, Source and Special Nuclear Material in Offshore Waters Beyond Agreement States' Territorial Waters; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule; Correction.

**SUMMARY:** In a Federal Register document published on October 30, 1980 (45 FR 71807), the NRC proposed to amend § 31.6 General license to install devices generally licensed in § 31.5. The word "general" was inadvertently used in the first line of proposed text when the word "specific" was intended. This document corrects this error and republishes the proposed text of § 31.6 as it should appear.

**FOR FURTHER INFORMATION CONTACT:** John D. Philips, Chief, Rules and Records, Office of Administration, Nuclear Regulatory Commission, Washington, DC 20555, (301) 492-7086.

**SUPPLEMENTARY INFORMATION:** The proposed revision of the introductory text of § 31.6 appearing at 45 FR 71809 (October 30, 1980) as corrected, reads as follows:

**§ 31.6 General license to install devices generally licensed in § 31.5.**

Any person who holds a specific license issued by an Agreement State authorizing the holder to manufacture, install, or servie a device described in § 31.5 within such Agreement State is hereby granted a general license to install and service such device in any non-Agreement State or in offshore waters beyond Agreement States' territorial waters and within the area of the U.S. Outer Continental Shelf; Provided, that:

* * * * *

Dated at Washington, D.C., this 20th day of November, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

*Secretary of the Commission.*

[FR Doc. 80-36882 Filed 11-25-80; 8:45 am]

BILLING CODE 7590-01-M

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## DEPARTMENT OF ENERGY

### Office of Conservation and Solar Energy

### 10 CFR Part 457

[Docket No. CAS-RM-80-120]

### Energy Auditor Training and Certification Grants; Extension of Comment Period for Proposed Rule

**AGENCY:** Department of Energy.

**ACTION:** Extension of comment period of proposed rule.

**DATES:** In response to requests for additional time for review, DOE has extended the comment period to December 8, 1980, 4:30 p.m. e.s.t.

**SUMMARY:** On October 8, 1980, the Department of Energy published a proposed rulemaking in the **Federal Register.** The rulemaking (45 FR 66970) related to implementing the Energy Auditor Training and Certification Program pursuant to subtitle F of Title V of the Energy Security Act (Pub. L. 96-294). This rulemaking provided for a comment period to end November 24, 1980.

**FOR FURTHER INFORMATION CONTACT:** James R. Tanck, Acting Director, Building Conservation Services Division, Department of Energy, 1000 Independence Avenue S.W., Room GH-068, Washington, D.C. 20585 (202) 252-9161

Issued in Washington, D.C., November 21, 1980.

Frank DeGeorge,

*Principol Deputy Assistant Secretary, Conservotion and Solor Energy.*

[FR Doc. 80-36958 Filed 11-24-80; 11:10 am]

BILLING CODE 6450-01-M

**10 CFR Part 474**

**[Docket No. CAS-RN-80-202]**

## Electric and Hybrid Vehicle Research, Development, and Demonstration Program; Equivalent Petroleum-Based Fuel Economy Calculation; Cancellation of Public Hearing

**AGENCY:** Department of Energy.

**ACTION:** Notice of Proposed Rulemaking for Electric and Hybrid Vehicle Research, Development, and Demonstration Program; cancellation of public hearing.

**SUMMARY:** The Department of Energy hereby cancels the public hearing on the Equivalent Petroleum-Based Fuel Economy Calculation for the Electric and Hybrid Vehicle Research, Development, and Demonstration Program scheduled for Tuesday, November 25, 1980, in Washington, D.C. The public hearing is cancelled due to lack of public interest in making oral presentations at the hearing.

**DATES:** As stated in the notice of proposed rulemaking issued on October 30, 1980 (FR 73684, November 6, 1980), written comments on the Equivalent Petroleum-Based Fuel Economy Calculation must be received by the Department by close of business, January 5, 1981.

**FOR FURTHER INFORMATION CONTACT:** Robert S. Kirk, Electric and Hybrid Vehicles Division, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-8032

Issued in Washington, D.C., November 21, 1980.

**Frank DeGeorge,**

*Principal Deputy Assistant Secretary Conservation and Solar Energy.*

[FR Doc. 80-36952 Filed 11-24-80; 11:02 am]

BILLING CODE 6450-01-M

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**Federal Energy Regulatory Commission**

**18 CFR Part 271**

**[Docket No. RM79-76 (Colorado-7)]**

## High-Cost Gas Produced From Tight Formations; Ceiling Prices

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the State of Colorado Oil and Gas Conservation Commission that the Dakota Formation be designated as a tight formation under § 271.703(d).

**DATE:** Comments on the proposed rule are due on December 19, 1980.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on December 4, 1980.

**ADDRESS:** Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Leslie Lawner, (202) 357.8299 or Victor Zabel, (202) 357-8559.

Issued November 19, 1980.

### I. Background

On November 10, 1980, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980), that the Dakota Formation located in La Plata County, Colorado be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Dakota Formation be designated a tight formation should be adopted. The United States Geological Survey concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

### II. Description of Recommendation

The recommended formation lies entirely within La Plata County, Colorado and underlies an area located on the north flank of the San Juan Basin and east of the city of Durango, Colorado. It is bounded on the south by the Southern Ute Indian Reservation boundary line and bounded on the north by the outcrop pattern of the Dakota and Mesaverde Formations. The recommended area contains approximately 118,238 acres, of which 27 percent is Federal, 5 percent State and 68 percent fee. The vertical limit to the top of the Dakota Formation ranges from 7500 to 8000 feet and averages 7600 feet. The vertical limit of the base of the Dakota Formation is defined by the top of the Morrison Formation. The Dakota Formation ranges from approximately 210 to 230 feet in thickness.

### III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG-10, convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilizied production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that Rule 317 of the Colorado Oil and Gas Conservation Commission's Rules and Regulations assures that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Dakota Formation, as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

### IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before December 19, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76 (Colorado-7), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to

whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than December 4, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3342)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

Kenneth A. Williams,

*Director, Office of Pipeline and Producer Regulation.*

Section 271.703(d) is amended by adding a new subparagraph (20) to read as follows:

**§ 271.703 Tight formations.**

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79.76, as subindexed below, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

* * * * *

(2) through (19) [Reserved]

(20) *Dakata Formation in Calorado*

(i) *Delineatian af farmation.* The Dakota Formation is found in La Plata County, Colorado. RM79-76 (Colorado-7)

(ii) *Depth.* The Dakota Formation is defined as that formation, the depth to the top of which ranges from 7500 to 8000 feet, and the bottom of which is defined by the top of the Morrison Formation.

[FR Doc. 80-36857 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

**18 CFR Part 271**

**[Docket No. RM 79-76 (Colorado-8)]**

## High-Cost Gas Produced From Tight Formations; Ceiling Prices

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Colorado Oil and Gas Conservation Commission that the Sanastee Formation and the Dakota Formation each be designated as a tight formation under § 271.703(d).

**DATE:** Comments on the proposed rule are due on December 19, 1980.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on December 4, 1980.

**ADDRESS:** Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Leslie Lawner, (202) 357-8299 or Victor Zabel, (202) 357-8559.

Issued: November 19, 1980.

### I. Background

On November 10, 1980, the Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980), that the Sanastee and Dakota Formations located in La Plata and Archuleta Counties, Colorado each be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that these formations be designated tight formations should be adopted. The United States Geological Survey concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

### II. Description of Recommendation

The recommended formations lie within La Plata and Archuleta Counties, Colorado in an area which is located on the north flank of the San Juan Basin, southeast of the City of Durango, Colorado, and south of the Southern Ute Indian Reservation boundary line. The recommended area is approximately 62,867 acres, of which 27 percent is Federal, 16 percent Indian, 2 percent state and 55 percent fee. The Sanastee Formation is found at intervals of 7550 to 7700 feet and is approximately 105 to 120 feet thick. The Dakota Formation is found at a depth of approximately 7600 feet and is approximately 210 to 230 feet thick.

### III. Discussion of Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing in Cause No. NG-11 convened by Colorado on this matter demonstrates, for each formation, that:

(1) The average *in situ*, gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stablilized production rate, against atmospheric pressure, of wells completed for production from the recommended formations, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formations is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that typical casing design of wells drilled in the area protects fresh water aquifers in the area, as required by the rules and regulations of the Colorado Oil and Gas Conservation Commission.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado, that the Sanastee Formation and Dakota Formation, as described and delineated in Colorado's recommendation as filed with the Commission, each be designated as a tight formation pursuant to § 271.703.

**IV. Public Comment Procedures**

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before December 19, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76 (Colorado-8) and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concernig the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than December 4, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301-3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

**Kenneth A. Williams,**
*Director, Office of Pipeline and Producer Regulation.*

Section 271.703(d) is amended by adding new subparagraphs (21) and (22) to read as follows:

**§ 271.703 Tight formations.**

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79-76, as subindexed below, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

* * * * *

(2) through (20) [Reserved].

(21) *Sanastee Formation in Colorado*

(i) *Delineation of formation.* The Sanastee Formation is found in La Plata and Archuleta Counties, Colorado. It is located southeast of the City of Durango, Colorado, and is bounded on the north by the southern boundary of the Southern Ute Indian Reservation. RM79-76 (Colorado-8)

(ii) *Depth.* The Sanastee Formation is defined as that formation occurring within the Mancos shale at intervals from approximately 7500 to 7700 feet.

(22) *Dakota Formation in Colorado*

(i) *Delineation of formation.* The Dakota Formation is found in La Plata and Archuleta Counties, Colorado. It is located southeast of the City of Durango, Colorado, and is bounded on the north by the southern boundary of the Southern Ute Indian reservation. RM79-76 (Colorado-8)

(ii) *Depth.* The Dakota Formation is defined as that formation the depth to the top of which averages approximately 7600 feet and the base of which is defined by the top of the Morrison Formation.

[FR Doc. 80-36858 Filed 11-25-80; 8:45 am]
BILLING CODE 6450-85-M

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**18 CFR Part 271**

**[Docket No. RM79-76 (Colorado-9)]**

## High-Cost Gas Produced From Tight Fountains; Ceiling Prices

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Colorado Oil and Gas Conservation Commission that the Corcoran Formation and the Cozzette Formation each be designated as a tight formation under § 271.703(d).

**DATE:** Comments on the proposed rule are due on December 22, 1980.

Public Hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on December 5, 1980.

**ADDRESS:** Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street NE., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Leslie Lawner, (202) 357-8299 or Victor Zabel, (202) 357-8559.

Issued November 20, 1980.

**I. Background**

On November 10, 1980, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980), that the Corcoran and Cozzette Formations located in Mesa and Garfield Counties, Colorado be designated as tight formations. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Corcoran and Cozzette Formations be designated as tight formations should be adopted. The United States Geological Survey concurs with Colorado's recommendation. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

**II. Description of Recommendation**

The recommended formations lie within Mesa and Garfield Counties, Colorado in an area which is located on the southwest flank of the Piceance Basin, northeast of the city of Grand Junction, Colorado. The area, known locally as the Wagon Track Tight Gas Sand area, includes part of the Shire Gulch Field and all of Horseshoe Canyon, Winter Flats and Hancock Gulch Units. The recommended area is approximately 150,176 acres, of which 93 percent is Federal, and 7 percent is fee. The average depth to the producing interval of the Cozzette Formation is 2,478 feet. The Cozzette Formation is approximately 175 feet thick. The Corcoran Formation is found at a depth of approximately 2,673 feet and is approximately 150 feet thick. The Corcoran and Cozzette Formations consist of one or more sandstone benches and have been identified as members of the Mount Garfield Formation of the Mesaverde Group.

**III. Discussion of Recommendation**

Colorado claims in its submission that evidence gathered through information

and testimony presented at a public hearing in Cause No. NG–12, convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Colorado further asserts that typical casing design of wells drilled in the area protects fresh water aquifers in the area, as required by the rules and regulations of the Colorado Oil and Gas Conservation Commission.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Corcoran Formation and the Cozzette Formation as described and delineated in Colorado's recommendation as filed with the Commission, be designated as tight formations pursuant to § 271.703.

### IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before December 22, 1980. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79–76 (Colorado–9), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than December 5, 1980.

(Natural Gas Policy Act of 1978, 15 U.S.C. §§ 3301–3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

**Kenneth A. Williams,**
*Director, Office of Pipeline and Producer Regulation.*

Section 271.703(d) is amended by adding new subparagraphs (23) and (24) to read as follows:

**§ 271.703 Tight formations.**

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, as subindexed below, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

* * * * *

(5) through (22) [Reserved].

(23) *Cozzette Formation in Colorado*

(i) *Delineation of formation.* The Cozzette Formation is found in Mesa and Garfield Counties, Colorado. It is located northeast of the city of Grand Junction, Colorado, and occupies an area known locally as the Wagon Track Tight Gas Sand area. RM79–76 (Colorado—9)

(ii) *Depth.* The Cozzette Formation is defined as that formation occurring within the Mount Garfield Formation of the Mesaverde Group and which is found at an average measured depth of 2,478 feet.

(24) *Corcoran Formation in Colorado*

(i) *Delineation of formation.* The Corcoran Formation is found in Mesa and Garfield Counties, Colorado. It is located northeast of the city of Grand Junction, Colorado, and occupies an area locally known as the Wagon Track Tight Gas Sand area. RM79–76 (Colorado—9).

(ii) *Depth.* The Corcoran Formation is defined as that formation occurring within the Mount Garfield Formation of the Mesaverde Group and which is found at an average depth of 2,673 feet.

[FR Doc. 80–36859 Filed 11–25–80; 8:45 am]
BILLING CODE 6450–85–M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 148

### Personal Declarations and Exemptions

*Correction*

In FR Doc. 80–33213 appearing on page 70476 in the issue for Friday, October 24, 1980, make the following correction:

On page 70477, in the first column, under "Date", the comments closing period was incorrectly given as "November 23, 1980". It should be given as "December 23, 1980".

BILLING CODE 1505–01–M

## RAILROAD RETIREMENT BOARD

### 20 CFR Parts 208, 210, 216, 217, 219, 221, 230, 232, 237, and 238

### Annuities Under the Railroad Retirement Act

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rules.

**SUMMARY:** The Railroad Retirement Board proposes to amend several parts of its regulations concerning annuities under the Railroad Retirement Act. Amendment of the regulations is a part of an on-going project of the Railroad Retirement Board to review, revise and reorganize its regulations. The amendments have been written in plain English in accordance with EO 12044, as amended and should be more usable and understandable.

**DATES:** Comments must be submitted on or before January 12, 1981.

**ADDRESS:** Comments should be sent in duplicate to R. F. Butler, Secretary, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, where they will be made available for public inspection during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Berg or Eloise Sandle, Bureau of Retirement Claims, Railroad Retirement Board, Room 943, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4818 (FTS 387–4818).

**SUPPLEMENTARY INFORMATION:** In accordance with the Board's report under E.O. 12044, as amended, the Board's Chief Executive Officer

reviewed the proposals to revise and develop regulations on annuity eligibility, applications, evidence, and jurisdiction, and determined that the regulations would not constitute significant regulations under the criteria established in the Board's report. However, in the spirit of E.O. 12044, as amended, the Board has determined to issue the regulations first as proposed rules and allow the public a 60-day period to comment on the proposed rules.

The Board proposes to amend the following regulations:

(1) Regulations on eligibility for annuities to be designated as Part 216;

(2) Regulations on applications for benefits to be designated as Part 217;

(3) Regulations on evidence required for payment of benefits to be designated as Part 219; and

(4) Regulations on determinations of Railroad Retirement Board jurisdiction to pay benefits to be designated as Part 221.

The proposed new Part 216 contains the basic eligibility requirements for the various types of annuities provided under the Railroad Retirement Act of 1974. The proposed amendment to the annuity eligibility regulations is necessary to update the regulations to the requirements imposed under the Railroad Retirement Act of 1974. The current regulations were issued under the Railroad Retirement Act of 1937 and are, in certain respects, obsolete. In addition, the proposed Part 216 has been written in plain English in accordance with E.O. 12044, as amended, and the eligibility requirements for the various types of annuities, which under current regulations are spread over several parts, have been consolidated under a single part to make these regulations more usable and understandable.

The proposed Part 217 sets forth and explains the requirements for the filing of applications for benefits under the Railroad Retirement Act of 1974. Substantial changes to the current regulations were made in 217.9(b), to provide that a disability application will not be denied if the claimant becomes disabled before a final decision is made; in § 217.16, to provide for the use of the date an application was mailed as the filing date, if it will prevent the loss of benefits; and in §§ 217.20 and 217.21, to allow a filing date to be established based on a written or verbal statement. In addition, the new part explains when, how, and where to file an application, details how and when an application may be cancelled, and sets forth the reasons why applications may be denied. The proposed amendment to the annuity application regulations is necessary to update the regulations to the requirements imposed under the Railroad Retirement Act of 1974. The current regulations were issued under the Railroad Retirement Act of 1937 and are, in certain respects, obsolete. In addition, the proposed Part 217 has been written in plain English in accordance with E.O. 12044, as amended, and the application requirements, which under current regulations are spread over several parts, have been consolidated under a single part to make these regulations more usable and understandable.

The proposed Part 219, Evidence Required for Payment, which would replace the current Part 239, Proofs Required in Support of Claims for Benefits, describes the amount and type of evidence required by the Board for the payment of the different benefits provided under the Railroad Retirement Act of 1974. The proposed amendment to the evidence regulations is necessary to update the regulations to the requirements imposed under the Railroad Retirement Act of 1974. The current regulations were issued under the Railroad Retirement Act of 1937 and are, in certain respects, obsolete. In addition, the proposed Part 219 has been written in plain English in accordance with E.O. 12044, as amended, and should be more usable and understandable.

The proposed Part 221, Jurisdiction Determination, is totally new. There is no similar part under current regulations. The proposed part explains the factors involved in deciding whether the Railroad Retirement Board or the Social Security Administration will pay benefits to a railroad employee, and the employee's family, both before and after death. The proposed Part 221 is necessary to administer the Railroad Retirement Act of 1974 and explains in a simple, straightforward manner how determinations on Railroad Retirement Board jurisdiction are made.

Amendment of the above-described regulations is a part of an ongoing project of the Railroad Retirement Board to review, revise and reorganize its regulations. As a result, the proposed new parts were written to be an integral part of the revised and reorganized regulations and may, in certain cases, refer to parts or sections of regulations which are not currently in effect. A substantial part of this regulation project should be completed in calendar year 1981, and therefore, the problems presented by publishing revised parts as they are completed should be largely alleviated by the end of 1981. The Board believes that the minor inconveniences that may arise as a result of publishing the regulations on a part-by-part basis are outweighed by the benefits derived from publishing current, more easily usable and understandable regulations.

Title 20, Chapter II, is amended as follows:

## PART 208—DISABILITY

### §§ 208.1, 208.2, § 208.5, and 208.7 [Removed]

1. Part 208 is amended by (a) revising the title of this part from "Eligibility for An Annuity" to "Disability," and (b) removing §§ 208.1, 208.2, 208.5, and 208.7.

## PART 210—[Removed]

2. Part 210 is removed.

3. The current Part 216 is revised to read as follows:

## PART 216—ELIGIBILITY FOR AN ANNUITY


### Subpart A—General

Sec.
216.1 Introduction.
216.2 Definitions.
216.3 Other regulations related to this part.

### Subpart B—Employee Annuity

216.5 Who is eligible for an age annuity.
216.6 Who is eligible for a disability annuity.
216.7 What is required for payment.
216.8 What work may affect eligibility.
216.9 Giving up the right to return to work.

### Subpart C—Supplemental Annuity

216.11 Introduction.
216.12 Who is entitled to a supplemental annuity.
216.13 Supplemental annuity closing date.
216.14 Relationship between supplemental annuity and other benefits.
216.15 What is a private pension.

### Subpart D—Spouse Annuity

216.20 Who is eligible for a spouse annuity.
216.21 What is required for payment.
216.22 Who is the employee's wife or husband.
216.23 When a spouse is living with an employee.
216.24 Contributing to support, defined.
216.25 One-half support, defined.

### Subpart E—Surviving Spouse Annuity

216.30 Who is eligible for a surviving spouse annuity.
216.31 What is required for payment.
216.32 Who is the employee's surviving spouse.
216.33 Marriage defined.
216.34 Relationship as wife, husband, widow or widower under state law.
216.35 Deemed marriage.
216.36 "Child in care" when child is living with wife or surviving spouse.
216.37 "Child in care" when child is not living with wife or surviving spouse.
216.38 Disability period for surviving spouse.

**Subpart F—Child's Annuity**

Sec.
216.45 General.
216.46 Who is eligible for a child's annuity.
216.47 What is required for payment of a child's annuity.
216.48 Who may be reentitled to a child's annuity.
216.49 Child defined.
216.50 Relationship as a child under State law.
216.51 Who is the employee's natural child.
216.52 Who is the employee's legally adopted child.
216.53 Who is the employee's stepchild.
216.54 Who is the employee's grandchild or stepgrandchild.
216.55 Who is the employee's equitably adopted child.
216.56 When a child must be dependent.
216.57 When a natural child is dependent.
216.58 When a legally adopted child is dependent.
216.59 When a stepchild is dependent.
216.60 When a grandchild or stepgrandchild is dependent.
216.61 When a equitably adopted child is dependent.
216.62 When a child is living with an employee.
216.63 When a child is a full-time student.
216.64 When a child is a full-time student during a period of non-attendance.

**Subpart G—Parent's Annuity**

216.70 Who is eligible for a parent's annuity.
216.71 What is required for payment.
216.72 Who is the employee's parent.

**Subpart H—Dual Benefit Windfall**

216.80 Introduction.
216.81 Types of windfall benefits.
216.82 When an employee's annuity can be increased for a windfall benefit.
216.83 When a spouse annuity can be increased for a windfull benefit.
216.84 When a surviving spouse annuity can be increased for a windfall benefit.
216.85 Dependency requirement for a windfall benefit as a widower.
216.86 What is needed to be permanently insured under the Social Security Act.

**Subpart I—Eligibility for More Than One Annuity**

216.90 Employee and spouse or survivor annuity.
216.91 Spouse and survivor annuity.
216.92 Two survivor annuities.

**Subpart J—Current Connection With the Railroad Industry**

216.95 General.
216.96 When required.
216.97 Regular current connection test.
216.98 Special current connection test.
216.99 What is regular non-railroad employemnt.
216.100 What amount of regular non-railroad employment will break a current connection.
216.101 Regular non-railroad employment that will not break a current connection.

Authority: Sec. 2, Pub. L. 93–445, 88 Stat. 1312–1319 (45 U.S.C. 231a), unless otherwise noted. Subpart J also issued under sec. 1, Pub. L. 93–445, 88 Stat. 1311 (45 U.S.C. 231). Sec. 7, Pub. L. 93–445, 88 Stat. 1339 (45 U.S.C. 231f).

## Subpart A—General

### § 216.1 Introduction.

This part explains when a person is eligible for a monthly annuity under the Railroad Retirement Act.

(a) *Regular annuity.* A regular monthly annuity is provided for—

(1) An employee who retires because of age or disability;

(2) An employee's wife or husband (spouse); and

(3) The widow, widower, child, or parent of an employee who died.

(b) *Supplemental annuity.* A supplemental annuity is provided for an employee who is entitled to an age or disability annuity.

### § 216.2 Definitions.

As used in this part—

"Apply" means to sign a form or statement that the Railroad Retirement Board accepts as an application for an annuity under the rules set out in Part 217.

"Current Connection" means that the employee was working in or was considered to be working in the railroad industry when he or she became entitled to an annuity or died. An employee has a current connection if he or she meets the conditions described in Subpart J of this part.

"Eligible" means that a person would meet all the requirements for payment of an annuity for a period of time but has not yet applied.

"Entitled" means that a person has applied and has proven his or her right to have the annuity begin.

### § 216.3 Other regulations related to this part.

This part is related to several other parts. Part 217 tells how to apply for an annuity. Part 218 sets the beginning and ending dates of an annuity. Part 219 sets out what evidence is necessary to prove eligibility. Parts 225–228 describe the computation of an annuity. Part 229 tells when and how an employee and spouse annuity can be increased under the social security overall minumum provision.

## Subpart B—Employee Annuity

### § 216.5 Who is eligible for an age annuity.

(a) *General.* An employee is eligible for an age annuity if he or she stops all work for pay as described in § 216.8, and is—

(1) Age 65 or older and has completed 10 years of service; or

(2) Age 60 or older and under 65 and has completed 30 years of service; or

(3) Age 62 or older and under 65 and has completed 10 years but less than 30 years of service. This type of annuity is reduced for each month the employee is entitled before he or she becomes 65 years old. The reduction is described in Part 226 of this chapter.

(b) *Change from employee disability to age annuity.* A disability annuity that is paid through the end of the month before the employee becomes 65 years old automatically becomes an age annuity beginning with the month he or she is 65 year old. However, the age annuity cannot be paid until the employee gives up the right to return to work as described in § 216.7.

### § 216.6 Who is eligible for a disability annuity.

The Railroad Retirement Act provides two types of disability annuities. One type is where the employee's disability prevents work in his or her regular railroad occupation. The other type is where the employee's disability prevents work in any regular employment.

(a) *Disabled for work in regular occupation.* An employee is eligible for a disability annuity if he or she is disabled for work in his or her regular occupation, as defined in Part 220 of this chapter, is under age 65, stops all work for pay, has a current connection with the railroad industry, and either—

(1) Has completed 20 years of service; or

(2) Has completed 10 years of service and is 60 years old or older.

(b) *Disabled for work in any regular employment.* An employee is eligible for a disability annuity if he or she is disabled for work in any regular employment, as defined in Part 220 of this chapter, is under 65, stops all work for pay, and has completed 10 years of service.

### § 216.7 What is required for payment.

The following conditions are necessary for payment of an employee annuity:

(a) An eligible employee must apply to be entitled to an annuity.

(b) If the employee applies for an age annuity, he or she must give up the right to return to work before any annuity to which he or she is entitled can be paid.

(c) If the employee applies for a disability annuity, the annuity may be paid without the need to give up the right to return to work. However, the annuity cannot be paid, beginning with the month the annuitant is 65 years old, until the annuitant gives up the right to return to work. The disability annuitant must give up the right to return to work before he or she is 65 years old to permit payment of a supplemental annuity under subpart C of this part or a spouse annuity under subpart D of this part.

The disabled employee can give the Board the authority to give up the right to return to work for him or her when it is required.

**§ 216.8 What work may affect eligibility.**

Most types of work for pay must be stopped before an employee is eligible for an age or disability annuity, as explained below:

(a) *Work an employee must stop.* Except as shown in paragraph (b) of this section the employee must stop working for—

(1) Any employer under the Railroad Retirement Act; and

(2) Any non-railroad employer.

(b) *Work an employee need not stop.* The employee may continue the following work and still be eligible for an age or disability annuity:

(1) Work for a local lodge or division of a railway organization if the pay is under $25 a month unless the work performed is solely for the purpose of collecting insurance premiums.

(2) Self-employment, as defined in paragraph (c).

(3) Work as an elected public official of the United States, a State, or any political subdivision of a State.

(c) *Self-employment, defined.* Self-employment is work performed in a person's own business, trade, or profession, rather than for an employer. A person is not self-employed, for purposes of this section, if he or she works in an incorporated business. In that case, the corporation is the person's employer. An independent contractor or consultant is considered to be self-employed only if he or she is not supervised by an employer and is not a regular member of the employer's staff. The following factors indicate that a person working as a contractor or consultant may be self-employed:

(1) The person has an office separate from that of an employer.

(2) The person performs similar services for several employers.

(3) The person is free to choose his or her own working hours.

(4) The person performs specific services for a limited time on a particular project.

(5) The person receives payment for a particular project, rather than on a regular basis.

**§ 216.9 Giving up the right to return to work.**

The employee must give up the right to return to work before an annuity can be paid as explained in § 216.7.

(a) *What return to work rights must be given up.* Except for the type of work shown in § 216.8(b), the employee must give up any seniority or other rights to retun to work for—

(1) Any employer under the Railroad Retirement Act; and

(2) Any non-railroad employer with whom the employee—

(i) Last worked before the annuity beginning date; or

(ii) Has the right to return to work on the annuity beginning date; or

(iii) Stopped working to permit the annuity to begin.

(b) *When the right to return to work ends.* An employee's right to return to work for a railroad or non-railroad employer ends when—

(1) The employer reports to the Board that the employee no longer has that right; or

(2) The employee or an authorized agent of the employee gives the employer an oral or written notice of the employee's wish to give up that right and—

(i) The employee certifies to the Board that the right has been given up;

(ii) The Board notifies the employer of the employee's certification; and

(iii) The employer either confirms the employee's right has been given up or fails to reply within 10 days following the day the Board mailed the notice to the employer; or

(3) An event occurs which under the established rules or practices of the employer automatically ends that right; or

(4) The employer or the employee or both take an action which clearly and positively ends that right; or

(5) The employee never had that right and permanently stops working; or

(6) The Board gives up that right for the employee, having been authorized to do so by the employee; or

(7) The employee dies.

## Subpart C—Supplemental Annuity

**§ 216.11 Introduction.**

A career railroad employee may qualify for a supplemental annuity in addition to the regular employee annuity. Supplemental annuities are paid out of a separate trust fund established through employer taxes. The Board reduces a supplemental annuity if the employee receives a private pension based on contributions from a railroad employer. Supplemental annuities are subject to federal income tax.

**§ 216.12 Who is entitled to a supplemental annuity.**

An employee is entitled to a supplemental annuity, if he or she—

(a) Does not work past his or her supplemental annuity closing date as shown in § 216.13; and

(b) Is entitled to the payment of an employee annuity under subpart B of this part; and

(c) Has a current connection with the railroad industry when the employee annuity begins; and either

(d) Is age 65 or older, has completed 25 years of service, and the employee annuity begins on or after July 1, 1966; or

(e) Is age 60 or older and under age 65, has completed 30 years of service, and the employee annuity begins on or after July 1, 1974. If that annuity is a disability annuity, the annuitant must give up the right to return to work as shown in §§ 216.7 and 216.9 before any supplemental annuity due him or her can be paid.

**§ 216.13 Supplemental annuity closing date.**

(a) *General.* An employee's supplemental annuity closing date is the last day the employee can work for a railroad employer and still be entitled to a supplemental annuity. There are two types of closing dates—the regular closing date for most career employees and the special closing date for an employee who did not complete the 25 years of service required to qualify for a supplemental annuity on his or her regular closing date.

(b) *Regular closing date.* If the employee has completed 25 years of railroad service or is eligible for an old-age benefit under section 202(a) of the Social Security Act, the regular closing date is the last day of the month after the month he or she becomes 65 years old. However, various closing dates were established if the employee became 65 years old in or before 1973. If the employee was—

(1) 65 years old in 1973, the closing date was January 31, 1974;

(2) 66 years old in 1973, the closing date was the last day of the month after the month he or she was 66 years old;

(3) 66 years old in 1972, the closing date was January 31, 1973;

(4) 67 years old in 1972, the closing date was the last day of the month after the month he or she was 67 years old;

(5) 67 years old in 1971, the closing date was January 31, 1972;

(6) 68 years old in 1971, the closing date was the last day of the month after the month he or she was 68 years old; or

(7) 68 years old before 1971, the closing date was January 31, 1971.

(c) *Special closing date.* If the employees has completed at least 23 years of service but less than 25 years of service and is not eligible for an old-age benefit under section 202(a) of the Social Security Act on his or her regular closing date, the employee's special closing date is the earliest of the following dates:

(1) The last day of the month before the employee becomes eligible for an old-age benefit under section 202(a) of the Social Security Act; or

(2) The last day of the first month in which the employee has enough months of railroad service to be entitled to a supplemental annuity (see § 216.12).

**§ 216.14 Relationship between supplemental annuity and other benefits.**

(a) *Employee annuity.* A supplemental annuity that begins after December 31, 1974 does not affect the payment of a regular employee annuity.

(b) *Employer pension.* A supplemental annuity is reduced for any private pension the employee is receiving based on a railroad employer's contributions. The reduction is equal to the amount of the pension based on the employer's contributions, less any amount the private pension is reduced because of the supplemental annuity. The supplemental annuity is not reduced for the amount of a private pension paid for by the employee's contributions. Private pension is defined in § 216.15.

(c) *Spouse or survivor annuity.* The payment of a supplemental annuity does not affect the amount of a spouse or survivor annuity.

(d) *Residual lump sum.* The amount of a supplemental annuity is not deducted from the gross residual lump-sum benefit. See Part 236 of this chapter for an explanation of the residual lump-sum benefit.

**§ 216.15 What is a private pension.**

The Board determines whether a pension established by a railroad employer is a private pension that will cause a reduction in the employee's supplemental annuity. A private pension is based on a pension plan that—

(a) Is a written plan or arrangement which is communicated to the employees to whom it applies; and

(b) Is established and maintained by a railroad employer for a defined group of employees; and

(c) Provides for the regular payment of benefits to employees under a set formula over a period of years.

## Subpart D—Spouse Annuity

**§ 216.20 Who is eligible for a spouse annuity.**

A person is eligible for a spouse annuity if the person—

(a) Is the wife or husband, as defined in § 216.22, of an employee who is entitled to an annuity under subpart B of this part;

(b) Stops the same type of work for pay that an employee must stop, as described in § 216.8; and

(c) Meets the age requirements. The spouse's age requirement depends upon when the employee's annuity begins and the employee's age, as follows:

(1) If the employee's annuity begins July 1, 1974 or later, the employee has completed 30 years of railroad service and the employee is 60 years old or older, the spouse must be—

(i) 60 years old or older; or

(ii) Less than 60 years old and a wife with the employee's child who is under 18 years old or disabled in her care. "In care" is defined in §§ 216.36 and 216.37. Subpart F of this part tells who is the employee's child.

(2) If the employee's annuity begins January 1, 1975 or later, the employee has completed less than 30 years of railroad service and the employee is 62 years old or older, the spouse must be—

(i) 65 years old or older; or

(ii) Less than 65 years old and a wife with the employee's child who is under 18 years old or disabled in her care; or

(iii) 62 years old or older and under 65. This type of annuity is reduced for each month the spouse is entitled before he or she becomes 65 years old. The reduction is described in Part 226 of this chapter.

(3) If the employee's annuity began before July 1, 1974, or it began in the period after June 30, 1974 and before January 1, 1975, the employee has less than 30 years of railroad service, and the employee is 65 years old or older, the spouse must be—

(i) 65 years old or older; or

(ii) Less than 65 years old and a wife with the employee's child who is under 18 years old or disabled in her care; or

(iii) 62 years old or older and under 65. This type of annuity is reduced for each month the spouse is entitled before he or she becomes 65 years old. The reduction is described in Part 226 of this chapter.

**§ 216.21 What is required for payment.**

An eligible spouse must—

(a) Apply to be entitled to an annuity; and

(b) Give up the right to return to work as described in § 216.9, in the same manner as if the spouse were an employee, before any annuity to which he or she is entitled can be paid.

**§ 216.22 Who is the employee's wife or husband.**

An employee's wife or husband is a person who—

(a) Is married to the employee, as described in § 216.33;

(b) Is living with the employee, as defined in § 216.23, on the date the spouse applied for the annuity; and

(c) Has been married to the employee, for at least one year before the date the spouse applied for the annuity; or

(d) Is the natural parent of the employee's child; or

(e) Was entitled to or, if the spouse had applied and been old enough he or she could have been entitled to, an annuity as a surviving spouse, a parent, or a disabled child under this part in the month before he or she married the employee.

**§ 216.23 When a spouse is living with an employee.**

(a) *General.* A spouse is living with the employee if—

(1) The employee and spouse are members of the same household; or

(2) The employee is contributing to the support of the spouse, as shown in § 216.24; or

(3) The employee is under court order to contribute to the spouse's support.

(b) *Members of the same household.* The employee and spouse are members of the same household if they normally live together as husband and wife in the same home. The employee and spouse are also considered members of the same household when they live apart but they expect to continue living together after a temporary separation. A temporary separation may be caused by military service, working away from home, hospitalization, or imprisonment. A separation of six months or less for any one of the above reasons or a separation of any length because of military service will be considered a temporary separation unless there is evidence that the employee and spouse do not intend to continue living together. A separation for more than six months, for other than military service, will be considered temporary only if these is evidence that the employee and spouse expect to live together in the near future. In general, a separation will not be considered temporary if the employee and spouse reside in different countries.

**§ 216.24 Contributing to support, defined.**

An employee is contributing to the support of a person if the employee gives some of his or her own cash, goods, or services to help support the person. Support includes food, clothing, housing, routine medical care, and other ordinary items needed for a person's well being. Contributions must be made regularly and must be large enough to meet an important part of a person's ordinary living costs. Benefits the persons receives based on the employee's military service record and spouse benefits under the Railroad Retirement Act are contributions to the person's support. A spouse social security benefit on the employee's earnings record is a contribution toward the spouse's support only if the spouse

met one of the "living with" requirements shown in § 216.23 when the spouse application was filed. The employee's contributions must be made on a regular basis. However, temporary interruptions caused by circumstances beyond the employee's control, such as illness or unemployment, are disregarded unless someone else takes over responsibility for supporting the person on a permanent basis.

**§ 216.25 One-half support, defined.**

The employee is providing one-half support to a person if the employee makes regular contributions to the person's support and the amount of the contributions is equal to or more than one-half of the person's ordinary living costs. Ordinary living costs are the costs for necessities such as food, clothing, housing, and routine medical care. A contribution may be in cash, goods, or services. The employee is providing one-half support only if he or she has done so for reasonable period of time. Ordinarily a reasonable period is the 12-month period immediately before the time the one-half support requirement must be met, as shown in §§ 216.58–216.60, 216.70, 216.82(c), 216.83(c) and 216.85 of this chapter. A shorter period will be considered reasonable if—

(a) The employee started providing one-half or more of person's support sometime during the 12-month period and intends to continue doing so on a permanent basis; or

(b) The employee provided one-half or more of a person's support for at least 3 months of the 12-month period, and—

(1) The employee had to stop or reduce the amount of the contributions because of circumstances beyond his or her control, such as illness or unemployment; and

(2) No other person took over the responsibility for providing one-half support on a permanent basis.

## Subpart E—Surviving Spouse Annuity

**§ 216.30 Who is eligible for a surviving spouse annuity.**

A person is eligible for a surviving spouse annuity if the person—

(a) Is the widow or widower, as defined in § 216.32, of an employee who has completed 10 years of railroad service and had a current connection with the railroad industry when he or she died;

(b) Has not remarried; and

(c) Meets one of the following conditions—

(1) Is 60 years old or older;

(2) Is 50 years or older and under 60 years old and he or she has a disability as defined in Part 220 of this chapter that began before the end of the period described in § 216.38. A surviving spouse annuity that is paid on the basis of disability up to the month the annuitant is 60 years old automatically becomes an age annuity beginning with the month he or she is 60 years old;

(3) Is under 65 years old and has "in care" the deceased employee's child who is entitled to an annuity under subpart F of this part because he or she is under 18 years old or is disabled. §§ 216.36 and 216.37 describe when a child is "in care."

**§ 216.31 What is required for payment.**

An eligible widow or widower must apply to be entitled to an annuity.

**§ 216.32 Who is the employee's surviving spouse.**

A surviving spouse is the deceased employee's widow or widower who—

(a) Was married to the employee for at least nine months before the day the employee died; or

(b) Was married to the employee less than nine months before the employee died but, at the time of marriage, the employee was reasonably expected to live for nine months, and—

(1) The employee's death was accidental; or

(2) The employee died in the line of duty while he or she was serving on active duty as a member of the armed forces of the United States; or

(3) The surviving spouse was previously married to the employee for at least nine months; or

(c) Is the natural parent of the employee's child; or

(d) Was married to the employee when either the employee or the surviving spouse legally adopted the other's child or they both legally adopted a child who was then under 18 years old; or

(e) Was, in the month before the month of marriage, entitled to or, if the surviving spouse had applied and been old enough, he or she could have been entitled to—

(1) A widow's, widower's, father's, mother's, wife's, parent's or disabled child's benefit under section 202 of the Social Security Act; or

(2) A widow's, widower's, parent's or disabled child's annuity under this part.

**§ 216.33 Marriage defined.**

Marriage is a relationship based on—

(a) A "deemed marriage" which may be established as described in § 216.35; or

(b) The laws of the state in which the employee has a permanent home. The employee's permanent home is his or her true and fixed home (legal domicile). It is the place to which a person intends to return whenever he or she is absent. A valid marriage under State law may be established if—

(1) The employee and spouse are married in a civil or religious ceremony; or

(2) The spouse could inherit a wife's, husband's, widow's, or widower's share of the employee's personal property if the employee were to die without leaving a will; or

(3) The employee and spouse live together in a common-law marriage relationship which is recognized under State law.

**§ 216.34 Relationship as wife, husband, widow or widower under State law.**

To decide a person's relationship as the wife or husband of an employee, the Board applies the laws of the State where the employee had a permanent home when the spouse applied for his or her annuity. To decide a person's relationship as the widow or widower of an employee, the Board applies the laws of the State where the employee had a permanent home when the employee died. If the employee's permanent home is not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, the Board applies the laws of the District of Columbia. See § 216.33(b) for a definition of "permanent home."

**§ 216.35 Deemed marriage.**

(a) *General.* If a marriage relationship cannot be established under State law, as shown in § 216.33, a person may be eligible for an annuity based on a deemed marriage. A person is deemed to be the wife, husband, widow, or widower of an employee if the person's marriage to the employee would have been valid under State law except for a legal impediment (see paragraph (b) of this section) and all of the following requirements are met:

(1) The person married the employee in a civil or religious ceremony.

(2) The person went through the marriage ceremony in good faith and did not know of the legal impediment at the time of the marriage. Good faith means that the person believes the marriage is legal.

(3) The person was living in the same household with the employee when he or she applied for the spouse annuity or when the employee died. "Living in the same household" is defined in paragraph (c) of this section.

(4) At the time the person applies for his or her annuity, no other person has a relationship under state law, as shown in § 216.33(b), as the employee's wife, husband, widow or widower and is or

has been entitled to an annuity based on that relationship.

(b) *Legal impediment.* A legal impediment means that there was a defect in the procedure followed in the marriage ceremony or that a previous marriage of the employee or spouse had not ended at the time of the ceremony.

(c) *Living in the same household.* A husband and wife are "living in the same household" if they are "members of the same household" as shown in §216.23(b).

**§ 216.36 "Child in care" when child is living with wife or surviving spouse.**

A child who has been living with a person for at least 30 consecutive days is in that person's care if—

(a) The child is under 18 years old; or

(b) The child is 18 years old or older with a mental disability and the person supervises the child's activities and makes important decisions about the child's needs either alone or with another person; or

(c) The child is 18 years old or older with a physical disability and the person performs personal services for the child. Personal services are such services as dressing, feeding, and managing money, which the child cannot do alone because of a disability; and

(d) The child is not in active military service.

**§ 216.37 "Child in care" when child is not living with wife or surviving spouse.**

(a) *When child in care.* A child living apart from a person is in that person's care if—

(1) The child lives apart or is expected to live apart from the person for not more than 6 months; or

(2) The child is under 18 years old, the person supervises the child's activities and makes important decisions about his or her needs, and one of the following circumstances applies:

(i) The child is living apart because of school but spends a vacation of at least 30 consecutive days with the person each year, unless some event makes the vacation unreasonable. If the person and the child's other parent are separated, the school must look to the person for decisions about the child's welfare.

(ii) The child is living apart because of the person's employment but the person makes regular and substantial contributions to the child's support. "Contributing to support" is defined in § 216.24.

(iii) The child is living apart because of the child's or the person's physical disability; or

(3) The child is 18 years old or older and is mentally disabled and the person supervises the child's activities, makes important decisions about the child's needs, and helps in the child's upbringing and development.

(b) *Child not in care.* A child living apart from a person is not in the person's care if—

(1) The child is in active military service; or

(2) The child is living with his or her other parent; or

(3) A court order removed the child from the person's custody and control; or

(4) The child is 18 years old or older, does not have a mental disability, and has been living apart or expects to live apart from the person for more than 6 months; or

(5) The person gave the right to custody and control of the child to someone else.

**§ 216.38 Disability period for surviving spouse.**

A surviving spouse who has a disability as defined in Part 220 of this chapter is eligible for an annuity only if the disability began before the end of a period which—

(a) Begins with the later of—

(1) The month in which the employee died; or

(2) The last month the surviving spouse was entitled to an annuity for having the employee's child "in care"; or

(3) The last month the surviving spouse was entitled to a previous annuity based on disability; and

(b) Ends with the earlier of—

(1) The month before the month in which the surviving spouse is 60 years old; or

(2) The last day of the 84th month (7 years) following the month in which the period began.

## Subpart F—Child's Annuity

**§ 216.45 General.**

The Railroad Retirement Act provides an annuity for the child of a deceased employee but not for the child of a living employee. However, the Act does provide that the child of a living employee can establish eligibility for a spouse annuity, or cause an increase in the annuity of an employee and spouse. The eligibility requirements described in this subpart for the annuity of a child of a deceased employee apply also for the following purposes, except as otherwise indicated in this part:

(a) To establish annuity eligibility for a wife under § 216.20 if she has the employee's eligible child "in care"; and

(b) To provide an increase in the employee's annuity under the social security overall minimum provision by including the eligible child. (See Part 229 of this chapter).

**§ 216.46 Who is eligible for a child's annuity.**

A person is eligible for a child's annuity if the person—

(a) Is a child, as defined in § 216.49, of an employee who has completed 10 years of railroad service and had a current connection with the railroad industry when he or she died;

(b) Is not married at the time the application is filed;

(c) Is dependent upon the employee as defined in §§ 216.56–216.61; and

(d) Meets one of the following at the time the application is filed—

(1) Is under 18 years old;

(2) Is 18 years old or older and either—

(i) Has a disability as defined in Part 220 of this chapter that began before the child became 22 years old; or

(ii) Is under 22 years old and is a full-time student as defined in § 216.63 and § 216.64; or

(iii) Becomes 22 years old in a month in which he or she is a full-time student and has not completed the requirements for, or received, a degree from a 4-year college or university.

**§ 216.47 What is required for payment of a child's annuity.**

An eligible child of a deceased employee must apply to be entitled to an annuity.

**§ 216.48 Who may be reentitled to a child's annuity.**

If a person's entitlement to a child's annuity has ended, the person may be reentitled if he or she has not married and he or she applies to be reentitled. The reentitlement may begin with—

(a) The first month the person is a full-time student if he or she is under 22 years old or is 22 years old and has not completed the requirements for, or received a degree from, a 4-year college or university; or

(b) The first month the person is disabled, if the disability began before he or she became 22 years old; or

(c) The first month the person is under a disability that began before the end of the 84th month after the month in which the previous spouse or child's annuity ended or the person was no longer included as a disabled child under the social security overall minimum (see Part 229 of this chapter) because he or she was no longer disabled.

**§ 216.49 Child defined.**

As used in this chapter, child means—

(a) The natural or legally adopted child of the employee; or

(b) The stepchild of the employee; or

(c) The grandchild or stepgrandchild of the employee or spouse; or

(d) The equitably adopted child of the employee.

**§ 216.50 Relationship as a child under State law.**

To decide a person's relationship as the child of an employee, the Board applies the laws of the State in which the employee has a permanent home when the wife applies for a spouse annuity for having the employee's child "in care," when the employee's annuity can be increased under the social secuirty overall minimum provision, or when the employee dies, if the person is applying for a child's annuity. If the employee's permanent home is not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, the Board applies the laws of the District of Columbia. See § 216.33(b) for a definition of "permanent home."

**§ 216.51 Who is the employee's natural child.**

A person may be eligible as an employees' natural child if one of the following conditions is met:

(a) The child could inherit, under State law, a share of the employee's personal property as the employee's natural child if the employee were to die without leaving a will.

(b) The child's mother or father entered into "a deemed marriage" with the employee, before the child's birth, as described in § 216.35.

(c) The child's mother has not married the employee, but—

(1) The employee has stated in writing that the person is his child; or

(2) A court order states that the employee is the father of the child; or

(3) A court ordered the employee to contribute to the child's support because the employee is the child's father.

(d) The child's mother has not married the employee, but—

(1) The person has acceptable evidence othe than that shown in paragraph (c) of this section, that the employee is his or her father; and

(2) The employee was living with the child or contributing to the child's support, as shown in § 216.62 and § 216.24, when—

(i) The wife applied for her annuity for having the employee's child "in care;" or

(ii) The employee's annuity can be increased under the social security overall minimum provision as explained in Part 229 of this chapter; or

(iii) The employee died, if the person is applying for a child's annuity.

**§216.52 Who is the employee's legally adopted child.**

A person may be eligible as the employee's child if the employee adopted the child under the State laws which apply, as shown in § 216.50. A child adopted by the surviving spouse after the employee's death is considered the employee's child if—

(a) The child is adopted within two years after the day the employee died;

(b) The employee began proceedings to adopt the child before death; and

(c) The child is living in the employee's household at the time of the employee's death; and

(d) The child is not receiving regular support contributions from any person other than the employee or spouse at the time of the employee's death.

**§ 216.53 Who is the employee's stepchild.**

A person may be eligible as an employee's stepchild if—

(a) The child's natural or adoptive parent married the employee after the child's birth; and

(b) There is a marriage relationship between the employee and the child's parent as shown in § 216.33; and

(c) The employee and the child's parent were married at least one year before the date the wife applies for her annuity for having the employee's child "in care" or before the date the employee's annuity can be increased under the social security overall minimum provision; or

(d) The employee and the child's parent were married at least nine months before the date the employee died, if the person is applying for a child's annuity. If they were married less than nine months, the conditions described in § 216.32(b) must be met.

**§ 216.54 Who is the employee's grandchild or stepgrandchild.**

A person may be eligible as the grandchild or stepgrandchild of an employee or of an employee's spouse if the requirements in (a) and either (b) or (c) are met:

(a) The person is the natural child, legally adopted child, or stepchild of the child of an employee or employee's spouse as defined in §§ 216.51–216.53 or in § 216.55.

(b) The person's natural or adoptive parents are deceased or are disabled as defined in section 223(d) of the Social Security Act in the month in which—

(1) The employee, who is entitled to an annuity under subpart B of this part, would be entitled to an age benefit under section 202(a) or a disability benefit under section 223 of the Social Security Act if his or her railroad service were wages under that Act; or

(2) The employee dies; or

(3) The employee's period of disability begins, if he or she is entitled to an annuity and has a period of disability which continues until he or she could be entitled to a social security benefit as described in paragraph (1) of this subsection. "Period of disability" is explained in Part 220 of this chapter.

(c) The person was legally adopted in the United States by the employee's surviving spouse after the employee's death and the child's natural or adoptive parent or stepparent was not living in the employee's household and making regular contributions to the child's support at the time the employee died.

**§ 216.55 Who is the employee's equitably adopted child.**

A person may be eligible as the equitably adopted child of an employee if the employee had agreed to adopt the child but the adoption did not occur. The agreement to adopt must be recognized under State law so that the child could inherit a share of the employee's personal property as the employee's child if the employee were to die without leaving a will. The State law to be followed is explained in § 216.50.

**§ 216.56 When a child must be dependent.**

(a) *Employee is alive.* A child must be dependent upon the employee in the month in which—

(1) The wife's annuity as described in § 216.45 (a) begins; or

(2) The employee's annuity can be increased as described in § 216.45(b); or

(3) The employee's period of disability begins or the employee could become entitled to a social security benefit as described in § 216.54(b)(1), if the employee has a period of disability that continues until he or she could become entitled to that benefit.

(b) *Employee is dead.* A child must be dependent upon the employee in the month in which—

(1) The employee dies; or

(2) The employee's period of disability begins or the employee could become entitled to a social security benefit as described in § 216.54(b)(l), if the employee has a period of disability that continues until he or she could become entitled to that benefit or dies.

**§ 216.57 When a natural child is dependent.**

The employee's natural child, as defined in § 216.51, is considered dependent on the employee at the time shown in § 216.56. However, if the child is legally adopted by another person during the employee's lifetime, the child is considered dependent on the employee only if the employee was

living with the child or contributing to the support of the child at one of the times shown in § 216.56.

**§ 216.58 When a legally adopted child is dependent.**

(a) *General.*— (1) *During employee's lifetime.* If an employee legally adopts a child before the employee could become entitled to a social security benefit as described in § 216.54 (b)(l), and no other person adopts the child during the employee's lifetime, the child is considered dependent on the employee at the time shown in § 216.56(a). If the employee adopts a child who is not his or her natural child or stephild after the employee could become entitled to a social security benefit, as described in § 216.54(b)(l), the child is considered dependent on the employee only if the requirements in paragraph (b) of this section are met. If another person adopts the child during the employee's lifetime, the child is considered dependent on the employee as shown in § 216.57.

(2) *After employee's death.* If an employee legally adopted a child, including a natural child, stepchild, or grandchild, and no other person adopted the child during the employee's lifetime, the child is considered dependent on the employee at the time shown in § 216.56(b). If a surviving spouse adopted a child after the employee's death, the child is considered dependent on the employee if the requirements in § 216.52 are met. If another person adopted the child during the employee's lifetime, the child is considered dependent on the employee as shown in § 216.57.

(b) *Child adopted after employee could become entitled to a social security benefit.* A child who is not the employee's natural child, stepchild, grandchild or stepgrandchild, and who is adopted by an employee after the employee could become entitled to a social security benefit as described in § 216.54(b)(l), is considered dependent on the employee during the employee's lifetime only if the requirements in items (1), (2), and either (3) or (4) are met:

(1) The child is adopted in the United States.

(2) The child began living with the employee before the child became age 18.

(3) The child is living with the employee in the United States and receives at least one-half of his or her support from the employee for the year before—

(i) The employee could become entitled to a social security benefit, as described in § 216.54(b)(1); or

(ii) The employee becomes entitled to a period of disability that continues until he or she could become entitled to a social security benefit as described in § 216.54(b)(1); or

(4) A child born in the one-year period mentioned in item (3) lives with and receives at least one-half of his or her support from the employee for "substantially all" of the period that begins on the date the child is born. "Substantially all" means—

(i) The child is living with and receiving one-half support from the employee when the employee could become entitled to a social security benefit, as described in § 216.54(b)(1), or a period of disability; and

(ii) Any period during which the child was not living with or receiving one-half support from the employee is not more than one-half the period from the child's birth to the employee's date of entitlement or three months, whichever is less.

(c) *Grandchild adopted after employee could become entitled to a social security benefit.* If an employee legally adopts his or her grandchild or the spouse's grandchild after the employee could become entitled to a social security benefit, as described in § 216.54(b)(1), the grandchild is considered dependent on the employee during the employee's lifetime only if the requirements in items (1), (2), and (3) or (4) are met:

(1) The grandchild is adopted in the United States.

(2) The grandchild began living with the employee before the grandchild became age 18.

(3) The grandchild is living with the employee in the United States and receives at least one-half of his or her support from the employee for the year before—

(i) The employee's annuity can be increased under the social security overall minimum (see Part 229 of this chapter) by including the grandchild; or

(ii) The employee could become entitled to a social security benefit, as described in § 216.54(b)(1); or

(iii) The employee becomes entitled to a period of disability that continues until he or she could become entitled to a social security benefit, as described in § 216.54(b)(1).

(4) A grandchild born in the one-year period mentioned in item (3) lives with and receives at least one-half of his or her support from the employee for "substantially all" of the period that begins on the date the grandchild is born. "Substantially all" is defined in paragraph (b)(4) of this section.

**§ 216.59 When a stepchild is dependent.**

An employee's stepchild, as described in § 216.53, is considered dependent on the employee if the stepchild is living with or receiving at least one-half of his or her support from the employee at one of the times shown in § 216.56.

**§ 216.60 When a grandchild or stepgrandchild is dependent.**

An employee's grandchild, as described in § 216.54 is considered dependent on the employee if the requirements in (a) and (b) or (c) are met:

(a) The grandchild or stepgrandchild began living with the employee before the grandchild or stepgrandchild became age 18.

(b) The grandchild or stepgrandchild is living with the employee in the United States and receives at least one-half of his or her support from the employee for the year before—

(1) The employee could become entitled to a social security benefit as described in § 216.54(b)(1); or

(2) The employee dies; or

(3) The employee becomes entitled to a period of disability that lasts until he or she could become entitled to a social security benefit, as described in § 216.54(b)(1), or dies. "Period of disability" is explained in Part 220 of this chapter.

(c) A grandchild or stepgrandchild born in the one-year period mentioned in paragraph (b) lives with and receives at least one-half of his or her support from the employee for "substantially all" of the period that begins on the date the grandchild or stepgrandchild is born. "Substantially all" is defined in § 216.58(b)(4).

**§ 216.61 When an equitably adopted child is dependent.**

(a) *During employee's lifetime.* An employee's equitably adopted child, as defined in § 216.55, is not considered dependent on the employee during the employee's lifetime if the adoption takes place after the employee could become entitled to a social security benefit, as described in § 216.54(b)(1). If the equitable adoption took place before the employee could become entitled to a social security benefit, the child is considered dependent on the employee if the employee was living with or contributing to the support of the child at one of the times shown in § 216.56.

(b) *After Employee's Death.* An employee's equitably adopted child, as defined in § 216.55 is considered dependent on the employee if the employee was living with or contributing to the support of the child when the employee died.

**§ 216.62 When a child is living with an employee.**

A child is living with the employee if the child normally lives in the same home with the employee and the employee has parental control and authority over the child's activities. The child is considered to be "living with" the employee while they are living apart if they expect to live together again after a temporary separation. A temporary separation may include the employee's absence because of active military service, working away from home, hospitalization, or imprisonment. However, the employee must have parental control and authority over the child during the period of temporary separation. A child who is in active military service or in prison is not "living with" the employee, since the employee does not have parental control over the child.

**§ 216.63 When a child is a full-time student.**

A full-time student is a person who is in full-time attendance at an educational institution. A person is not a full-time student if he or she is paid while attending an educational institution by an employer who has requested or required that the person attend the educational institution.

(a) *Full-time attendance, defined.* Full-time school attendance means that a student is enrolled in a non-correspondence course which is considered full-time for day students under the practices and standards of the educational institution. If the student is enrolled in a junior college, college, or university, the course must last at least 13 weeks. If the student is enrolled in any other educational institution, the course must last at least 13 weeks and the student's scheduled rate of attendance must be at least 20 hours a week. A student whose full-time attendence either begins or ends in a month is in full-time attendance for the entire month. A student is in full-time attendence in the month he or she graduates if classes end in the month before graduation. A student is not in full-time attendance after his or her classes end if they end two or more months before the month of graduation.

(b) *Educational institution, defined.* An educational institution is a school (including a technical, trade, or vocational school), junior college, college, or university that meets any one of the following requirements:

(1) It is operated or directly supported by the United States, by any State or local government, or by a political subdivision of a State or local government.

(2) It is approved by a State or accredited by a State or nationally-recognized accrediting body. Approval by a State means that a State agency or local governmental unit recognizes a school, college, or university as an eductional institution or approves one or more of the courses offered by a school, college, or university. A State-recognized accrediting body is one designated or recognized by a State as the proper authority for accrediting schools, colleges, or universities. A nationally-recognized accrediting body is one that has been recognized by the U.S. Commissioner of Education.

(3) It is a nonaccredited school, college, or university but its credits are accepted by at least 3 educational institutions that have been accredited by a State or nationally-recognized accrediting body.

**§ 216.64 When a child is a full-time student during a period of nonattendance.**

A student who has been in full-time attendance at an educational institution is considered a full-time student during a period of non-attendance (including part-time attendance) if—

(a) The period of nonattendance is 4 consecutive months or less; and

(b) The student shows the Board that he or she intends to return or the student does return to full-time attendance at the end of the period; and

(c) The student has not been expelled or suspended from the educational institution.

## Subpart G—Parent's Annuity

**§ 216.70 Who is eligible for a parent's annuity.**

A person is eligible for a parent's annuity if there is no surviving spouse or child who is or who could ever be entitled to an annuity under Subpart E or F of this part and the person—

(a) Is a parent as defined in § 216.72 of a deceased employee who had completed 10 years of railroad service and had a current connnection with the railroad industry when he or she died;

(b) Is 60 years old or older;

(c) Has not married since the employee died; and

(d) Was receiving at least one-half support from the employee when he or she died. One-half support is defined in § 216.25.

**§ 216.71 What is required for payment.**

An eligible parent must apply to be entitled to an annuity.

**§ 216.72 Who is the employee's parent.**

An employee's parent is a person who—

(a) Is the natural mother or father, who is considered the employee's parent under the laws of the state where the employee had a permanent home when he or she died; or

(b) Is a person who legally adopted the employee before the employee became 16 years old; or

(c) Is a stepparent who married the employee's natural or adoptive parent before the employee became age 16. The marriage must be valid under the laws of the state where the employee had a permanent home when the employee died. See § 216.33(b) for a definition of permanent home.

## Subpart H—Dual Benefit Windfall

**Authority:** Sec. 3, Pub. L. 93–445, 88 Stat. 1323–1325 (45 U.S.C. 231b). Sec. 4, Pub. L. 93–445, 88 Stat. 1329–1332 (45 U.S.C. 231c). Sec. 7, Pub. L. 93–445, 88 Stat. 1339 (45 U.S.C. 231f). Sec. 216.86 also issued under sec. 1, Pub. L. 93–445, 88 Stat. 1311 (45 U.S.C. 231).

**§ 216.80 Introduction.**

Under the 1937 Railroad Retirement Act, an employee working in employment covered by that Act and the Social Security Act could get the full benefit of both Acts. The 1974 Railroad Retirement Act, which restructured the annuity into several components called tiers, eliminated this advantage, requiring that the first tier (the social security component) be reduced by the full amount of the social security benefit. However, an employee who is insured under the Social Security Act based on earnings before 1975, and meets certain other requirements, is entitled to a dual benefit windfall. This additional amount replaces, to a certain extent, the offset for the social security benefit in the first tier of the annuity. Similar provisions are made for a spouse and surviving spouse. This subpart describes the eligibility requirements for the windfall benefit. Parts 226–228 of this chapter describe how the windfall benefit is computed. Part 218 of this chapter explains when the windfall benefit begins and ends.

**§ 216.81 Types of windfall benefits.**

(a) *Employee and spouse.* The windfall benefit for an employee or spouse is equivalent to the type of social security benefit it is intended to replace:

(1) *Employee.* An employee windfall benefit is a replacement for:

(i) An old age or disability insurance benefit; or

(ii) A wife, husband, widow or widower insurance benefit.

(2) *Spouse.* A spouse windfall benefit is a replacement for:

(i) An old age or disability insurance benefit; or

(ii) A wife or husband insurance benefit.

(b) *Surviving spouse.* The windfall benefit for a surviving spouse is a guarantee that the surviving spouse will not get less in total benefits under the 1974 Act than he or she would have received under the 1937 Act as a widow or widower who was also entitled to an old age or disability insurance benefit under the Social Security Act.

**§ 216.82 When an employee's annuity can be increased for a windfall benefit.**

(a) *Old age or disability windfall benefit.* An employee's annuity can be increased for a windfall benefit based on his or her own earnings record if the employee—

(1) Has completed at least 10 years of railroad service before 1975;

(2) Is eligible for an old age or disability benefit under section 202(a) or 223(a) of the Social Security Act as in effect on December 31, 1974;

(3) Meets one of the following conditions:

(i) He or she worked for a railroad employer or as an employee representative in 1974;

(ii) He or she has a current connection with the railroad industry on December 31, 1974 or on the beginning date of his or her annuity; or

(iii) He or she has completed a total of at least 25 years of railroad service before 1975; and

(4) Is permanently insured under the Social Security Act on his or her own earnings record on December 31, 1974, as described in § 216.86; or

(5) Meets the requirements in paragraphs (a) (1) and (2) of this section but does not meet any of the conditions in paragraph (a)(3) and is permanently insured under the Social Security Act on his or her own earnings record on December 31 of the year before 1974 in which the employee last worked in the railroad industry, as described in § 216.86

(b) *Spouse or surviving spouse windfall benefit.* An employee's annuity can be increased for a windfall benefit as the spouse or surviving spouse of another person if the employee—

(1) Has completed at least 10 years of railroad service before 1975;

(2) Is eligible for a benefit as a spouse or surviving spouse under section 202 (b), (c), (e), (f) or (g) of the Social Security Act as in effect on December 31, 1974;

(3) Meets one of the following conditions:

(i) He or she worked for a railroad employer or as an employee representative in 1974;

(ii) He or she has a current connection with the railroad industry on December 31, 1974 or on the beginning date of his or her annuity; or

(iii) He or she has completed a total of at least 25 years of railroad service before 1975; and

(4) Is the spouse or surviving spouse of a person who—

(i) Is permanently insured under the Social Security Act on December 31, 1974, as described in § 216.86; and

(ii) If alive, is entitled to an old age or disability benefit under section 202(a) or 223(a) of the Social Security Act; or

(5) Meets the requirements in paragraphs (b)(1) and (2) of this section but does not meet any of the conditions in paragraph (b) (3) and is the spouse or surviving spouse of a person who—

(i) Is permanently insured under the Social Security Act on December 31 of the year before 1974 in which the employee last worked in the railroad industry, as described in § 216.86; and

(ii) If alive, is entitled to an old age or disability benefit under section 202(a) or 223(a) of the Social Security Act.

(6) Meets the dependency requirement in paragraph (c), if the employee is a male.

(c) *Dependency requirement for a windfall benefit as a husband or widower.* An employee who meets the requirements in paragraph (b) of this section and is the husband or widower of a permanently insured person must also have been receiving one-half of his support from that person at one of the times shown in this paragraph. One-half support is defined in § 216.25. A husband or widower must be eligible for benefits under section 202(c) or (f) of the Social Security Act as in effect on December 31, 1974, to be entitled to a windfall benefit. On that date, the Social Security Act required that a husband or widower must have been receiving one-half of his support from his wife at one of the following points in time:

(1) If she had a period of disability which continued until she became entitled to an old age or disability benefit or until her death—

(i) At the beginning of her period of disability; or

(ii) When she became entitled to an old age or disability benefit; or

(iii) When she died.

(2) If she did not have a period of disability which continued as described in paragraph (c) (1) of this section—

(i) When she became entitled to an old age or disability insurance benefit; or

(ii) When she died.

**§ 216.83 When a spouse annuity can be increased for a windfall benefit.**

(a) *Old age or disability windfall benefit.* A spouse annuity can be increased for a windfall benefit based on the spouse's own earnings record if—

(1) The employee has completed at least 10 years of railroad service before 1975 and he or she meets one of the following conditions:

(i) He or she worked for a railroad employer or as an employee representative in 1974;

(ii) He or she has a current connection with the railroad industry on December 31, 1974 or on the beginning date of the employee annuity; or

(iii) He or she has completed a total of at least 25 years of railroad service before 1975; and

(2) The spouse—

(i) Is permanently insured under the Social Security Act on his or her own earnings record on December 31, 1974, as described in § 216.86; and

(ii) Is eligible for an age or disability benefit under section 202(a) or 223(a) of the Social Security Act as in effect on December 31, 1974; or

(3) The employee has completed at least 10 years of railroad service before 1975 but does not meet any of the other conditions described in paragraph (a) (1) of this section and the spouse—

(i) Is permanently insured under the Social Security Act on his or her own earnings record on December 31 of the year before 1974 in which the employee last worked for the railroad industry, as described in § 216.86; and

(ii) Is eligible for an age or disability benefit under section 202(a) or 223(a) of the Social Security Act as in effect on December 31, 1974.

(b) *Spouse windfall benefit.* A spouse annuity can be increased for a windfall benefit based on the employee's earnings record if—

(1) The employee's annuity was increased for a windfall benefit under § 216.82(a);

(2) The spouse is 62 years old or older or is a wife with the employee's child who is under 18 years old or disabled in her care; and

(3) The spouse annuity cannot be increased for a windfall benefit under paragraph (a) of this section.

(c) *Dependency requirement for a husband.* A spouse who meets the requirements or paragraph (a) of this section and is the husband of the railroad employee must also have been receiving one-half of his support from the employee, as defined in § 216.25, on the later of—

(1) The beginning date of the spouse annuity; or

(2) The date the husband can become entitled to a windfall benefit based on his own earnings record, as shown in paragraph (a) of this section.

**§ 216.84 When a surviving spouse annuity can be increased for a windfall benefit.**

A surviving spouse annuity can be increased for a windfall benefit if—

(a) The deceased employee completed at least 10 years of service before 1975; and

(b) The surviving spouse—

(1) Is permanently insured under the Social Security Act on this or her own earnings record on December 31, 1974, as described in § 216.86; and

(2) Is entitled to an old age or disability benefit under section 202(a) or 223(a) of the Social Security Act.

**§ 216.85 Dependency requirement for a windfall benefit as a widower.**

A surviving spouse who meets the requirements in § 216.84 and is the widower of the deceased employee must also have been receiving one-half of his support from the deceased employee when the employee died or on the beginning date of the employee's annuity. One-half support is defined in § 216.25. A widower must be eligible for an annuity under section 5(a) of the Railroad Retirement Act of 1937, as in effect on December 31, 1974, to be entitled to a windfall benefit. Since a widower who was not receiving one-half of his support from his wife was not eligible for an annuity under the Railroad Retirement Act of 1937, he is not entitled to a windfall benefit.

**§ 216.86 What is needed to be permanently insured under the Social Security Act.**

"Permanently insured" is similar to "fully insured" under section 214(a) of the Social Security Act. To be permanently insured, a person needs the same social security earnings that he or she would need to be insured under the Social Security Act when or or she becomes 62 years old or dies, whichever is earlier. To be permanently insured as of December 31, 1974, the person must have enough social security earnings through December 31, 1974, to be fully insured under the Social Security Act. To be permanently insured as of December 31 of the year before 1974 in which the employee last worked in the railroad industry, the person must have enough social security earnings through that date to be fully insured under the Social Security Act.

## Subpart I—Eligibility for More Than One Annuity

**§ 216.90 Employee and spouse or survivor annuity.**

Under the 1937 Act, a person receiving an employee annuity who was also entitled to an annuity as a spouse or survivor could receive both annuities. Under section 2(h)(3) of the 1974 Act, if a person is entitled to both an employee annuity and a spouse or survivor annuity, the spouse or survivor annuity must be reduced by the amount of the employee annuity. However, this reduction does not apply if the employee or the person on whose wage record the spouse or survivor benefit is payable worked for a railroad employer or as an employee representative before January 1, 1975.

**§ 216.91 Spouse and survivor annuity.**

If a person is entitled to both a spouse and survivor (child's or parent's) annuity only the larger of the two annuities will be paid. However, if the person chooses, he or she can receive the smaller of the two annuities.

**§ 216.92 Two survivor annuities.**

If a person is entitled to two survivor (surviving spouse, child's, or parent's) annuities, only the larger of the two annuities will be paid. However, if the person chooses, he or she can receive the smaller of the two annuities.

## Subpart J—Current Connection With the Railroad Industry

**§ 216.95 General.**

A current connection with the railroad industry is clear in most cases where entitlement or death immediately follows continuous years of railroad employment. However, there are cases in which the employee did not work for a railroad employer for a period of time before entitlement or death. In this situation, a test is provided to determine whether the employee can be considered to have a current connection with the railroad industry.

**§ 216.96 When required.**

(a) A current connection is required to qualify a person for the following types of railroad retirement benefits:

(1) An employee occupational disability annuity as described in § 216.6(a).

(2) A supplemental annuity, as described in subpart C of this part.

(3) An employee or spouse windfall benefit, as described in §§ 216.82 and 216.83.

(4) A survivor annuity, as described in subparts E, F, and G of this part.

(5) The lump-sum death payment described in Part 235 of this chapter.

(b) A current connection established when an employee's annuity began is effective for—

(1) Any annuity under this part for which the employee later becomes eligible; and

(2) Any survivor annuity under this part or a lump-sum death payment under Part 235 of this chapter.

**§ 216.97 Regular current connection test.**

An employee has a current connection with the railroad industry if he or she meets one of the following requirements:

(a) The employee works in creditable railroad service in at least 12 of the 30 consecutive months immediately before the earlier of—

(1) The month his or her annuity begins; or

(2) The month he or she dies.

(b) The employee works in creditable railroad service in at least 12 months in a period of 30 consecutive months and does not work in any regular non-railroad employment in the interval between the month the 30-month period ends and the earlier of—

(1) The month his or her annuity begins; or

(2) The month he or she dies.

**§ 216.98 Special current connection test.**

An employee who does not have a current connection under the regular test has a current connection only to qualify a person for a survivor annuity if—

(1) The employee would not be fully or currently insured under section 214 of the Social Security Act if his or her railroad service after 1936 were treated as social security earnings; or

(2) The employee has no quarters of coverage as defined in section 213 of the Social Security Act.

**§ 216.99 What is regular non-railroad employment.**

Regular non-railroad employment is full- or part-time employment for pay but not any of the following types of employment:

(a) Self-employment.

(b) Temporary work provided as relief by an agency of a Federal, state, or local government.

(c) Service inside or outside the United States, for an employer under the Railroad Retirement Act, even if the employer does not conduct the main part of its business in the United States.

(d) Involuntary military service not creditable under the Railroad Retirement Act.

(e) Employment with the following agencies of the United States Government:

(1) Department of Transportation.
(2) Interstate Commerce Commission.
(3) National Mediation Board.
(4) Railroad Retirement Board.

**§ 216.100 What amount of regular non-railroad employment will break a current connection.**

The amount of regular non-railroad employment needed to break a current connection depends on when the 30-month period described in § 216.97 ends, as follows:

(a) If the 30-month period ends in the year before or in the same year as the month the annuity begins or the month the employee dies, the current connection is broken if the employee—

(1) Works in each month in the interval after the end of the 30-month period and before the month the annuity begins or the employee dies; or

(2) Works and earns at least $200 in wages in any three months within the interval described in paragraph (a)(1) of this section.

(b) If the 30-month period ends more than a year before the year in which the annuity begins or the employee dies, the current connection is broken if the employee—

(1) Works in any two consecutive years wholly or partially within the interval after the end of the 30-month period and before the month the annuity begins or the employee dies; and

(2) Earns at least $1,000 in wages in any year wholly or partially within the interval described in paragraph (b)(1) of this section, even if that year is not one of the two consecutive years described in paragraph (b)(1) of this section.

**§ 216.101 Regular non-railroad employment that will not break a current connection.**

Regular non-railroad employment will not break an employee's current connection if it is performed during the 30-month period described in § 216.97(b), in or after the month the annuity begins, or in the month the employee dies.

## PART 217—[REDESIGNATED AS PART 230]

4. The current Part 217 is redesignated as Part 230. A new Part 217 is added to read as follows:

## PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

Subpart A—General

Sec.
217.1 Introduction.
217.2 Definitions.
217.3. Need to file an application.

Subpart B—Applications

217.5 When an application is a claim for an annuity or lump sum.
Sec.
217.6 What is an application filed with the Board.
217.7 Claim filed with the Social Security Administration.
217.8 When one application satisfies the filing requirement for other benefits.
217.9 Effective period of application.
217.10 Application filed after death.
217.11 "Good cause" for delay in filing application or in providing proof of support.

Subpart C—Filing an Application

217.15 Where to file.
217.16 Filing date.
217.17 Who may sign an application.
217.18 When application is not acceptable.
217.19 Representative of the claimant selected after application is filed.
217.20 When a written statement is used to establish the filing date.
217.21 Deterred from filing.

Subpart D—Cancellation of Application

217.25 Who may cancel an application.
217.26 How to cancel an application.
217.27 Effect of cancellation.

Subpart E—Denial of Application

217.30 Reasons for denial of application.
217.31 Applicant's right to appeal denial.

Authority: Sec. 5, Pub. L. 93-445, 88 STAT. 1332 (45 U.S.C. 231d). Sec. 7, Pub. L. 93-445, 88 STAT. 139 (45 U.S.C. 231f).

### Subpart A—General

**§ 217.1 Introduction.**

This part describes how to apply for an annuity or lump-sum payment under this chapter. It contains the rules for the filing and cancellation of an application and the period of time the application is in effect.

**§ 217.2 Definitions.**

The following definitions are used in this part.

"Applicant" means a person who signs an application for an annuity or lump sum for himself or herself or for some other person.

"Application" refers only to a form described in § 217.6.

"Apply" or "File" means to sign a form or statement that the Railroad Retirement Board accepts as an application.

"Award" means to process a form to make a payment. An annuity is awarded on the date the payment form is processed.

"Claimant" means a person who files for an annuity or lump sum for himself or herself or the person for whom an application is filed.

**§ 217.3 Need to file an application.**

In addition to meeting other requirements, a person must file an application to become entitled to an annuity or lump sum. Filing an application will—

(a) Permit a formal decision on whether the person is entitled to an annuity or lump sum;

(b) Protect a person's entitlement to an annuity for as many as 12 months before the application is filed; and

(c) Provide the right to appeal if the person is dissatisfied with the decision (see Part 260 of this chapter).

### Subpart B—Applications

**§ 217.5 When an application is a claim for an annuity or lump sum.**

An application is a claim for an annuity or lump sum if it meets all of the following conditions.

(a) It is based on an application form completed and filed with the Board as described in § 217.6;

(b) It is signed by the claimant or by someone described in § 217.17 who can sign the application for the claimant;

(c) It is filed with the Board on or before the date of death of the claimant. (See § 217.10 for limited exceptions.)

**§ 217.6 What is an application filed with the Board.**

(a) *General.* An application filed with the Board is generally one that is filed on a form set up by the Board for that purpose. See Part 200 of this chapter for a list of application forms.

(b) *Claim filed with the Social Security Administration.* An application filed for benefits under Title II of the Social Security Act on one of the forms set up by the Social Security Administration for that purpose (except an application for a disability insurance benefit that terminated before the employee completed his or her 120th month of creditable railroad service) is also considered an for an annuity or lump sum if it is filed as shown in § 217.7.

(c) *Claim filed with the Veterans Administration.* An application filed with the Veterans Administration on one of its forms for survivor benefits under section 3005 of Title 38, United States Code, is also considered an application for a survivor annuity.

**§ 217.7 Claim filed with the Social Security Administration.**

(a) *Claim is for life benefits.* An application for life benefits under Title II of the Social Security Act is an application for an annuity if the conditions either in paragraphs (a)(1), (a)(2), and (a)(3) or in paragraph (a)(4) of this section are met:

(1) The application was filed because the applicant did not know he or she was eligible for an annuity under the Railroad Retirement Act. The Board must have or receive evidence indicating why the applicant thought

that he or she lacked eligibility for an annuity.

(2) The claimant would have been entitled to and would currently be entitled to an annuity under subparts B or D of Part 216 of this chapter if the applicant had applied for the annuity on the date the social security application was filed.

(3) The applicant asks the Board in a written statement to consider the application for social security benefits as an application for an employee or spouse annuity.

(4) The application was filed because the employee had less than 10 years of creditable railroad service, and having established entitlement to social security benefits and continued working in railroad service, subsequently acquired 10 years of railroad service.

(b) *Claim is for death benefits.* An application for death benefits under Title II of the Social Security Act is an application for an annuity or lump sum if—

(1) The application is filed based on the death of an employee and the Board has jurisdiction for the payment of survivor benefits based on the compensation record of the deceased employee; and

(2) The claimant is eligible for an annuity or a lump-sum death payment on the date the application is filed.

**§ 217.8 When one application satisfies the filing requirement for other benefits.**

An annuity application filed with the Board is generally considered as an application for other benefits to which a person is or may be eligible. Therefore a claimant does not need to file another application to be entitled to any of the following types of benefits:

(a) An employee age annuity if—

(1) The employee's application for a disability annuity is formally denied and the employee is eligible for the age annuity on the date the application is filed or on the date the application is denied; or

(2) The employee is entitled to a disability annuity in the month before the month he or she is 65 years old.

(b) An accrued employee or supplemental annuity, or a residual lump sum, if a claimant is eligible for one of these payments when he or she files an application for a survivor annuity or lump-sum payment under this chapter.

(c) A surviving spouse annuity if he or she is entitled to a spouse annuity in the month before the month the employee died.

(d) A child's annuity if the wife of the employee had the child "in care" and was entitled to a spouse annuity in the month before the month the employee died.

(e) A surviving spouse annuity based on age, if the surviving spouse was entitled to a surviving spouse annuity based on disability in the month before the month he or she is 60 years old.

(f) A surviving spouse annuity based on age or disability if a widow, who was receiving an annuity under § 216.30(c)(3) of this chapter because she had the employee's child in her care, is eligible for an age or disability annuity when she no longer has an eligible child in her care.

(g) A spouse annuity based on age if a wife, who was receiving an annuity because she had the employee's child in her care, is eligible for an unreduced age annuity when she no longer has an eligible child in her care.

(h) A surviving spouse annuity under § 216.30(c)(3) of this chapter if during the time the surviving spouse is entitled to an annuity based on disability, he or she has "in care" a child of the deceased employee.

(i) A benefit under Title II of the Social Security Act unless the applicant restricts the application only to an annuity.

**§ 217.9 Effective period of application.**

(a) *When effective period ends.* The effective period of an application ends on the date of the notice of an initial decision denying the claim. If a timely appeal is made (see Part 260 of this chapter) the effective period of the application ends on the date of the notice of the decision of the referee, on the date of the notice of the final decision of the Board, or when court review of the denial has been completed. After the effective period of an application ends, the person must file a new application for any annuity or lump sum to which the claimant believes he or she is eligible.

(b) *Application filed before claimant is eligible.* (1) *General rule.* Except as shown in paragraph (b)(2) of this section, an application for an annuity must be denied if it is filed with the Board more than three months before the date an annuity can begin.

(2) *Application for disability annuity.* If the Board determines that a claimant for a disability annuity is disabled under Part 220 of this chapter, beginning with a date after the application is filed and before a final decision is made, the application is treated as though it was filed on the date the claimant became disabled. The claimant may be an employee, surviving spouse, or surviving child.

(c) *Application filed after the claimant is eligible.* (1) *Application for lump-sum death payment.* An application for a lump-sum death payment under Part 234 of this chapter must be filed within two years after the death of the employee. This period may be extended under the Soldiers' and Sailors' Civil Relief Act of 1940, or when the applicant can prove "good cause" under § 217.11 of this chapter for not filing within the time limit.

(2) *Application for annuity unpaid at death.* An application for an annuity due but unpaid at death under Part 234 of this chapter must be filed within two years after the death of the person entitled to the annuity. This period may be extended under the Soldiers' and Sailors' Civil Relief Act of 1940, or when the applicant can prove "good cause" under § 217.11 of this chapter for not filing within the time limit.

(3) *Application for residual lump sum.* An application for a residual lump sum under Part 234 of this chapter may be filed at any time after the death of the employee.

**§ 217.10 Application filed after death.**

The claimant must generally be alive when an application is filed. The following are exceptions to this rule:

(a) A survivor eligible for an annuity or lump sum under this chapter may file an application to establish a period of disability if the employee dies before filing an application for a disability annuity. A period of disabiliy is defined in Part 220 of this chapter. The application must be filed within three months after the month the employee died.

(b) A person who could recieve payment for the estate of a person who paid the burial expenses of the deceased employee may file an application if the person who paid the burial expenses dies before applying for the lump-sum death payment under Part 234 of this chapter. The application must be filed within the two-year period shown in § 217.9(c)(1).

(c) A surviving spouse may file an application for a spouse annuity after the death of the employee if the surviving spouse was eligible for a spouse annuity in the month before the month the employee died.

**§ 217.11 "Good cause" for delay in filing application or in providing proof of support.**

(a) An applicant has "good cause" for a delay in the filing of an application for a lump-sum death payment or an annuity unpaid at death, as shown in § 217.9(c) (1) and (2), or for a delay in providing proof of support, as shown in § 219.31, if the delay was due to—

(1) Circumstances beyond the applicant's control, such as extended

illness, mental or physical incapacity, or communication difficulties; or

(2) Incorrect or incomplete information furnished by the Board; or

(3) Efforts by the applicant to secure evidence without realizing that evidence could be submitted after filing an application or proof of support; or

(4) Unusual or unavoidable circumstances which show that the applicant could not reasonably be expected to have been aware of the need to file an application or proof of support within the set time limit.

(b) An applicant does not have good cause for a delay in filing or providing proof of support if he or she was informed of the need to file or provide proof of support within the set time limit but neglected to do so or decided not to file.

## Subpart C—Filing an Application

### § 217.15 Where to file.

(a) *Applicant in U.S. or Canada.* An applicant who lives in the United States or Canada may file an application at any Board office in person or by mail. An applicant may also give the application to any Board field employee who is authorized to receive it at a place other than a Board office.

(b) *Application Outside U.S.* An applicant who lives outside the United States or Canada may file an application at any United States Foreign Service office. An applicant may also send the application to an office of the Board.

### § 217.16 Filing date.

An application filed in a manner and form acceptable to the Board is officially filed with the Board on the earliest of the following dates:

(a) On the date it is received at a Board office.

(b) On the date it is delivered to a field employee of the Board as described in § 217.15.

(c) On the date it is received at any office of the U.S. Foreign Service.

(d) On the date the application was mailed, as shown by the postmark, if using the date it is received will result in the loss or reduction of benefits.

(e) On the date the Social Security Administration considers the application filed, if it is filed with the Social Security Administration or the Veterans Administration.

### § 217.17 Who may sign an application.

An application may be signed according to the following rules:

(a) A claimant who is 18 years old or older, competent (able to handle his or her own affairs), and physically able to sign the application, must normally sign in his or her own handwriting. However, a parent or a person standing in place of a parent may sign an application for a student under 22 years old. A parent or a person standing in place of a parent must sign the application for a child who is not yet 18 years old, except as shown in item (d).

(b) A claimant who is unable to write must make his or her mark. A Board representative or two other persons must sign as witnesses to a signature by mark.

(c) A claimant's representative, as described in Part 266 of this chapter, must sign the application if the claimant is incompetent (unable to handle his or her own affairs).

(d) A claimant who is a child between the ages of 16 and 18, is competent, as defined in paragraph (a) of this section, has no court appointed representative, and is not in the care of any person, may sign the application.

### § 217.18 When application is not acceptable.

(a) *Not properly signed.* The Board will ask the applicant to prepare a corrected application if—

(1) The original application was signed by someone other than the claimant or a person described in § 217.17; or

(2) The signature has been changed; or

(3) The signature is not readable or does not appear to be authentic.

(b) *Incomplete or not readable.* The Board will ask the applicant to prepare a supplement application with certain items completed if—

(1) Any entries on the application are not readable or appear to be incorrect; or

(2) An important part of the application was not completed.

(c) *Obtaining corrected application.* If an application is not properly signed, the applicant must prepare a new application with a corrected signature. If the Board receives the corrected application within 30 days after the applicant is asked to prepare it, the Board will use the filing date of the original application to pay benefits. If the Board receives the corrected application more than 30 days after the notice to the applicant, the Board will use the filing date of the corrected application to pay benefits.

### § 217.19 Representative of the claimant selected after application is filed.

(a) *Before benefits awarded.* If the Board selects a representative for an incompetent claimant (see Part 266 of this chapter) after an application is filed but before the benefit is awarded, a new benefit application must be filed by the representative. However, benefits will be paid using the filing date of the original benefit application.

(b) *After benefits awarded.* If the Board selects a representative after a monthly annuity was awarded to another person, the representative must apply as a substitute payee on a form specifically designed for that purpose. A new annuity application is not required.

### § 217.20 When a written statement is used to establish the filing date.

(a) *Statement filed with the Board.* A written statement indicating an intent to file a claim for an annuity or lump sum, filed with the Board as provided in §§ 217.15 and 217.16, can establish the filing date of an application. A form set up by the Board to obtain infomation about persons who may be eligible for an annuity or lump sum in a particular case is not by itself considered a written statement for the purpose of this section. The Board will use the filing date of the written statement if all of the following requirements are met:

(1) The statement gives a person's clear and positive intent to claim an annuity or lump sum for himself or herself or for some other person.

(2) The claimant or a person described in § 217.17 signs the statement.

(3) The person who signed the statement files an application with the Board on one of the forms described in Part 200 of this chapter within 90 days after the date a notice is sent advising the person of the need to file an application.

(4) The claimant is alive when the application is filed except as provided in § 217.10.

(b) *Statement filed with the Social Security Administration.* A written statement filed with the Social Security Administration can be used to establish the filing date of an application if, assuming the statement were an application, the conditions under § 217.7 are met and—

(1) The statement gives a clear and positive intent to claim benefits under Title II of the Social Security Act;

(2) The claimant or a person described in § 217.17 signs the statement;

(3) The statement is sent to the Board by the Social Security Administration;

(4) The person who signed the statement files an application with the Board on one of the forms described in Part 200 of this chapter within 90 days after the date a notice is sent advising the person of the need to file an application; and

(5) The claimant is alive when the application is filed except as provided in § 217.10.

**§ 217.21 Deterred from filing.**

A person who telephones or visits a Board office stating that he or she wishes to file for an annuity or lump sum, but puts off filing because of an action or lack of action by an employee of the Board, can establish a filing date based on that oral notice if the following conditions are met:

(a) The employee of the Board failed to—

(1) Tell the person that it was necessary to file an application on the proper form; or

(2) Tell the person that a written statement could protect the filing date; or

(3) Give the person the proper application form; or

(4) Correctly inform the person of his or her eligibility.

(b) The person files an application on one of the forms described in Part 200 of this chapter within 90 days after the date a notice is sent advising the person of the need to file an application.

(c) The claimant is alive when the application is filed except as provided in § 217.10.

## Subpart D—Cancellation of Application

**§ 217.25 Who may cancel an application.**

An application may be cancelled by the claimant or a person described in § 217.17. If the claimant is deceased, the person who is or could be eligible for any annuity accrual under Part 234 of this chapter may cancel the application for the annuity.

**§ 217.26 How to cancel an application.**

An application may be cancelled under the following conditions:

(a) *Before an annuity is awarded.* The application may be cancelled if—

(1) The applicant files a written request with the Board at a place described in § 217.15 asking that the application be cancelled or stating that he or she wants to withdraw the application.

(2) The claimant is alive on the date the written request is filed or the claimant is deceased and the rights of no person other than the person requesting the cancellation will be adversely affected; and

(3) The applicant files the written request on or before the date the annuity is awarded.

(b) *After an annuity is awarded.* The application may be cancelled if—

(1) The conditions in paragraph (a) (1) and (2) of this section are met;

(2) Any other person who would lose benefits because of the cancellation consents to the cancellation in writing; and

(3) All annuity payments already made based on the application being cancelled are repaid or will be recovered.

**§ 217.27 Effect of cancellation.**

When a person cancels an application the effect is the same as though an application was never filed. When an employee cancels his or her application, any application filed by the employee's spouse is also cancelled. However, a request to cancel a survivor's application will cancel only the application of the survivor named in the written request. A person who cancels an application may reapply by filing a new application under this part.

## Subpart E—Denial of Application

**§ 217.30 Reasons for denial of application.**

The Board will deny each application filed by or for an employee, spouse or survivor for one or more of the following reasons:

(a) The claimant does not meet the eligibility requirements for an annuity or lump sum under this chapter.

(b) The applicant files an application for other than a disability annuity more than three months before the date on which the eligible person's annuity can begin.

(c) The applicant does not submit the evidence required under this chapter to establish eligibility for an annuity or lump sum.

**§ 217.31 Applicant's right to appeal denial.**

Each applicant is given the right to appeal the denial of his or her application if he or she does not agree with the Board's decision. The appeals process is explained in Part 260 of this chapter.

5. A new Part 219 is added to read as follows:

## PART 219—EVIDENCE REQUIRED FOR PAYMENT

### Subpart A—General Evidence Requirements

Sec.

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219.21 Evidence of natural parent or child relationship.
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**Subpart D—Other Evidence Requirements**

219.30 Evidence of "living with".
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219.36 Evidence of where the employee had a permanent home.
219.37 Evidence of "good cause".


Authority: Sec. 7(b)(1), Pub. L. 93-455 (45 U.S.C. 231f(b)(1)).

### Subpart A—General Evidence Requirements

**§ 219.1 Introduction.**

This part contains the basic rules for the evidence which is required to support a person's claim for monthly or lump-sum benefits under the Railroad Retirement Act as described in Parts 216 and 234 of this chapter and Medicare coverage (see Parts 270–271 of this chapter) under title XVIII of the Social Security Act. Special evidence requirements for disability annuities are found in Part 220 of this chapter.

**§ 219.2 Definitions**

As used in this subpart—

"Applicant" means the person who signs an application for an annuity or lump sum for himself, herself or for some other person.

"Apply" means to sign a form or statement that the Board accepts as an application.

"Benefits" means any employee annuity, spouse annuity, survivor annuity, or lump-sum payment under the Act.

"Convincing evidence" means one or more pieces of evidence that proves to the satisfaction of the Board that an individual meets a requirement for eligibility. See § 219.7 for the guides the Board uses in deciding whether evidence is convincing.

"Eligible" means a person meets all of the requirements for payment of an annuity, a lump-sum or a benefit under section 202 of the Social Security Act but has not yet applied.

"Entitled" means that a person has applied and has proven his or her rights to benefits.

"Evidence" means any record, document or signed statement that helps to show whether a person is eligible for benefits. It may also be used to establish whether the person is still entitled to benefits.

**§ 219.3 Who is responsible for furnishing evidence.**

When evidence is required to prove a person's eligibility for, or right to continue to receive, annuity payments, that person or his or her representative (See Part 266 of this chapter) is responsible for obtaining the evidence and submitting it to the Board. An employee of the Board will advise each applicant what is needed and how to get it. If the evidence submitted is a foreign-language record or document, the Board will have it translated. All evidence and documents given to the Board are kept confidential and are not disclosed to anyone but the person who submitted them, except under the rules described in Part 262.16 of this chapter. Section 13 of the Railroad Retirement Act provides criminal penalties for any persons who misrepresent the facts or make false statements to obtain retirement benefits for themselves or someone else.

**§ 219.4 When and where to furnish evidence.**

When a person applies for benefits, the Board will ask that person for evidence to prove that he or she is eligible for the benefits.

After a person establishes entitlement to an annuity, the Board may ask for evidence to show that the person may continue to be entitled to an annuity or that his or her annuity payments should not be reduced or stopped. See Part 218 of this chapter for a list showing when annuity payments must be reduced or stopped. A person who lives inside the United States shall give his or her evidence to an employee of the Railroad Retirement Board office where the person files the application. Persons who live in an area where there is no Board office or persons who are unable to travel to a Board office may send evidence to the Board office closest to where they live. Persons who live outside the United States may take evidence to the Foreign Service Office closest to where they live, or send it to the headquarters office of the Board.

**§ 219.5 Failure to furnish requested evidence.**

(a) *Evidence to prove initial eligibility.* Usually the Board will ask a person to furnish specific kinds of evidence or information by a certain date, to prove initial eligibility for benefits. If the evidence or information is not received by that date, the Board may decide that the person is not eligibile for benefits and will deny his or her application. The effects of denying an application are explained in Part 217 of this chapter.

(b) *Evidence to prove continued entitlement.* When a person is already receiving an annuity, a Board employee may ask that person to produce by a certain date information needed to decide whether that person can continue to receive an annuity or whether the annuity should be reduced or stopped. If the information is not received by the date given, the Board may decide that the person is no longer entitled or that his or her annuity should be stopped or reduced under the Act.

(c) *What to do when required evidence will be delayed.* When the required evidence cannot be furnished within the specified time, the person who was asked to give the evidence or information should notify the Board and explain why there will be a delay. If this delay is caused by illness, failure to receive the information from another source, or a similar situation, the person will be given additional time to secure the evidence or information. If the information is not received within a reasonable time, as determined by the Board, the person who was asked to give the evidence or information will be notified of the effect that his or her failure to furnish the evidence or information will have on his or her receiving or continuing to receive benefits.

**§ 219.6 Original records or copies as evidence.**

(a) *General.* An applicant or an annuitant may be asked to show an original document or record as evidence to prove eligibility or continued entitlement to benefits. A Board employee will make a photocopy or transcript of these original documents or records and return the documents to the person who furnished them. A person may also submit copies of original records that are properly certified and some uncertified birth notifications. These types of records are described below in this section.

(b) *Certified copies of original records.* The Board will accept copies of original records or extracts from records if they are certified as true and exact copies of the original by—

(1) The official custodian of the record;

(2) A Board employee who is authorized to certify copies;

(3) A Veterans Administration employee, if the evidence was given to that agency to obtain veteran benefits;

(4) A Social Security Administration employee, if the evidence was given to that agency to obtain social security benefits;

(5) A United States Consular Officer or employee of the Department of State authorized to certify evidence received outside the United States; or

(6) An employee of a State agency or State Welfare Office authorized to certify copies of original records in the agency's or office's files.

(c) *Uncertified copies of original records.* The Board may accept uncertified photo copies of birth registration notifications as evidence when it is the practice of the local birth registrar to issue them in this manner.

**§ 219.7 How the Board decides what is convincing evidence.**

When the Board received evidence, a Board employee examines it to see if it is convincing evidence. If it is, no other evidence is needed. In deciding whether the evidence is convincing, the Board employee decides whether—

(a) The information contained in the evidence was given by a person in a position to know the facts;

(b) There was any reason to give false information when the evidence was created;

(c) The information contained in the evidence was given under oath or in the presence of witnesses, or with the knowledge that there was a penalty for giving false information;

(d) The evidence was created at the time took place or shortly after;

(e) The evidence has been altered or has any erasures on it; and

(f) The information contained in the evidence agrees with other available evidence, including existing Board records.

**§ 219.8 Preferred evidence and other evidence.**

When a person submits the type of evidence shown as "preferred" in §§ 219.11(a); 219.12(a)(1) and (a)(2); 219.15(b)(1), (b)(2), and (b)(3); 219.16(b); 219.17(b); 219.18(b); 219.21(a); 219.23(b); 219.24(b); or 219.33(c) of this part, the Board will generally find it is convincing evidence. This means that unless there is information in the Board's records that raises a doubt about the evidence, other evidence to prove the same fact will not be needed. If preferred evidence is not available, the Board will consider any other evidence a person furnishes. If the other evidence consists of several different records or documents which all show the same information, the Board may determine that it is convincing evidence even though it is not "preferred" evidence. If the other evidence is not convincing by itself, the person will be asked to submit additional evidence. If the additional evidence shows the same information, all the evidence considered together may be convincing evidence. When the Board has convincing evidence of the facts that must be proven, or when it is clear that the evidence provided does not prove the necessary facts, the Board will make a formal decision about the applicant's rights to benefits.

## Subpart B—Evidence of Age, Marriage, and Death

**§ 219.10 When evidence of age is required.**

(a) Evidence of age is required when the employee applies for an annuity under the Railroad Retirement Act or for Medicare coverage under title XVIII of the Social Security Act.

(b) Evidence of age is also required from a person who applies for a spouse's annuity, widow's, widower's, parent's or child's annuity under the Railroad Retirement Act, or for Medicare coverage under title XVIII of the Social Security Act.

**§ 219.11 Types of evidence to prove age.**

(a) *Preferred evidence.* The best type of evidence to prove a person's age is—

(1) A birth certificate or hospital birth record recorded before age 5;

(2) A church record of birth or baptism recorded before age 5; or

(3) Notification of registration of birth made before age 5.

(b) *Other evidence of age.* If an individual cannot obtain "preferred" evidence of age, he or she will be asked to submit other convincing evidence to prove age. The other evidence may be one or more of the following records with the records of highest value listed first; they are.

(1) Physician's or Midwife's birth record;

(2) Bible or other family record;

(3) Naturalization record;

(4) Military record;

(5) Immigration record;

(6) Passport;

(7) Census record or World War I draft registration;

(8) School record;

(9) Vaccination record;

(10) Insurance record;

(11) Labor Union or fraternal record;

(12) Employer's record; or

(13) A statement signed by the individual giving the reason why he or she cannot obtain other convincing evidence of age and the sworn statements of two other persons who have personal knowledge of the age that the individual is trying to prove.

**§ 219.12 Evidence to prove death.**

(a) *When evidence of the employee's death is required.* Evidence to prove the employee's death is always required for payment of any type of survivor benefit based on the deceased employee's record. See Part 216 for types of survivor benefits payable.

(1) Preferred evidence of death. The best evidence of a person's death is—

(i) A certified copy of or extract from the public record of death, coroner's report of death, or verdict of the coroner's jury of the state or community where death occurred; or a certificate by the custodian of the public record of death; or a certificate or statement of death issued by a local registrar public health official;

(ii) A signed statement of the funeral director, attending physician, or intern of the institution where death occurred;

(iii) A certified copy of, or extract from, an official report or finding of death made by an agency or department of the United States; or

(iv) If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department; or a copy of the public record of death in a foreign country.

(2) Other evidence of death. If the "preferred" evidence of death cannot be obtained, the individual who must furnish evidence of death will be asked to explain why and submit other convincing evidence such as sworn statements of two persons who have personal knowledge of the death. These persons must be able to swear to the date, time, place and cause of death.

(b) *When evidence to prove death of other persons is required.* Evidence to prove the death of persons other than the employee is required when—

(1) A person, who is eligible for survivor benefits, dies after the employee;

(2) A residual lump sum (See Part 234 of this chapter) is payable and a person whom the employee named to receive all or part of this benefit dies before the employee; or dies after the employee but before receiving his or her share of the benefit;

(3) The spouse in a joint and survivor annuity election case (See Part 231 of this chapter) dies before the employee; or

(4) Any other case where there is reasonable doubt of the death of—

(i) Any person who, if alive, has priority over the applicant;

(ii) Any spouse whose death is alleged to have ended a previous marriage; or

(iii) Any person whose end of entitlement would increase benefits to other entitled persons.

**§ 219.13 Evidence of presumed death.**

When a person cannot be proven dead but evidence of death is needed, the Board may presume he or she died at a certain time if the Board receives the following evidence:

(a) A certified copy of, or extract from, an official report or finding by an agency or department of the United States that a mining person is "presumed" to be dead as stated in Federal law (5 U.S.C. 5565). Unless other evidence is submitted showing an actual date of death, the Board will use the date on which the person was reported missing as the date of death.

(b) Signed statements by those in a position to know the facts and other records which show that the person has been absent from his or her residence for no apparent reason and has not been heard from for at least 7 years. If there is no evidence available that he or she is still alive, the Board will use as the date of death either the date he or she left home, the date ending the 7-year period, or some other date depending upon what the evidence shows is the most likely date of death.

(c) When a person has been missing for less than 7 years but may be presumed dead due to drowning or common disaster, (fire, accident, etc.), the Board will ask for signed statements from the applicant and individuals who know the circumstances surrounding the person's disappearance. The best evidence is statements from individuals who witnessed the drowning or saw the missing person at the scene of the accident shortly before it happened.

(d) If the applicant is the employee's grandchild or stepgrandchild but the

evidence does not identify a parent, the grandchild or stepgrandchild's parent will be presumed to have died in the first month in which the employee became entitled to benefits.

**§ 219.14 When evidence of marriage is required.**

Documentary evidence of marriage is required when an applicant for a monthly annuity, lump-sum death payment, residual lump sum or Medicare coverage, claims to be the wife, husband, widow, widower or stepparent of the employee. An applicant may also be required to submit evidence of another person's marriage when that person's marriage is necessary to determine the applicant's entitlement to benefits under the Railroad Retirement Act. In deciding whether the marriage to the employee is valid or not in a life case, the Board will follow the law of the State where the employee had a permanent home when the applicant filed an application; in a death case, the Board will follow the law of the State where the employee had a permanent home when he died. See § 219.36 for description of permanent home. What evidence will be required depends on whether the employee's marriage was a ceremonial marriage, a commonlaw marriage, or a marriage that can be deemed to be valid.

**§ 219.15 Evidence of a valid ceremonial marriage.**

(a) *Definition of valid "ceremonial marriage."* A valid "ceremonial marriage" is one that follows procedures set by law in the State or foreign country where the ceremony takes place. These procedures cover who may perform the marriage ceremony, what licenses or witnesses are needed and similar rules. A ceremonial marriage can be one that follows certain tribal Indian custom, Chinese custom or similar traditional procedures.

(b) *Preferred evidence.* Preferred evidence of a ceremonial marriage is—

(1) A copy of the public record of the marriage, certified by the custodian of the record or by a Board employee;

(2) A copy of the church record of the marriage certified by the custodian of the record or by a Board employee; or

(3) The original certificate of marriage.

(c) *Other evidence of a ceremonial marriage.* If preferred evidence of a ceremonial marriage cannot be obtained, the applicant must state why, in writing, and submit either—

(1) A sworn statement of the clergyman or official who performed the marriage ceremony; or

(2) Other convincing evidence such as the sworn statements of two persons who have knowledge of the marriage; preferably eyewitnesses to the marriage ceremony.

**§ 219.16 Evidence of a common-law marriage.**

(a) *Definition of "common-law marriage."* A "common-law" marriage is one considered valid under the law of certain States even though there was no formal ceremony. It is a marriage based upon an agreement to be married between two persons free to marry, who consider themselves married, and who live together as husband and wife. In some states certain other requirements (as dictated by the laws of the state) must be met.

(b) *Preferred evidence.* Evidence of a common-law marriage must give the reasons why the informant believes that a marriage exists. If the information described in this paragraph is not furnished on a form provided by the Board, it must be submitted in the form of a sworn statement. Preferred evidence of a common-law marriage is one of the following:

(1) If both the husband and wife are alive, each shall sign a statement and get signed statements from one blood relative of each. The statement of another individual may be submitted for each statement the husband or wife is unable to get from a relative. Each signed statement should show that—

(i) The husband and wife have a present agreement to be married and that they believe they are married; and

(ii) The husband and wife present themselves to the public as husband and wife.

(2) If either the husband or wife is dead, the surviving spouse shall sign a statement and get signed statements from two blood relatives of the dead spouse. The surviving spouse's statement should show that he or she and the dead spouse had an agreement that they believed themselves to be married and that they presented themselves to the public as husband and wife. The statments from relatives of the dead spouse should support the surviving spouse's statement.

(3) If both husband and wife are dead, the applicant shall get a signed statement from one blood relative of each dead spouse. Each statement should show that the husband and wife had an agreement that they believed themselves to be married and that they presented themselves to the public as husband and wife.

(4) Statements by relatives and other individuals described in paragraphs (b)(1), (2), (3) of this section are not required when—

(i) The husband and wife entered into a ceremonial marriage which was void because of a legal impediment to the marriage. See § 216.35 for definition of legal impediment;

(ii) After the impediment was removed the husband and wife continued to live together as man and wife until the employee filed an application or one of them died; and

(iii) A valid common-law marriage was established, under the law of the State in which they lived, by their continuing to live together as man and wife.

(c) *Other evidence of common-law marriage.* When preferred evidence of a common-law marriage cannot be obtained, the applicant will be asked to explain why and to furnish other convincing evidence of the marriage.

**§ 219.17 Evidence of a deemed valid marriage.**

(a) *Definition of "deemed valid marriage."* A "deemed valid marriage" is a ceremonial marriage entered into in good faith which would be valid if a legal impediment did not exist. An applicant may be the deemed spouse or widow or widower only if the applicant lives in the same household and no other person has been or is entitled to benefits as the legal spouse, widow, or widower.

(b) *Preferred evidence.* Preferred evidence of a deemed valid marriage is—

(1) Evidence of the ceremonial marriage as described in § 219.15(b);

(2) If both the employee and spouse are alive, the spouse's signed statement that he or she went through the ceremony in good faith and his or her reasons for believing the marriage was valid; or if the employee is dead, the widow or widower's signed statement that he or she went through the marriage ceremony in good faith and his or her reasons for believing it was valid;

(3) If required to remove a reasonable doubt, the signed statements of other persons who might have information about what the parties knew about any previous marriage or other facts showing whether the parties went through the marriage ceremony in good faith; and

(4) Evidence that the parties were living in the same household, if the employee is alive, when he or she applied for benefits or, if the employee is dead, when he or she died. See § 219.30(c) for the evidence required to demonstrate living in the same household.

(c) *Other evidence of a deemed valid marriage.* If preferred evidence of a deemed valid marriage cannot be obtained, the applicant must explain why and submit other convincing evidence of the marriage.

**§ 219.18 Evidence that a marriage has ended.**

(a) *When evidence is required.* Evidence of how a previous marriage ended may be required to determine whether a later marriage is valid. If a widow or widower remarried after the employee's death and that marriage was annulled, evidence of the annulment is required.

(b) *Preferred evidence.* Preferred evidence that a marriage has ended is—

(1) A certified copy of the decree of divorce or annulment; or

(2) Evidence of the death (See § 219.12(b)) of a party to the marriage.

(c) *Other evidence that a marriage has ended.* If preferred evidence that the marrige has ended cannot be obtained, the applicant must explain why and submit other convincing evidence that the marriage has ended.

## Subpart C—Evidence for Child's and Parent's Benefits

**§ 219.20 When evidence of a parent or child relationship is required.**

A person who applies for parent's or child's benefits or for Medicare coverage is required to submit evidence of his or her relationship to the deceased employee. A spouse, under age 60, who applies for a spouse annuity because she has a child of the employee in care, is required to submit evidence of the child's relationship to the employee. The evidence the Board will request depends on whether the person is the employee's natural child, adopted child, stepchild, grandchild or stepgrandchild; or whether the person is the employee's natural parent or adopting parent.

**§ 219.21 Evidence of natural parent or child relationship.**

(a) *Preferred evidence.* If the eligible person is the natural parent of the employee, preferred evidence of the relationship is a copy of the employee's public or religious birth record. If the eligible person is the natural child of the employee, preferred evidence of the relationship is a copy of the child's public or religious birth record.

(b) *Other evidence of parent or child relationship.* When preferred evidence of a parent or child relationship cannot be obtained, the Board may ask the applicant for evidence of the employee's marriage or of the marriage of the employee's parents if that is needed to remove any reasonable doubt of the relationship. To show that a person is the child of the employee the person may be asked for evidence that he or she would be able to inherit the employee's personal property under State law where the employee had a permanent home (See § 219.31). When a spouse applies for benefits because of a child in care, the employee may be asked for a copy of any court order showing that he has been declared to be the natural parent of the child or a court order requiring the employee to contribute to the child's support because the child is his son or daughter.

**§ 219.22 Evidence of stepparent or stepchild relationship.**

If the eligible person is a stepparent or stepchild of the employee, the Board will ask for the evidence described in § 219.21 or § 219.23 which shows the person's natural or adoptive relationship to the employee's husband, wife, widow or widower. The Board will also ask for evidence of the husband's, wife's, widow's, or widower's marriage to the employee. (See § 219.14–219.17).

**§ 219.23 Evidence of relationship by legal adoption—parent or child.**

(a) *Definition of legally adopted child.* A child who is legally adopted by the employee under applicable State law is a "child" of the employee. Legal adoption is different from equitable adoption in that the adoption proceedings are completed under applicable State law and are not defective. A child adopted after the employee's death by the widow or widower, under certain conditions is deemed to be the employee's child. (See Part 216 Subpart H of this chapter).

(b) *Preferred evidence.* Preferred evidence of legal adoption is—

(1) A copy of the decree or order of adoption, certified by the custodian of the record;

(2) A photocopy of the decree or order of adoption; or

(3) If the widow or widower adopted the child after the employee's death, the evidence described in paragraph (b)(1) of this section; the widow's or widower's statement as to whether the child was living in the same household with the employee when he or she died (See § 219.30); what support the child was getting from another person or organization; and if the widow or widower had a deemed valid marriage with the employee, and evidence of that marriage (See § 219.17).

(c) *Other evidence of legal adoption.* In some States, the record of adoption is sealed and cannot be obtained without a court order. In this event, the Board will accept as proof of adoption an official notice received by the adopting parents at the time of adoption that the adoption has been completed; or a birth certificate issued as a result of the adoption proceeding.

**§ 219.24 Evidence of relationship by equitable adoption.**

(a) *Definition.* An equitably adopted child is a child who cannot qualify as a legally adopted child because the adoption proceedings are defective under State law; or a contemplated adoption was never completed. In some states, the law will consider a person to be the child of another if the other person agreed to adopt the child, the natural parents or the person caring for the child agreed to the adoption, the person and the child then lived together as parent and child, and certain other requirements are met.

(b) *Preferred evidence.* If the applicant is a child who had this type of relationship to the employee (or to the employee's wife, widow or husband), as defined in paragraph (a) of this section, the Board will ask for evidence of the agreement if it is in writing. The Board will also ask for written statements from the child's natural parents.

(c) *Other evidence.* If the agreement to adopt was not in writing, the Board will ask for other convincing evidence about the child's relationship to the adopting parents.

**§ 219.25 Evidence of relationship of grandchild or stepgrandchild.**

If the child is the grandchild or stepgrandchild of the employee, the Board will require the kind of evidence described in §§ 219.21–219.22 that shows the child's relationship to his or her parents and his or her parent's relationship to the employee.

**§ 219.26 Evidence of a child's dependency.**

(a) *When evidence of a child's dependency is required.* Evidence of a child's dependency on the employee is required when–

(1) The employee is receiving an annuity that can be increased under the Social Security Act Overall Mininum (See Part 229 of this chapter) by including a child, grandchild or a spouse who has a child in her care;

(2) A wife under age 65 applies for a full spouse annuity because she has a child or a grandchild of the employee in her care; or

(3) A child or someone in behalf of a child applies for a child's annuity based on the deceased employee's record.

(b) *When the dependency requirement must be met.* Usually the dependency requirement must be met at the time the employee became disabled or died or at

the time the child's annuity application was filed.

(c) *Natural or adopted child.* If the child is the employee's natural or adopted child the Board may ask for the following evidence:

(1) A signed statement by someone who knows the facts that confirms this relationship and which shows whether the child was legally adopted by someone other than the employee. If the child was adopted by someone else while the employee was alive but the adoption was annulled, the Board may require a certified copy of the annulment decree or other convincing evidence of the annulment.

(2) A signed statement by someone in a position to know showing when and where the child lived with the employee and when and why they may have lived apart; and showing what contributions the employee made to the child's support and how the contributions were made.

(d) *Stepchild.* If the child is the employee's stepchild, the Board may ask for the following evidence:

(1) A signed statement by someone in a position to know showing when and where the child lived with the employee and when and why they may have lived apart.

(2) A signed statement by someone in a position to know showing that the child received at least one-half of his or her support from the employee or the one-year before the employee became entitled to benefits or to a period of disability, (See Part 220 Subpart B of this chapter), died, and the income and support the child received in this period from any other source.

(e) *Grandchild or stepgrandchild.* If the child is the employee's grandchild or stepgrandchild, the Board will ask for evidence described in paragraph (d) of this section showing that the child was living with the employee and receiving at least one-half of his or her support from the employee for the year before the employee became entitled to benefits or to a period of disability (See Part 220 Subpart B of this chapter), or died. The Board will also ask for evidence of the employee's death or disability.

**§ 219.27 Evidence of school attendance for child age 18 or older.**

If a child age 18 or older, applies for benefits as a student the Board will ask for evidence that the child is attending school. After the child has started his or her school attendance the Board will also ask (twice yearly) for evidence that he or she is continuing to attend school full-time. The child will be asked to submit (on a form furnished by the Board or other form acceptable to the Board) the following evidence:

(a) A signed statement that he or she is attending school full-time and is not being paid by an employer to attend school.

(b) A statement from an official of the school verifying that the child is attending school full-time. The Board will also accept as evidence a letter of acceptance from the school, receipted bill or other evidence show that the child has enrolled or been accepted at that school or is continuing in full-time attendance.

## Subpart D—Other Evidence Requirements

**§ 219.30 Evidence of "living with."**

(a) *Definition of "living with."* A spouse, widow or widower is "living with" the employee if—

(1) He or she and the employee are living in the same household together;

(2) The employee is contributing to the spouse's, widow's or widower's support (see § 216.24 of this chapter); or

(3) The employee is under court order to contribute to the spouse's, widow's or widower's support.

(b) *When evidence of "living with" is required.* Evidence of living with" is required when—

(1) The employee's spouse applies for a spouse's annuity; or

(2) The employee's legal widow or widower applies for a lump-sum death payment or residual lump sum on the basis of that relationship; or the employee's "deemed" widow or widower applies for a widow's or widower's annuity.

(c) *Types of evidence to prove "living with."* The following evidence may be required:

(1) If the employee is alive, both the employee and his or her spouse must sign a statement that they are living together in the same household when the spouse applies for a spouse's annuity.

(2) If the employee is dead, the widow or widower must sign a statement showing whether he or she was living with the employee when the employee died.

(3) If the employee and spouse, widow or widower were temporarily living apart, a signed statement is required explaining where each was living, how long the separation lasted, and the reason for the separation. If more evidence is required to remove any reasonable doubt about this, the Board may ask for signed statements of other persons in a position to know the facts or for other convincing evidence of "living with."

(4) If the employee and spouse, widow or widower were not living in the same household, the Board may ask for evidence that the employee was contributing to or under court order to contribute to the support of his or her spouse, widow or widower. Evidence of contributions or a certified copy of the order for support may be requested. The court order for support must be in effect on the day the spouse applies for a spouse's annuity or if the employee is dead, the day of the employee's death. This type of evidence does not apply for a "deemed" widow or widower (see § 219.17) because he or she must have been living in the same household as the employee.

**§ 219.31 Evidence of a parent's support.**

If a person applies for a parent's annuity, the Board will ask for evidence to show that the parent received at least one-half support from the employee in the one-year period before the employee died. The Board may also ask the parent for signed statements from other people who know the facts about his or her sources of support. The Board will ask for the following evidence:

(a) The parent's signed statement showing his or her income, any other sources of support, and the amount from each source during the one-year period; and

(b) The parent's signed statement showing his or her expenses during the one-year period.

(c) If the statement described in paragraphs (a) and (b) of this section cannot be obtained, other convincing evidence that the parent received one-half of his or her support from the employee.

**§ 219.32 Evidence of a male spouse's or widower's dependence.**

In the case of *Kalina* vs. *Railroad Retirement Board,* the Supreme Court ruled that a male spouse or widower need not be dependent on the deceased employee to be eligible for a spouse's or widower's annuity. However, a male spouse or widower must be dependent on the employee to be entitled to a windfall (see § 226.27 of this chapter for description of windfall). The male spouse or widower will be asked for evidence that he was dependent on the employee for at least one-half his support at the time of his annuity beginning date or if earlier the date he became entitled to a windfall or at the time of the employee's death. The Board will ask for the following evidence:

(a) The male spouse's or widower's signed statement showing his income, any other sources of support and the amount from each source.

(b) The male spouse's or widower's signed statement showing his expenses.

(c) If the statement described in paragraphs (a) and (b) of this section cannot be obtained, other convincing evidence that the spouse or widower received one-half support from the employee.

**§ 219.33 Evidence of having a child in care.**

(a) *Definition.* "Child in care" means that the mother or father exercises parental control and responsibility for the welfare and care of a child under age 18 or a mentally incompetent child age 18 or over or performs personal services for a mentally competent child age 18 or over who is disabled.

(b) *When evidence of having a child in care is required.* A person under age 65 who applies for a spouse's annuity on the basis of caring for a child, or for a mother's or father's annuity as a widow or widower, is required to furnish evidence that he or she has in care an eligible child of the employee as described in §§ 216.36–216.37. What evidence the Board will ask for depends on whether the child is living with the applicant or with someone else.

(c) *Preferred evidence of having a child in care.* Preferred evidence of having a child in care is—

(1) If the child is living with the applicant, the applicant's signed statement showing that the child is living with him or her.

(2) If the child is living with someone else—

(i) The applicant's signed statement showing with whom the child is living and why. The applicant must also show when the child last lived with him or her, how long the separation will last and what care and contributions he or she provides for the child; and

(ii) The signed statement of the person with whom the child is living showing what care the applicant provides and the sources and amounts of support received by the child. If the child is in an institution, an official there should sign the statement. If there is a court order or written agreement showing who has custody of the child, the Board will ask for a copy of this.

(d) *Other evidence.* If the preferred evidence described in paragraph (c)(2)(ii) of this section cannot be obtained, the Board will ask for other convincing evidence that the applicant has the child in care.

**§ 219.34 Evidence of responsibility for or payment of burial expenses.**

(a) *When evidence of burial expenses is required.* If a person applies for the lump-sum death payment because he or she is responsible for paying the funeral home or burial expenses of the employee or because he or she has paid some or all of these expenses, the Board will ask for evidence of this.

(b) *Type of evidence required.* The Board will ask for the following evidence:

(1) The applicant's signed statement showing—

(i) That he or she accepted responsibility for the funeral home expenses or paid some or all of these expenses or other burial expenses; his or her relationship to the employee; and if not related by blood or marriage, why he or she accepted responsibility for, or paid these expenses;

(ii) Total funeral home expenses and, if necessary, the total of other burial expenses; and if someone else paid part of the expenses, the person's name, address, relationship to the employee and the amount he or she paid;

(iii) The amount of cast or property the applicant expects to receive as repayment for any burial expenses he or she paid; and whether anyone has applied for any burial allowance from the Veterans Administration or other governmental agency for these expenses; and

(iv) If the applicant is owner or official of a funeral home, a signed statement from anyone, other than an employee of the home, who helped make the burial arrangements showing whether he or she accepted responsibility for paying the burial expenses.

(2) Unless the person is applying as an owner or official of a funeral home, a signed statement from the owner or official and, if necessary, from those supplied other burial goods or services which shows—

(i) The name, address, and relationship to the employee of everyone who accepted responsibility for, or paid any part of, the burial expenses; and

(ii) Information which the owner or official of the funeral home and, if necessary, the supplier has about the expenses and payments mentioned in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section.

**§ 219.35 Evidence of relationship of a person other than a parent or child.**

When any person other than a child or parent applied for benefits due because of the employee's death or because of the death of a beneficiary, the Board may ask the applicant for evidence of relationship. The type of evidence requested is dependent upon the amount of benefit payable and the applicant's relationship to the decreased employee or beneficiary. If there is more than one person eligible for the benefit, and all eligible persons agree on the relationship of each other eligible person, only one of the persons will be asked to furnish proof of relationship.

**§ 219.36 Evidence of where the employee has a permanent home.**

(a) *When evidence of the employee's permanent home is required.* The Board may ask for evidence to prove where the employee has a permanent home at the time his or her spouse filed an application or if earlier, the time the employee died if—

(1) The entitled person is applying for benefits as the employee's wife, husband, widow, widower, parent or child; and

(2) The entitled person's relationship to the employee depends upon the laws of the State where the employee has his or her permanent home when his or her wife or husband applied for benefits or when the employee died.

(b) *What evidence is required.* The Board will ask for the following evidence to establish the employee's permanent home.

(1) The eligible person's signed statement showing what the employee considered to be his or her permanent home.

(2) If the statement in paragraph (b)(1) of this section or other evidence of record raises a reasonable doubt in establishing the employee's permanent home, evidence of where the employee paid personal property taxes, or real estate taxes, or income taxes; or voted; or other convincing evidence may be required.

**§ 219.37 Evidence of "good cause".**

The principle of "good cause" is applied by the Board in determining whether to allow an application which is submitted after the statutory time limits to be acceptable for the lump-sum death payment.

(a) *When evidence of "good cause" is required.* The Board may ask for evidence the applicant had "good cause" for delay as defined in Part 217 of this chapter when the applicant is applying for the lump-sum death payment described in Part 234 of this chapter more than two years after the employee died.

(b) *What evidence is required to establish "good cause".* The Board will ask for the following evidence of "good cause":

(1) The applicant's signed statement explaining why he or she did not submit proof of support or the application for lump-sum death payment within the specified 2-year period.

(2) If the statement in paragraph (b)(1) of this section or other evidence raises a reasonable doubt whether there was good cause, other convincing evidence to establish "good cause".

6. A new Part 221 is added to read as follows:

## PART 221—JURISDICTION DETERMINATIONS

Sec.
221.1 Introduction.
221.2 Railroad Retirement Board jurisdiction.
221.3 Social Security Administration jurisdiction.
221.4 When a jurisdiction decision may be reversed.

Authority: Sec. 7(b)(1), Pub. L. 94–547 (45 U.S.C. 231f(b)(1)).

### § 221.1 Introduction.

This part explains the factors involved in deciding whether the Social Security Administration or the Railroad Retirement Board will pay benefits to a railroad employee, and his or her eligible family members, both before and after the employee's death. The agency that has jurisdiction over the payment of benefits also has jurisdiction of the applicant's medicare coverage (see Part 270 of this chapter). The Board is responsible for making this decision.

### § 221.2 Railroad Retirement Board jurisdiction.

(a) *Life cases.* The Board has jurisdiction to pay monthly benefits to each living employee who has completed at least ten years (120 months) of creditable service under the Railroad Retirement Act, and to his or her eligible spouse. Creditable service is described in Part 220 of this chapter.

(b) *Death cases.* The Board has jurisdiction to pay monthly benefits or lump-sum death benefits to eligible survivors of a deceased employee, when the deceased employee has at least ten years (120 months) of service that is creditable under the Railroad Retirement Act and a current connection as described in Part 216 of this chapter. Lump-sum death benefits are described in Part 234 of this chapter. The Board also has jurisdiction to pay any residual benefits that may become payable at the death of an employee. Residual benefits are described in Part 234 of this chapter. The Board retains jurisdiction to pay any residual that may be payable even after jurisdiction has been transferred to the Social Security Administration as described in § 221.3.

### § 221.3 Social Security Administration jurisdiction.

The Board transfers jurisdiction (railroad service and compensation credits earned by the employee which the Social Security Administration considers in determining benefits payable) to the Social Security Administration when—

(a) *Life and death cases.* A living or deceased employee has less than 120 months of service that is creditable under the Railroad Retirement Act; or

(b) *Death cases.* A deceased employee has at least 120 months of service that is creditable under the Railroad Retirement Act (see Part 220 of this chapter) but does not have a current connection with the railroad industry as described in Part 216 of this chapter.

### § 221.4 When a jurisdiction decision may be reversed.

The Board may reverse a jurisdiction decision whenever evidence is received by the Board indicating that the original decision was incorrect.

## PART 230—[REDESIGNATED FROM PART 217]

7. Former Part 217 titled Months Annuities Not Payable by Reason of Work is redesignated as Part 230. A new Part 217 titled Application for Annuity or Lump Sum was added (as explained in item 4 above).

## PART 232—SPOUSE'S ANNUITIES

### Subpart A—[Removed]

### §§ 232.201-232.204 [Removed]

8. Part 232 is amended by removing Subpart A and §§ 232.201 through 232.204 of Subpart B.

## PART 237—INSURANCE ANNUITIES AND LUMP SUMS FOR SURVIVORS

### Subparts C and H—[Removed]

### §§ 237.401, 237.404, and 237.406-237.410 [Removed]

9. Part 237 is amended by removing Subpart C, §§ 237.401, 237.404, and 237.406 through 237.410 of Subpart D, and Subpart H.

## PART 238—RESIDENTIAL LUMP-SUM PAYMENTS

### § 238.5 [Removed]

10. Part 238 is amended by removing § 238.5.

Dated: November 14, 1980.

By Authority of the Board.

**R. F. Butler,**

*Secretary of the Board.*

[FR Doc. 80-36931 Filed 11-25-80; 8:45 am]

BILLING CODE 7905-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Parts 404 and 416

### Continued Payment of Disability Benefits to Individuals Under Vocational Rehabilitation Plans; Decision to Develop

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Notice of Decision to Develop Regulations.

**SUMMARY:** The Social Security Administration plans to publish proposed regulations to provide that disability benefits will not be terminated or suspended because a person's physical or mental impairment has ceased if he or she is participating in an approved State vocational rehabilitation program.

These changes will implement a provision of Pub. L. 96–265 (The "Social Security Disability Amendments of 1980") which amends sections 225 and 1631(a) of the Social Security Act to continue benefits after the impairment ceases if the beneficiary is participating in an approved rehabilitation program. The Commissioner of Social Security must determine that participation in the program will increase the likelihood that the person may be permanently removed from the disability benefit rolls.

The changes will require revision to Subparts D, J, and P of Part 404 and Subparts I and N of Part 416 of Title 20 of the Code of Federal Regulations. The Department of Health and Human Services has classified these regulations as policy significant.

**FOR FURTHER INFORMATION CONTACT:** Russell C. Brown, Social Security Administration, Room 3–C–7 Operations, 6401 Security Boulevard, Baltimore, Maryland 21235 Telephone 301–594–3784.

Dated: November 5, 1980.

**William J. Driver,**

*Commissioner of Social Security.*

[FR Doc. 80-36940 Filed 11-25-80; 8:45 am]

BILLING CODE 4110-07-M

## DEPARTMENT OF DEFENSE

### Department of the Army

### 32 CFR Part 505

[Army Reg. 340-21]

### Personal Privacy and Rights of Individuals Regarding Personal Records; Exemptions

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Army proposes to delete 2 exemption rules for two systems of records formerly subject to the Privacy Act. It was proposed to delete these two systems of records at 45 FR 75734, November 17, 1980.

**DATE:** Comments must be received on or before December 16, 1980.

**ADDRESS:** Comments may be sent to Headquarters, Department of the Army, The Adjutant General's Office, Washington, D.C. 20310.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Christian, telephone: (202) 693-0973.

**SUPPLEMENTARY INFORMATION:** Department of the Army exemption rules were published in the Federal Register of September 28, 1977 at 42 FR 51502.

**§ 505.9b [Amended]**

Accordingly, § 505.9b of 32 CFR Part 505 is proposed to be amended by deleting the exemptions for record systems A0508.09 DAPE, entitled FBI Criminal Type Reporting File (42 FR 51507; September 28, 1977) and A0720.04b DAPE, entitled Individual Correctional Treatment Files (42 FR 51511; September 28, 1977).

M. S. Healy,

*OSD Federal Register Liaison Officer, Washington, Headquarters Services, Department of Defense.*

November 20, 1980.

[FR Doc. 80-36784 Filed 11-25-80; 8:45 am]

BILLING CODE 3710-08-M

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### 32 CFR Part 505

[Army Reg. 340-21]

### Personal Privacy and Rights of Individuals Regarding Their Personal Records

**AGENCY:** Department of the Army DoD.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of the Army proposes to amend the regulations pertaining to processing systems of records notices under the Privacy Act of 1974. The proposed amendment is necessary to conform to the current requirements of the Office of Management and Budget and the Department of Defense.

**DATE:** Comments must be received on or before December 26, 1980.

**ADDRESS:** Comments may be submitted to Headquarters, Department of the Army, The Adjutant General's Office, Washington, D.C. 20310.

**FOR FURTHER INFORMATION CONTACT:** Mr. Guy B. Oldaker, telephone (area code: 202) 693-0973.

**SUPPLEMENTARY INFORMATION:** Department of the Army policy and procedures implementing the Privacy Act of 1974 were published in the Federal Register on November 28, 1975 (40 FR 55551) and are contained in 32 CFR Part 505.

Accordingly, it is proposed to revise § 505.5 of 32 CFR to read as follows:

**§ 505.5 System of records.**

(a) *Section I. General Provisions.* (1) *Standards.* (i) This chapter prescribes general standards for, and restrictions in, the establishment and maintenance of systems of records. It requires the publication of notices in the Federal Register for all systems of records and of advance reports to the Congress and the Office of Management and Budget for those meeting the criteria in Section II. Section 505.6 details instructions for preparing system notices.

(ii) A "system of records", as defined in the Privacy Act, must meet all of the following criteria:

(A) It must consist of "records".

(B) It must be "under the control of" an agency.

(C) It must consist of records that are retrieved by reference to and individual name or some other personal identifier.

(iii) Some systems of records may be exempt from certain provisions of the Act; however, none are automatically exempt. Procedures for claiming exemptions are in § 505.7.

(2) *Retrieval practices.* Whether records are subject to the Act depends on how they are retrieved. To be subject to the Act, the records must be retrieved by use of an individual identifier; it is not enough that a capability or potential for retrieval exists or that retrieval is possible solely because of human memory.

(i) Existing file series shall not be rearranged so as to permit retrieval by name, social security number, or other individual identifier unless a system notice is published in the Federal Register.

(ii) Files may be rearranged, however, so as to prevent retrieval by person identifier and, thus, remove them from the system notice requirements. This procedure shall not be used, however, to circumvent the requirements of the Act by such devices as designating a file by a general overall title (e.g., "reaassignment actions") when, in fact, the documents are retrieved by individual identifiers.

(3) *Relevance and necessity.* Only such personal information as is relevant and necessary to accomplish a purpose or mission required by Federal statute or Executive Order of the President shall be maintained in systems of records. The specific provision of law or Executive Order which provides authority for maintenance of information in each system of records must be identified. Statutory authority, or the regulatory authority derived therefrom, to establish and maintain a system of records does not convey unlimited authority to collect and maintain all information which may be useful or convenient, as opposed to that which is relevant and necessary.

(4) *Standards of accuracy.* Except for certain statistical records which are not used in making a determination about an individual, most records could be used in making a determination about an individual's rights, benefits, or privileges, including employment. To ensure accuracy, information to be included in a system of records should be obtained directly from the individual concerned whenever practicable. All records in systems of records which are used in making any determinations about any individual will be maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in any determination.

(5) *First Amendment rights.* No record describing how an individual exercises rights guaranteed by the First Amendment will be maintained unless expressly authorized by Federal statute, by the individual about whom the record pertains, or unless pertinent to and within the scope of an authorized law enforcement activity. The exercise of these rights includes, but is not limited to, religious and political beliefs, freedom of speech and the press, and the right of assembly and to petition.

(6) *System evaluation.* System managers will evaluate information contained in their systems of records for relevance and necessity during the development phase of a new system of records or when an amendment to an existing system is proposed. In addition, system managers will evaluate their existing systems prior to the Annual Report (see § 505.1(k)). This evaluation should consider:

(i) Relationship of each item of information to the statutory or regulatory purpose for which the system is maintained.

(ii) Specific adverse consequences of not collecting each category of information.

(iii) Possibility of meeting the information requirement through use of information not individually identifiable or through sampling techniques.

(iv) Length of time the information is needed and, where appropriate, techniques for purging parts of the record.

(v) Financial cost of maintaining the data compared to risk or adverse consequences of not maintaining it.

(vi) Necessity and relevance of the information to the mission. When certain information is no longer required, it should be excised, if feasible. This requirement does not authorize destruction of records which are required to be retained in accordance with disposal authorizations granted under the Federal Records Act of 1950, as amended.

(7) *Government contractors.* When the Army contracts for the operation, use, or maintenance of a system of records to accomplish a function of the Army, such system of records will be deemed to be maintained by the Army and is subject to this regulation and the Defense Acquisition Regulation. Contractors are obligated to comply with the requirements of the Privacy Act in the collection, use, maintenance, and dissemination of information contained in the system of records. The contractor will be required to establish and maintain procedures which ensure that the confidentiality of records is maintained at all times and that information is disclosed only as permitted by the Privacy Act and Army regulations in the 340–21 series. The disclosure of records between the Army and its contractors will not require the consent of the individual to whom the record pertains or the maintenance of a disclosure accounting record. In this regard, disclosure of personal information between the Army and the contractor is considered to be the same as between those officers and employees of the Army who have a need for the records in the performance of their duties.

(8) *Safeguarding personal information in systems of records.* Personal information which is not routinely required to be released under the Freedom of Information Act (see § 505.3(b)(2)) must be safeguarded to preclude unauthorized disclosure and dissemination or misuse. Unauthorized access will be controlled by appropriate administrative, technical, and physical safeguards compatible with the sensitivity of the information. As a minimum, records will be accorded the protection prescribed by AR 340–16. Classified records must be safeguarded as prescribed in AR 380–5. Safeguarding information in automated systems is subject to the risk assessment requirements of Chapter 10 and Appendix L, AR 380–380.

(b) *Section II. Reporting Requirements for New or Altered Systems.* (1) *Narrative report.* The Privacy Act requires that an advance report of a new or altered system, meeting the requirements set forth in paragraph (b)(3) of this section, must be staffed with the Congress and the Office of Management and Budget. This will permit an evaluation of the probable and/or potential effect of such proposal on the privacy and other personal or property rights of individuals. It will also permit evaluation of the disclosure of information relating to such individuals and its effect on the preservation of the constitutional principles of federalism and separation of powers.

(2) *Criteria.* A report is required under the following conditions:

(i) *When a new system of records is proposed.* A new system is one for which no system notice is currently published in the Federal Register.

(ii) When an alteration is proposed to an existing published system of records which meets the following criteria:

(A) Increases or changes the number or types of individuals on whom records are maintained. Changes involving the number—rather than the type—of individuals about whom records are maintained need only be reported when that change significantly alters the character or purpose of the system of records; e.g., normal increases attributed to normal population growth patterns need not be reported. On the other hand, when a system which covered only a portion of the workforce is expanded to cover all individuals, a report is required; e.g., a system which covered only a command portion of enlisted members is expanded to cover the entire enlisted force of the Department of the Army. The change would affect the "categories of individuals covered by the system" element of the system notice.

(B) Expands the types or categories of information maintained. For example, expansion of an employee payroll file to include data on education and training must be reported since the purpose of a payroll does not encompass education or training. This change would affect the "categories of records in the system" element of the system notice.

(C) Alters the manner in which the records are organized, indexed, or retrieved so as to change the nature or scope of the records. An example would be the combining of two or more existing systems, or splitting an existing system into two or more different systems such as might occur in a centralization/decentralization of organizational responsibilities; this would require a report.

(D) Alter the purpose(s) for which the information is used. For example: a proposal that military service records currently used for historical purposes, are to be used to make determinations on eligibility for disability benefits, would require a report. A proposal to change or establish a new "routine use" does not necessarily require a report if that use is compatible with the purposes for which the system is maintained; i.e., does not in effect create a new purpose.

(E) Changes the equipment configuration, software, and/or procedures so as to create the potential for either greater or easier access. Examples of such changes would be the conversion of a manual system to an automated one or the addition of a telecommunications capability to a system which did not have one. Another example would be the direct linking into a system by remote terminals of a new category of offices, such as might occur if a field office which had previously accessed a file by calling the headquarters office were to acquire direct terminal access. Software releases, such as operating systems and system utilities that provide for easier access, would require a report if used by applications that process personal information.

(*1*) The addition of an on-line capability to a previously batch-oriented system would require a report.

(*2*) The addition of peripheral devices such as tape drives, disk drives, card readers, printers, and the like to an existing equipment configuration does not constitute an altered system under the Privacy Act so long as the existing security posture is preserved; i.e., no report is required.

(*3*) An equipment configuration that currently has an on-line capability is not subject to the reporting requirement if it satisfies the following criteria:

(*i*) The equipment configuration changes in such a way that its existing security posture is preserved, i.e., the addition of terminals in a closed shop environment.

(*ii*) The addition of terminals does not exceed the capability of the current

operating system and the existing security posture is preserved.

(3) *Content.* (i) The narrative report will consist of (A) transmittal letter, (B) narrative statement, and (C) supporting documentation. It will bear the Reports Control Symbol DD (A&AR) 1379.

(ii) The transmittal letter should include information not appropriate to either the narrative statement or the system notice, i.e., request for waiver (see paragraph (b)(3)(iv)(D) of this section), and be addressed to HQDA (DAAG–AMR–R).

(iii) The narrative statement primarily accomplishes staffing with the Congress and the Office of Management and Budget. It must include the following items:

(A) System Identification and Name: (e.g., A0708.02DAPC Official Military Personnel File);

(B) Responsible Official: (Name, title, and address of official to whom inquiries/comments may be directed);

(C) Purpose(s) of the System: (for new system only), or Nature of the Change(s) Proposed: (for altered system);

(D) Authority for the System: (Cite the specific provision of Federal statute or Executive Order which authorizes or provides a legal basis for maintenance of the information);

(E) Number or estimate of individuals on whom records will be maintained;

(F) Information on First Amendment Activities: (must include basis for maintaining, from Federal statute);

(G) Measures to Assure Information Accuracy: (Describe procedures to insure accuracy, relevance, timeliness, and competeness of the information if the system is to be used to make determinations about the rights, benefits, or entitlements of individuals);

(H) Other Measures to Assure System Security: (Describe administrative, technical, and physical safeguards to protect confidentiality of information against unauthorized access and threat. Automated systems require risk assessment pursuant to AR 380–380 and compliance with the privacy safeguards of Appendix L thereto); and

(I) Relations to State/Local Government Activities: (either source or recipient).

(iv) *Supporting documentation:* Attach the following inclosures:

(A) The proposed new (or altered) system notice prepared in accordance with § 505.6(i).

(B) An advance copy of proposed exemption rules if the System Manager plans to claim exemptions permitted by the Privacy Act for the new or altered system. (This action requires approval of the Secretary of the Army.)

(C) When either computer systems, word processing, or microform systems are used in processing a system of records under the Privacy Act, a brief description must be provided addressing (*1*) the process, (*2*) physical and technical safeguards, (*3*) information storage, and (*4*) data retrievability. At a minimum:

(i) State whether the automation is done in a batch or on-line equipment.

(ii) Describe in general terms the physical safeguards of the computer site and state if a site risk analysis was performed.

(iii) If an on-line system is being described, state whether dial-up or hard wired terminal support the system. Describe the controls used in accessing the system via the terminals, e.g., controlled area, key locks on hard wired terminals, password protection for dail-up terminals, etc.

(iv) State the location where the primary computer media is stored. Generally, computer media is stored at a Data Processing Installation which, in most instances, is not the System Location.

(v) Describe the technical procedures used to protect on-line data from unauthorized disclosures. In cases where Data Base Management Systems and/or retrieval languages are part of a computer system, describe the control procedures for insuring that the information accessed is in conformity with the published system notice, e.g., an ad-hoc query retrieving a record by SSN when SSN was not specified as a retrieval field in the published system notice.

(D) Request for waiver of the 60 day advance notice requirement may be submitted when:

(*1*) a delay of 60 days in establishing the system would not be in the public interest, with detailed justification (*i*) showing how the public interest would be adversely affected if the waiver were not granted (i.e., effect on the public of delaying implementation of the system), and (*ii*) explaining why an earlier notice was not provided; or

(*2*) the system of records was in existence prior to September 27, 1975; failure to provide the required notice was due to administrative oversight; and suspending operation of the system would adversely affect the public interest.

(When such waiver is approved, it has the net effect of waiving only the 30 days required by the Congress and Office of Management and Budget for review; it does not obviate the requirement to publish in the **Federal Register** for 30 days' public comment.)

(v) *Constraints.* Report on a proposed new or altered system of records must be submitted no later that the following dates, whichever is earlier;

(A) Ninety days before any issuance of data collection forms and/or instructions;

(B) Ninety days before entering any personal information into the new or altered system.

(C) Ninety days before any public issuance of a Request for Proposal or an Invitation to Bid for computer and/or communication system. (NOTE: Requests for delegation of procurement authority may be submitted to General Services Administration in accordance with Public Law 89–306 and regulations issued pursuant to that law prior to expiration of the 90 day limitation, but will include language stipulating that the System Manager has reviewed requirements of the Privacy Act for filing a report on a new system and concluded that the report is (is not) applicable to such procurement.)

(vi) *Procedure.* (A) Report of a proposed new or altered system of records must be submitted to The Adjutant General, ATTN: DAAG–AMR–R, at least 90 days before the system is to become operational to permit internal review and coordination, staffing at DOD, and a minimum of 30 days' review by the Congress and Office of Management and Budget.

(B) Following the aforementioned 30 days' review, notice for the new/altered system will be published in the **Federal Register** for 30 days' public comment. Any approved exemption rule which applies to the system will be published concurrently, but in a separate section of the **Federal Register**, first for 30 days' review and comment, and secondly, as a final rule. An exemption may not be invoked until it has been published as a final rule.

(C) New/altered system notices which have been published in the **Federal Register** will be included in subsequent revisions to the AR 340–21 series.

**M. S. Healy,**

*OSD Federal Register Liaison Officer Department of Defense.*

[FR Doc. 80–36776 Filed 11–25–80; 8:45 am]

BILLING CODE 3710–08–M

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[A-5-FRL 1682-1]**

### State and Federal Administrative Orders Revising the Michigan State Implementation Plan

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Proposed Rulemaking.

**SUMMARY:** On December 10, 1979, the State of Michigan submitted to the U.S. Environmental Protection Agency (USEPA) a proposed revision to the Michigan State Implementation Plan (SIP). The revision is a Final Order issued by the Michigan Air Pollution Control Commission (Commission) which extends the compliance date until January 1, 1985 for the Consumers Power Company's B.C. Cobb plant to meet the State of Michigan's sulfur dioxide ($SO_2$) emission limitations. The purpose of this notice is to invite public comment on USEPA's proposed approval of this revision to the Michigan SIP.

**DATE:** Written comments must be received by December 26, 1980.

**ADDRESS:** Please send comments to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

The State Order, supporting materials and public comments received in response to this notice may be inspected and copied (for appropriate charges) during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Judy Kertcher, Regulatory Analysis Section, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604 (312) 886-6038.

**SUPPLEMENTARY INFORMATION:** The Cobb Plant is located in Muskegon, Michigan on Muskegon Lake, approximately five miles east of Lake Michigan. Muskegon, Michigan is designated as attaining the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide at 40 CFR Part 81. The Cobb Plant consists of five coal-fired steam electric generating units having a total rating of 510 megawatts. The plant's emissions were discharged through five 76.2 meter (m) stacks until August 1975 when a new 198.2 m stack was constructed for the discharge of the combined emissions from all five units. In September 1978, the Company requested an extension from January 1, 1980 until January 1, 1985 for the B.C. Cobb Plant to meet the $SO_2$ emission limitation in Michigan Rule 336.1401. For the purpose of demonstrating attainment and maintenance of the $SO_2$ NAAQS, a good engineering practice (GEP) stack height of 163.1 m was used in the dispersion modeling analysis submitted to USEPA. The GEP stack height was calculated using the formula proposed by USEPA on January 12, 1979 (44 FR 2608).

The Michigan Air Pollution Control Commission (Commission) and the Company entered into a Stipulation for Entry of a Consent Order which was incorporated into a Final Order of the Commission. On December 10, 1979, Michigan submitted the Final Order to the USEPA as a revision to the Michigan SIP.

The proposed SIP revision, Final Order APC No. 6-1979, extends the compliance date for the B.C. Cobb Plant from January 1, 1980 to January 1, 1985 for meeting the sulfur dioxide emission limitations in Tables 41 and 42 of MAPCC Rule 336.1401. Any Order which has been issued to a major source and extends the SIP compliance date for meeting the sulfur dioxide emission limitations must be approved by USEPA before it becomes effective as a SIP revision under the Clean Air Act. The proposed revision allows a five year extension of the compliance date of the Michigan SIP Rule 336.1401 for the five units at the B.C. Cobb Plant.

The Order contains the following provisions:

A. Sulfur Dioxide Emission Limitations:

(1) Beginning on January 1, 1980 and continuing to January 1, 1985 fuel burned at the Cobb Plant shall not:

(a) On an annual average exceed 2.5 percent sulfur content by weight at 12,000 BTU/pound of coal.

(b) Result in sulfur dioxide emissions not greater than 386 tons on any calendar day. This emission limitation is the equivalent of burning coal which averages 3.5 percent sulfur content by weight at 12,000 BTU/pound of coal and 510 megawatts net load for 24 hours.

(c) On a daily average result in emissions of sulfur dioxide not greater than a rate of 7.0 pounds per million BTU heat input.

(2) After January 1, 1985 emissions of sulfur dioxide from the Cobb Plant shall not exceed the levels prescribed in Tables 3 and 4 of Rule 336.49 (Tables 41 and 42 of revised Rule 336.1401, effective January 17, 1980), unless an alternate date for compliance with the levels is established by the Commission.

B. Sulfur Dioxide Control Program:

(1) By January 1, 1980 the Company shall submit to the Commission an acceptable control strategy which shall provide for compliance with Section A(2) of the Order.

(2) If the Company elects to burn low sulfur coal as the method of control, the Company shall by January 1, 1981 and by each January 1 for the following three (3) years:

(a) Notify the Commission that it has under contract or contract option the low sulfur coal necessary to meet the requirements of Section A(2) of the Order; or

(b) Notify the Commission, with acceptable explanation, that adequate quantities of low sulfur coal are available for acquisition for use in the Cobb Plant by January 1, 1985.

(3) If low sulfur coal is chosen as the method of control, the Company shall notify the Commission of the signing of any contracts for such coal within thirty (30) days for their signing.

(4) If the Company elects a control strategy othe than low sulfur coal burning, a report on the method of control (including increments of progress) shall be provided to the Commission by January 1, 1980. If a control strategy other than low sulfur coal burning is submitted, it is the intent of the Company and the Commission to incorporate the elements of the Control strategy into either a new or amended order.

(5) By January 1, 1981 and by each January 1 for the following three (3) years, the Company shall submit to the Commission a report of the Company's progress toward complying with the Order. Any developments which would preclude compliance with any provision of the Order shall be immediately reported in writing to the Commission.

C. monitoring and Data Reporting:

(1) The Company shall operate four (4) ambient sulfur dioxide monitors around the Cobb Plant in such manner and at such locations as reasonably specified by the Chief of the Air Quality Division of the Department of Natural Resources (hereinafter "Staff").

(2) The Company shall perform a weekly sulfur analysis of fuel burned in the Cobb Plant in accordance with the procedures specified in Appendix A.

(3) The Company shall by January 1, 1980 install and place in operation stack gas emission monitor(s) for measuring sulfur dioxide that meets the performance specifications of Appendix B of 40 CFR Part 60 (1977).

(4) The Company shall demonstrate the adequacy of the stack gas sulfur dioxide monitor(s) in accordance with the procedures specified in Appendix B of 40 CFR Part 60 (1977).

(5) For each calendar day during which the stack gas sulfur dioxide monitor(s) has been inoperative for 12 consecutive hours, the Company shall conduct a daily analysis of the coal burned at the Cobb Plant according to the procedures specified in Appendix A. This daily analysis shall be discontinued only after the stack gas sulfur dioxide monitor(s) has operated acceptably for 12 consecutive hours during a calendar day.

(6) The Company shall report to the Staff sulfur dioxide emissions in terms of pounds of sulfur dioxide per million BTU heat input in accordance with the procedures specified in Appendix B of 40 CFR Part 60 (1977).

(7) The Company shall submit to the Staff data from the aforementioned ambient air quality monitors, stack gas monitor(s), and fuel sulfur analysis in such format and at such intervals as reasonably specified.

(8) During the first quarter of 1980 and at approximately 18-month intervals thereafter, the Company shall conduct periodic particulate emission tests for each unit of the Cobb Plant. The tests shall be conducted in accordance with Commission approved procedures.

(9) The monitoring and reporting requirements specified in or pursuant to Subsections C(1) through (8) shall be, upon request of the Company, reviewed by the Commission and modified if the Commission finds such modifications are justified.

The Final Order contained the following appendix:

Appendix A—Fuel Analysis Procedures

1. Weekly Fuel Analysis:

a. A minimum of three equally spaced grab samples of the coal burned at the Cobb Plant shall be taken each calendar day.

b. A weekly composite coal sample shall be prepared for analysis from the grab samples according to ASTM or equivalent methods for each calendar day that the daily fuel analysis is required.

c. The composite coal sample shall be analyzed for sulfur heat (BTU) content according to ASTM or equivalent methods approved by the Chief of the Air Quality Division.

An air quality study was submitted to the USEPA on behalf of Consumers Power Company. The study used non-reference modeling techniques and employed a point source gaussian plume air quality model developed by Consumers Power Company's consultant. The model used in the analysis is not included as a reference model in GUIDELINE ON AIR QUALITY MODELS (EPA 450/2-78-027), April, 1978. Consequently, USEPA performed an air quality modeling analysis to ensure that approval of the variance for B.C. Cobb will not cause or contribute to a violation of the $SO_2$ National Ambient Air Quality Standards (NAAQS). Based on its analysis employing a reference model (MPTER) with five years of meteorological data (1973–1977), USEPA concluded that the SIP revision for B.C. Cobb will not cause or contribute to a violation of the NAAQS. The State has indicated that it is relying upon fuel analysis to determine the Company's compliance with the Order. This is acceptable to USEPA.

Under the revised stack height policy, published June 24, 1980 (45 FR 42279), sources seeking credit for raising existing stacks will be required to provide a fluid modeling or field study demonstration that the stack height increase is necessary to avoid excessive concentrations due to downwash, wakes and eddies. Consumers Power did not submit an adequate demonstration that the stack height increase from 76.2m to 198.2m is necessary to avoid aerodynamic downwash at the B.C. Cobb Plant. Therefore, USEPA performed an additional air quality analysis using the 76.2m height of the old stack and the stack design parameters associated with the new stack (198.2m). The modeling analysis demonstrated that no additional stack height credit was necessary to demonstrate attainment of the $SO_2$ NAAQS. Therefore, fluid modeling is not required to support the revision to the Michigan SIP.

USEPA proposes to approve this revision to the Michigan SIP, and solicits public comment on the revision and on USEPA's proposed approval. All interested persons are invited to submit comments to the address listed in the front of this notice. Public comments received on or before (30 days from date of publication) will be considered in USEPA's final rulemaking. All comments received will be available for inspection at the Region V Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois, 60604. After the public comment period, the Administrator of USEPA will publish in the **Federal Register** the Agency's final action on the proposed SIP revision. Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures. USEPA labels proposed regulations as "specialized." I have reviewed these proposed regulations pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979 by the Administrator and I have determined that they are specialized regulations not subject to the procedural requirements of Executive Order 12044.

This proposed rulemaking is issued under the authority of Section 110 of the Clean Air Act (42 U.S.C. 7410).

Dated: October 31, 1980.

**John McGuire,**

*Regional Administrator.*

[FR Doc. 80-36898 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-38-M

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**40 CFR Part 52**

**[A-S-FRL 1681-5]**

## Approval and Promulgation of Implementation Plan: Minnesota

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The U.S. Environmental Protection Agency (USEPA) today proposes approval of revisions to the Minnesota State Implementation Plan (SIP) for the Twin Cities and Rochester sulfur dioxide nonattainment areas. The State submitted these proposed revisions to USEPA to satisfy the requirements of Part D of the Clean Air Act (Act). The State transmitted the Twin Cities sulfur dioxide plan on May 7, 1980 and amended it on June 17, 1980. The State submitted the Rochester sulfur dioxide plan on July 15, 1980. On August 4, 1980 the State resubmitted both sulfur dioxide plans and the June 17, 1980 submission. A correction to the August 4, 1980 submission was submitted to USEPA on September 4, 1980.

The purpose of today's notice is to discuss the results of USEPA's review of the proposed revisions; to propose approval and to invite public comment.

**DATE:** Comments on this revision and on the proposed USEPA action on the revisions are due by December 26, 1980.

**ADDRESSES:** Copies of the proposed SIP revision are available at the following addresses for inspection:

United States Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

United States Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, D.C. 20460

Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113.

**FOR FURTHER INFORMATION CONTACT:** Richard Clarizio, U.S. Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6035.

**SUPPLEMENTARY INFORMATION:** On March 3, 1978 (43 FR 8962) and October 5, 1978 (43 FR 45993), pursuant to the requirements of section 107 of the Clean Air Act (Act) as amended, USEPA designated certain areas in each state as not meeting the primary and/or secondary National Ambient Air Quality Standards (NAAQS) for total suspended particulates, sulfur dioxide, carbon monoxide, photochemical oxidants, and nitrogen dioxide.

In Minnesota, Air Quality Control Region 131 and the City of Rochester were designated primary nonattainment areas for sulfur dioxide. Air Quality Control Region 131 (the Twin Cities urban area) contains the following counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington. There were no designated secondary nonattainment areas and all other portions of the State were designated either better than the NAAQS or unclassifiable.

Part D of the Act, which was added by the 1977 Amendments, requires each State to revise its SIP to meet specific requirements for areas designated as nonattainment. Section 172 of the Act specifies these requirements. These SIP revisions must demonstrate attainment of the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982. Under certain conditions that date may be extended to December 31, 1987 for ozone and/or carbon monoxide. On March 25, 26, and 27, 1980 the State notified the public that adoption of the Twin Cities sulfur dioxide plan would be considered at the Minnesota Pollution Control (MPC) Board's, April 22, 1980 meeting. All interested parties were invited to comment on the plan at that time. On April 22, 1980, after hearing the testimony presented at the meeting, the MPC Board adopted the Twin Cities sulfur dioxide plan. The State submitted the Twin Cities sulfur dioxide plan on May 7, 1980 and amended it on June 17, 1980.

For the Rochester nonattainment area the State, on May 24, 1980, notified the public that adoption of the sulfur dioxide plan would be considered at the MPC Board's June 24, 1980 meeting. All interested parties were invited to comment on the plan at that time. On June 24, 1980, after hearing the testimony presented at the meeting the MPC Board adopted the Rochester sulfur dioxide plan. The State submitted the Rochester sulfur dioxide plan on July 15, 1980. On August 4, 1980, the State resubmitted both sulfur dioxide plans. A correction to the August 4, 1980 submission was submitted to USEPA on September 4, 1980.

The measures proposed for promulgation today will be in addition to, and not in lieu of, existing SIP regulations. The present emission limitations for any source will remain applicable and enforceable to prevent a source from operating without controls, or under less stringent controls, while it is moving toward compliance with the new requirements, or if it chooses, challenging the new requirements. In some instances, the present emission control requirements contained in the federally approved SIP are different from the requirements currently being enforced by the State. In these situations, the present federally approved SIP will remain applicable and enforceable until there is compliance with the newly promulgated and federally approved requirements. Failure of a source to meet applicable pre-existing requirements will result in appropriate enforcement action, including assessment of noncompliance penalties. Furthermore, if there is any instance of delay or lapse in the applicability or enforceability of the new requirements, because of a court order or for any other reason, the pre-existing requirements will be applicable and enforceable.

The only exception to this rule is in cases where there is a conflict between the new requirements and the requirements of the existing regulations such that it would be impossible for a source to comply with the pre-existing SIP while moving toward compliance with the new requirements. In these situations, the State may exempt a source from compliance with the pre-existing regulations. Any exemptions granted will be reviewed and acted on by USEPA either as part of these promulgated requirements or as a future SIP revision.

The requirements for an approvable SIP are described in a **Federal Register** notice published on April 4, 1979 (44 FR 20372), and are not repeated in this notice. Supplements to the April 4, 1979, notice were published on July 2, 1979 (44 FR 38583), August 28, 1979 (44 FR 59371), September 17, 1979 (44 FR 53761) and November 23, 1979 (44 FR 67182), discussing among other things, additional criteria for SIP approval.

USEPA's proposed rulemaking action may take one of the following three forms: approval, disapproval, or conditional approval. USEPA will conditionally approve the plan if the State proposal contains minor deficiencies, and if the State provides assurances that it will submit corrections on a specified schedule. The schedules must be negotiated between the USEPA Regional Office and the State prior to final rulemaking on these revisions. The negotiated schedules will be announced for public comment in a separate Notice of Proposed Rulemaking. A conditional approval means that the restrictions on new major source construction do not apply unless the State fails to submit the necessary revisions by the scheduled date, or if the revisions are not approved by USEPA.

USEPA solicits comments from all interested parties on both the proposed SIP revisions and the proposed approval of these revisions. Presented below is a brief synopsis of each urban area's plan and USEPA's evaluation and proposed rulemaking action. A more detailed analysis of the plans is available for inspection, upon request, at the USEPA, Region V office.

*Nonattainment Area Plan Description*

In accordance with section 109 of the Act, USEPA established a primary and a secondary NAAQS for sulfur dioxide. The primary NAAQS is designed to protect public health and the secondary NAAQS is designed to protect the public welfare. A violation of the primary sulfur dioxide NAAQS occurs either: a) when the monitored or modeled annual arithmetic mean concentration of sulfur dioxide exceeds 80 micrograms per cubic meter of air (80 $ug/m^3$) or b) when the average 24-hour monitored or modeled concentration of sulfur dioxide exceeds 365 $ug/m^3$ of air, more than once in a calendar year. A violation of the secondary sulfur dioxide NAAQS occurs when the 3-hour average monitored or modeled concentration of sulfur dioxide exceeds, more than once in a calendar year, 1300 $ug/m^3$.

Based on ambient air quality monitoring conducted in 1976 in the Twin Cities and in the City of Rochester, violations of the primary sulfur dixode NAAQS were detected. Therefore, in the March 3, 1978 **Federal Register** (43 FR 8962), USEPA desigated these two urban areas as nonattainment for sulfur dioxide.

The Clean Air Act requires the State to submit a revised SIP which demonstrates attainment of the primary sulfur dioxide NAAQS by December 31, 1982. The revised SIP must contain a strategy with the specific measures which the State will implement to reduce sulfur dioxide emissions. To determine which measures will be

effective, the State must have an accurate and complete inventory of sulfur dioxide emissions and meteorological and air quality data for the area. With this data, the State can utilize air pollution simulations (dispersion models) and statistical analyses to determine the cause of the original sulfur dioxide problem and to predict the effectiveness of the proposed measures on future air quality.

For the Twin Cities urban area and the City of Rochester, the State performed modeling analyses for the annual, 24-hour and 3-hour averaging time periods. In both areas, the State utilized the Climatological Dispersion Model (CDMQC) to conduct the annual air quality analyses. The CDMQC and Larsen's models were used in the screening analysis for the 3-hour and 24-hour studies to determine areas of expected maximum impact. Refined 3-hour and 24-hour analyses were performed using the urban version of RAM.

For the annual analyses in the Twin Cities area, the base year emissions (1976) and representative meteorological data for the year 1976 were used in CDMQC to obtain a regional mapping of the sulfur dioxide concentrations. The CDMQC results were compared with actual air quality levels in 1976 and adjustments were made to the modeled output results so that the model would more accurately project sulfur dioxide concentrations for the area. Once the base year annual air quality was calculated and the model calibrated for the Twin Cities area, two more air quality analyses were performed. One analysis was performed assuming that all the sources in the area were in compliance with the State's current regulations. Another analysis was performed for the attainment year 1982. This analysis considered the impact of the proposed control strategy and of projected new source growth. For the Rochester area, the same three annual air quality analyses were conducted. The CDMQC model was not calibrated, however, because of the insufficient number of monitors in the area.

For the 24-hour and 3-hour analyses, the State compiled point and area source emissions inventories for both nonattainment areas. These inventories were based on 1976 maximum allowable emissions. The meteorological data used for both areas were hourly surface observations for Minneapolis-St. Paul, Minnesota and upper air data for St. Cloud, Minnesota for the year 1976. Surface meteorological data for Rochester were not available at the time the modeling analysis was performed. With this information and the following modelling procedures, the State performed the 24-hour and 3-hour air quality analyses for the base year.

The modelling procedure for both areas consisted of utilizing the CDMQC with a receptor coverage sufficient to asses air quality impact for all major point sources in these areas. The CDMQC analysis used a 1.0 km receptor grid resolution. Larsen's model was than applied to locate potential short-term hot spots. These hot spots were subsequently analyzed individually using urban RAM in a 5 by 6 km area around each hot spot with 0.5 km receptor grid resolution.

Once the base year analyses were performed for both the 24-hour and 3-hour time periods, two more analyses were conducted for both time periods. One analysis was performed assuming that all the sources in the area were in compliance with the State's current regulations. Another analysis was performed for the attainment year 1982. This last analysis took into consideration the impact of the proposed control strategy and of any new source growth which might occur.

For both areas, the modeled results for all three time periods indicated that compliance with present regulations would not be sufficient to achieve attainment of the sulfur dioxide NAAQS by December 31, 1982. The State projects that attainment of the primary and secondary NAAQS can be achieved in these areas if sulfur dioxide emissions are reduced from a few sources in each area. Specifically, the State projects that attainment can be achieved if the following sources are required to comply with the following emission limitations:

| Source | Emission limitation |
|---|---|
| **Twin Cities Urban Area** | |
| 1. Northern States Power Company's Inver Hills Generating Plant. | 1.1 pounds of sulfur dioxide (S02)/million British Thermal Units (MMBTU). |
| 2. St. Paul Ammonia Products, Division of N-Ren Corporation. | 2.0 pounds of S02/MMBTRU. |
| 3. North Star Chemicals, Division of N-Ren Corporation | (a) Increase stack height 36.58 m.<br>(b) 30 pounds of S02/ton sulfuric acid produced and a limit of 294 tons of sulfuric acid. |
| 4 Koch Refining | Burn low sulfur refinery fuel oil (1.75% sulfur by weight) and a facility-wide emission rate of 32.5 tons of S02/day. |
| **City of Rochester** | |
| 1. City of Rochester Public Utility Department (CRPUD). | Boiler 1, 2, 4,—3.2 pounds of S02/MMBTU. |
| Silver Lake Generating Plant | Boiler 3—2.3 pounds of S02/MMBTU. |
| 2. CRPUD North Broadway Plant. | Coal fired mode—2.3 pounds of S02/MMBTU. Both coal and oil-fired modes available. Load restrictions allow for the equivalent of one coal-fired boiler to be operated at any time. |
| 3. Rochester State Hospital | Oil-fired—2.5 pounds of S02/MMBTU with a load restriction that the equivalent of one of three boilers be operated on residual oil at any given time. |
| 4. Associated Milk Producers, Incorported. | Boilers, 1, 2, 3, or 4—3.0 pounds of S02/MMBTU. |

The State performed modeling analyses for each nonattainment area using the revised emission limitations listed above. The modeling analyses demonstrate that these new emission limitations provide a sufficient reduction in sulfur dioxide emissions to ensure attainment of the sulfur dioxide NAAQS by 1982. To ensure that the emission limitations specified above are adhered to and enforceable, the State has issued revised operating permits for these sources under the existing authority of Minnesota Air Pollution Control Regulation.

The State of Minnesota has made an adequate commitment of financial and manpower resources to implement these sulfur dioxide plans. USEPA's review of these plans indicates that attainment of the sulfur dioxide NAAQS will be achieved by December 31, 1982 and that in the interim reasonable further progress will be made to ensure attainment of the NAAQS by this date. USEPA, therefore, proposes to approve these plans as meeting the criteria for an approvable Part D SIP.

It should be noted, however, that sections 172 and 173 of the Act require a program for the review of permits for the construction and operation of new or modified stationary sources wishing to locate in a designated nonattainment area. The State of Minnesota will submit its New Source Review (NSR) program in the near future. At that time USEPA will review the program and propose rulemaking action on it. Until final approval of a NSR program, the Act prohibits the construction of any new or modified stationary source in nonattainment areas.

All interested persons are invited to comment on these revisions to the Minnesota SIP and on USEPA's proposed action. Comments should be submitted to the address listed at the beginning of this notice. Public comments received on or before December 26, 1980, will be considered in USEPA's final rulemaking.

A thirty day public comment period is being provided because USEPA has a

responsibility under the Clean Air Act to take final action as soon as possible after July 1, 1979 on SIP revisions addressing the Part D requirements.

All comments received will be available for inspection at the USEPA Region V Air Programs Branch, 230 South Dearborn Street, Chicago, Illinois, 60604.

Under Executive Order 12044, USEPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized developmental procedures.

USEPA labels these other regulations "specialized." I have reviewed this regulaiton and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under the authority of sections 110 and 172 of the Clean Air Act (42 U.S.C. §§ 7410, 7502).

Dated: October 24, 1980.

John McGuire,

*Regional Administrator.*

[FR Doc. 80-36897 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 52

[A-5-FRL 1681-8]

## State and Federal Administrative Orders Revising the Michigan State Implementation Plan

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Proposed rule: Proposed approval of revision.

**SUMMARY:** The U.S. Environmental Protection Agency (USEPA) proposes to approve a revision to the Michigan State Implementation Plan (SIP). The revision is a Final Order (Order) issued by the Michigan Air Pollution Control Commission (Commission) to the Union Camp Corporation (Company). The Order extends from January 1, 1980 until January 1, 1985 the date by which the Company is required to comply with the sulfur dioxide emission limitations contained in the federally approved Michigan SIP. The purpose of this notice is to invite public comment on USEPA's proposed approval of the Order dated January 3, 1980.

**DATE:** Written comments must be received by December 26, 1980.

**ADDRESSES:** Please send comments to: Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6029.

The State Order, supporting material and public comments received in response to this notice may be inspected and copied (for appropriate charges) during normal business hours at the above address or State Order and supporting materials available at address below: Michigan Department of Natural Resouces, Air Quality Division, State Secondary Complex, General Office Building, 7150 Harris Drive, P.O. Box 30028, Lansing, Michigan 48909.

**FOR FURTHER INFORMATION CONTACT:** Toni Lesser, Regulatory Analysis Section, Air Programs Branch, Region V, U.S. Environmental Protection Agency, 230 South Dearborn, Chicago, Illinois 60604, (312) 886-6037.

**SUPPLEMENTARY INFORMATION:** Union Camp Corporation operates a paper mill in Monroe County, Michigan. The Monroe facility is located 35 miles southwest of Detroit, Michigan and 20 miles northeast of Toledo, Ohio. The area is designated as attaining the National Ambient Air Quality Standards (NAAQS) for sulfur dioxide ($SO_2$). The paper mill produces 300 tons/day of paperboard products and has one 300 MBTU/hr stoker coal-fired boiler.

Under Michigan Air pollution Control commission (Commission) Rule 336.49, approved as part of the Michigan State Implementation Plan on May 31, 1972, and recodified as Rule 336.1401, the source is required to burn coal with a maximum sulfur content of 1.5 percent effective July 1, 1978. On January 8, 1980, the Commission entered into the record a Stipulation for Entry of Consent Order and Final Order APC No. 14-1979. Under the Order, the source was permitted to burn 2.7% sulfur(S) fuel on an annual average and 4.0% S fuel on a daily average between January 1, 1980 and July 1, 1980. Beginning July 1, 1980 until July 1, 1982, Union Camp may burn 2.5% S (annual average) and 4.0% S (daily average) fuel. Beginning July 1, 1982 until January 1, 1985, Union Camp is allowed to burn 2.2% S (annual average) and 3.5 S (daily average) fuel. After January 1, 1985, Union Camp must comply with the existing SIP limitations of 1.5% S in Rule 336.49 (recodified as 336.1401) unless an order granting an additional extension of time or setting a new limitation has been submitted to and approved by USEPA as a SIP revision.

An air quality analysis was performed to demonstrate that the National Ambient Air Quality Standards (NAAQS) and Prevention of Significant Deterioration (PSD) increments will be protected throughout the delayed compliance period (January 1, 1980 to January 1, 1985). The modeling analysis demonstrated that the Union Camp SIP revision will not cause or contribute to a violation of the applicable NAAQS or consume the PSD increment.

The Order contains the following provisions:

### A. Sulfur Dioxide Emission Limitations

(1) Beginning on January 1, 1980, and continuing to July 1, 1980, fuel burned at the mill shall not:

(a) On an annual average exceed 2.70 percent sulfur content by weight at 12,000 Btu/pound of coal.

(b) On a daily average exceed 4.00 percent sulfur content by weight at 12,000 Btu/pound of coal.

(2) Beginning on July 1, 1980, and continuing to July 1, 1982, fuel burned at the mill shall not:

(a) On an annual average exceed 2.50 percent sulfur content by weight at 12,000 Btu/pound of coal.

(b) On a daily average exceed 4.00 percent sulfur content by weight at 12,000 Btu/pound of coal.

(3) Beginning on July 1, 1982, and continuing to January 1, 1985, fuel burned at the mill shall not:

(a) On an annual average exceed 2.20 percent sulfur content by weight at 12,000 Btu/pound of coal.

(b) On a daily average exceed 3.50 percent sulfur content by weight at 12,000 Btu/pound of coal.

(4) After January 1, 1985, emissions of sulfur dioxide from the mill shall not exceed the levels prescribed in Tables 3 and 4 of Rule 336.49 (new rule 336.1401) unless an alternate date for compliance with the levels is established by the Commission.

### B. Sulfur Dioxide Control Program

(1) If low sulfur coal is chosen as the method of control, the Company shall notify the Commission of the signing of any contracts for such coal within thirty (30) days of their signing.

(2) If the Company elects a control strategy other than low sulfur coal burning, a report on the method of control (including increments of progress) shall be provided to the Commission by January 1, 1983. If a control strategy other than low sulfur coal burning is submitted, it is the intent of the Company and the Commission to incorporate the elements of the control strategy into either a new or amended Order.

(3) By January 1, 1983, and by January 1, 1984, the Company shall submit to the Commission a report of the Company's progress toward complying with the Order. Any developments which would preclude compliance with any provision

of this Order shall be immediately reported in writing to the Commission.

C. Monitoring and Data Reporting

(1) The Company shall operate one (1) ambient sulfur dioxide monitor around the mill in such manner and at such location as reasonably specified by the Chief of the Air Quality Division of the Department of Natural Resources (hereinafter "Staff").

(2) The Company shall perform a daily sulfur analysis of fuel burned in the mill in accordance with the procedures specified in Appendix A. Such daily sulfur analysis of fuel burned in the mill shall continue until such time as the Company has received written approval from Staff that an alternate sampling frequency is acceptable. Such approval shall be based on an acceptable demonstration that the alternate sampling frequency is sufficient to assure that the daily sulfur dioxide emission limitations are being met.

(3) The Company shall submit to the Staff data from the aforementioned ambient air quality monitors and fuel sulfur analysis in such format and at such intervals as reasonably specified.

(4) By January 1, 1980, the Company shall conduct a particulate emission test on the boiler at the mill. The test shall be conducted in accordance with Commission approved procedures.

USEPA has reviewed the Order and concluded that extension of the compliance date for the Union Camp Corporation from January 1, 1980 until January 1, 1985 will not threaten or prevent the attainment and maintenance of the $SO_2$ NAAQS and PSD increments. In addition, the State has indicated that it is relying on fuel analysis to determine the Company's compliance with the Order. This is acceptable to USEPA. Therefore, USEPA proposes approval of the Order as a revision to the Michigan SIP.

All interested persons are invited to comment on this revision to the Michigan SIP and on USEPA's proposed action. Comments should be submitted to the address listed in the front of this notice. Public comments received on or before December 26, 1980, will be considered in USEPA's final rulemaking.

Under Executive Order 12044 (43 FR 12661), USEPA is required to judge whether a regulation is "significant" and, therefore, subject to certain procedural requirements of the Order or whether it may follow other specialized development procedures.

USEPA labels proposed regulations as "specialized." I have reviewed these proposed regulations pursuant to the guidance in USEPA's response to Executive Order 12044, "Improving Environmental Regulations," signed March 29, 1979 by the Administrator and I have determined that they are specialized regulations not subject to the procedural requirements of Executive Order 12044.

This proposed rulemaking is issued under the authority of Section 110 of the Clean Air Act (42 U.S.C. 7410).

Dated: October 31, 1980.

**John McGuire,**

*Regional Administrator.*

[FR Doc. 80-36884 Filed 11-25-80; 8:45 am]

**BILLING CODE 6560-38-M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

### 42 CFR Ch. I

### Formula Grants to States for Preventive Health Service Programs

**AGENCY:** Center for Disease Control, Public Health Service, HHS.

**ACTION:** Withdrawal of notice of decision to develop regulations.

**SUMMARY:** The Public Health Service withdraws the Notice of Decision to Develop Regulations, published in the Federal Register on May 1, 1979 (44 FR 25476), to cover formula grants for preventive health service programs authorized under Section 315 of the Public Health Service Act. Since there were no funds appropriated for these programs, regulations will not be developed at this time.

**EFFECTIVE DATE:** November 26, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dennis D. Tolsma, Office of the Director, Center for Disease Control, PHS, HHS, Atlanta, Georgia 30333, telephone (404) 329-3243 or FTS: 236-3243.

**SUPPLEMENTARY INFORMATION:** Section 203 of the Health Services and Centers Amendments of 1978 (Pub. L. 95-626) established a new Section 315 under Title III of the Public Health Service Act. The provisions of this legislation authorized grants to States beginning in the fiscal year which ends September 30, 1980, to assist them in planning for, developing, and providing preventive health service programs designed to prevent or reduce the five leading causes of death.

On May 1, 1979, the Public Health Service proposed to develop regulations (44 FR 25476) to cover grant applications and awards for these grants. However, no funds were appropriated in fiscal year 1980. In addition, the President's fiscal year 1981 revised budget did not include funding for this program. Therefore, the Notice of Decision to Develop Regulations published in the **Federal Register** on May 1, 1979 (44 FR 25476), is withdrawn.

Dated: October 6, 1980.

**Julius B. Richmond,**

*Assistant Secretary for Health.*

[FR Doc. 80-36922 Filed 11-25-80; 8:45 am]

**BILLING CODE 4110-86-M**

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

### [BC Docket No. 80-725; RM-3648]

### FM Broadcast Station in Los Lunas, New Mexico; Proposed Changes in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rule making.

**SUMMARY:** Action taken herein proposed the assignment of a Class A FM channel to Los Lunas, New Mexico, in response to a petition filed by Frieda Brasher and Michael, Paul and Perkins Brasher. The proposed channel could provide a first local aural broadcast service to Los Lunas.

**DATES:** Comments must be filed on or before December 30, 1980, and reply comments on or before January 19, 1981.

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

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Broadcast Bureau, (202) 632-9660.

**SUPPLEMENTARY INFORMATION:**

In the matter of amendment of § 73.202(b) *Table of Assignments* FM Broadcast Stations (Los Lunas, New Mexico), BC Docket No. 80-725, RM-3648.

Adopted: November 10, 1980.

Released: November 24, 1980.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making [1] was filed by Frieda Brasher, and Michael, Paul and Perkins Brasher ("petitioners"), proposing the assignment of FM Channel 272A to Los Lunas, New Mexico, as that community's first FM assignment.

(b) The channel can be assigned to Los Lunas in compliance with the minimum distance separation requirements.

(c) Petitioners state they will apply for the channel, if assigned.

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[1] Public Notice of the petition was given on May 7, 1980, Report No. 1227.

2. *Community Data*—(a) *Locatoin.* Los Lunas, seat of Valencia County is located approximately 32 kilometers (20 miles) south of Albuquerque, New Mexico.

(b) *Population. Los Lunas—973,*[2] Valencia County—40,539.

(c) *Local Aural Broadcast Service.* None.

3. Petitioners assert that Los Lunas has shown a continued growth pattern since 1970, and estimates its 1978 population at 3,000 persons (taken from a local community profile). Sufficient economic and demographic information with respect to Los Lunas, has been submitted to demonstrate the need for an FM assignment.

4. In view of the fact that the proposed FM channel assignment could provide a first full-time local aural broadcast service, the Commission proposes to amend the FM Table of Assignments, Section 73.202(b) of the Rules, with regard to Los Lunas, New Mexico, as follows:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| Los Lunas, N. Mex. | | 272A |

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before December 30, 1980, and reply comments on or before January 19, 1981.

7. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632-9660. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

[2] Population figures are taken from the 1970 U.S. Census.

Federal Communications Commission.

**Henry L. Baumann,**

*Chief, Policy and Rules Division, Broadcast Bureau.*

Appendix

[BC Docket No. 80-725 RM-3648]

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 80-36889 Filed 11-25-80; 8:45 am]
BILLING CODE 6712-01-M

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**47 CFR Parts 1, and 73**

**[BC Docket No. 80-499; FCC 80-545]**

## Table of Television Channel Allotments; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Errata to BC Docket No. 80-499.

**SUMMARY:** On November 3, 1980, a Notice of Proposed Rulemaking in BC Docket No. 80-499, re Table of Television Channel Allotments, was published in the **Federal Register** at 45 FR 72902. Inadvertently, a portion of Commissioner Abbott Washburn's dissenting statement was omitted. The purpose of this errata is to now publish that statement in its entirety.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Jim Warwick (202) 632-7116.

**William J. Tricarico,**

*Secretary.*

### Dissenting Statement of Commissioner Abbott Washburn

*Notice of Proposed Rulemaking re: Table of Television Channel Allotments*

*Adverse Impact on UHF*

The executive Summary of the Report of the Comparability Task Force (approved by the Commission on September 18, 1980) speaks of the goal of "a fully competitive and prosperous UHF service". Its closing sentence reads ". . . this goal is now beginning to be achieved. . . ."

In direct contrast, this Notice on page 29 states ". . . UHF is now sufficiently mature and viable to compete directly against VHF. . . ."

The first statement is the correct one. UHF has begun to turn the corner. It should not now be subjected to additional hazards. Many UHF stations are still marginal. UHF channels remain available to be applied for and to be activated.

This rulemaking, in proposing to do away with the minimum mileage separations and substituting so-called "equivalent protection", is an abrupt reversal of the Commission's long-standing policy of bending every effort to assist the development of UHF. With

the issuance of this proposed rulemaking, the continued healthy growth of UHF will be stifled. Entrepreneurs will prefer to opt for the short-spaced "V's". In my judgment we should not now propose such a drastic change of direction.

*"Equivalent Protection" Approach Seriously Flawed*

The Notice states that "the proposed approach will eliminate much of the uncertainty . . . of the current procedure." In point of fact the opposite will be the case. In place of today's clear-cut mileage separations, the "flexible criteria" here proposed will lead to greater uncertainty. There will be costly arguments in television markets throughout the country as to whether or not specific applications for short-spaced VHF stations will provide the required "equivalent protection". Engineers and lawyers will reap a harvest contesting and defending these applications. Rather than shortening the process, the proceedings resulting from this approach will be as long or longer than those we now have.

Adding to the disruption and uncertaintly is the definition of "equivalent protection". The use of the F(50, 50) and the F(50, 10) curves to define "equivalent protection" in specific instances is a misapplication of the engineering principle underlying the derivation of these curves. In paragraph 91, on page 43, the authors of the Notice recognize this:

> These curves were derived from many measurements on different stations under varying conditions and therefore represent average values; they are intended for allocation purposes and general studies and *will likely prove inaccurate in individual cases that deviate significantly from the norm.* (Emphasis added.)

Statistically, 68 percent of the data points will fall within plus or minus 9 dB of the interference curve. 32% of them will fall more than 9 dB outside of the curve. Thus, in almost one third of the cases the use of the curve to allot a channel produces an unrealistic and unfair result: either penalizing the drop-in station by imposing a power limit that is too low to enable it to serve its market, or allowing too high a power level causing serious interference to the existing station. (In the latter case an exceedingly heavy burden-of-proof rests on the existing station.) The curves, therefore, are neither a fair nor a workable tool. To attempt to so use them can only cause uncertainty and contention.

It is like taking a mean January temperature for 100 U.S. cities of 50° and concluding from this that motorists in Detroit, Duluth and Cheyenne won't need snow tires and chains next winter.

In addition to the unsound use of the curves to predict service or interference in specific situations, the Notice relegates several significant elements to the status of mere "safety factors". For example, in paragraph 104 on page 56 *receiving antenna directivity* is not incorporated into the "equivalent protection" criteria.[1] Likewise in paragraph 111, page 60, *terrain shielding* is relegated to an additional "safety factor" and does not enter into the protection standard. These considerations are of over-riding importance in specific drop-in situations and should be factored into the allotment methodology as such.

*A More Accurate Recommended Procedure*

In any specific case there are three possible types of propagation paths from the interfering transmitter to the protected receiver. Each of these three paths has distinct characteristics. However, in the derivation of the FCC curves they have necessarily been averaged, which explains the wide variability associated with those curves. The three categories of propagation paths are:

1. Line of sight between the transmitter and the receiver, normally limited to relatively short paths (less than 50–60 miles).

2. Paths with one obstacle where the transmitter and receiver essentially share the same horizon. These paths are normally of an intermediate distance, and in some of the short-spaced stations envisioned here this type of path applies. These one-obstacle paths can either offer shielding or they can result in significant gain over the average values depicted in the FCC curves. Where these paths exhibit gain they are known as knife-edge diffraction paths and this phenomenon was originally described by Bullington.[2] The situation where the knife-edge diffraction results in significant gain can occur in as may as three quarters of a random sample of one-obstacle paths. Furthermore, these knife-edge diffraction paths exhibit a greater stability over time than do other propagation paths. Where this type of transmission is present it would seem risky to rely on the FCC curves alone.

3. Two-obstacle paths exhibit no such gain but only shielding effects. These paths generally occur at greater distances and usually obtain under the present rules where minimum distance separations of 170 miles or more are required.

Additionally, there are certain cases where there is very flat terrain between the interfering transmitter and the protected receiver where the terrain roughness factor described in the FCC rules is slightly positive. Today's Notice of Proposed Rulemaking attempts to treat terrain solely as a "safety factor". this is appropriate only insofar as terrain provides attenuation or shielding. It is not appropriate to consider it solely as a "safety factor" if the terrain shielding factor is positive nor is it appropriate to disregard knife-edge diffraction gain in those single-obstacle paths where it applies.

While I would prefer that each drop-in proposal be supported by its own unique measured data and calculations, I recognize that such a policy might be unduly cumbersome and expensive for the applicant and the Commission. However, I find that the variability in the simplistic use of the average FCC curves, as proposed, entails too much risk of significant interference. Accordingly I would suggest that, as a minimum, consideration be given to augmenting the use of the curves by having the drop-in applicant furnish appropriate path profiles and some minimum amount of measured data. It has been estimated that very minimal supplementary measurements[3] would reduce the variability in the FCC curves from 9 or 10 dB without measurements to around 4 to 6 dB.

For a nominal cost we could thereby obtain significant assurance that the drop-in would not cause widespread interference. I solicit comments on this alternative procedure and would be particularly interested in a precise description of the path-loss measurements that would be required and the benefits to be gained.

*Demand For More Vs Not Demonstrated*

The Notice perceives an inexorable demand by the public for more TV service facilities. Yet the studies it cites as evidence are flimsy and not on point. The econometric studies, for example, done in 1971, '72, '73, '74, and '76 rely largely on data collected in the '60s. This research utilized mostly cable-TV data,

[1] Notwithstanding the uncertainties highlighted in paragraph 105, page 56, front-to-back ratios of "typical" home rooftop antennas are required to be added to the near impossible showing under the *Carroll* doctrine (see footnote 72 page 31) by those who file in opposition to the drop-in.

[2] K. Bullington, "Radio Propagation Fundamentals," Bell System Technical Journal, vol. 36, no. 3, Fig. 7, AT&T.

[3] For a fuller explanation of how to obtain improved prediction by measurements, see National Bureau of Standards Technical Note No. 102, August 1961.

and the cable systems were almost all in rural areas.

Comsat's 1979 press release announcing its intent to file an application for a direct-to-the-home-broadcast-satellite service is cited in the Notice as evidence of consumer demand. There is, as of now, no evidence whatsoever of public demand for DBS.

There *is*, of course, consumer demand for programming—e.g. commercial-free movies and sports on MDS—but this is quite different from demand for facilities. Unused UHF channels remain available at the Commission. This would not be the case if a shortage of facilities existed. We should wait until existing UHF availabilities have been applied for before short-spacing more VHFs.

[FR Doc. 80-36886 Filed 11-25-80, 8:45 am]

BILLING CODE 6712-01-M

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## 47 CFR Part 73

[Docket No. 21474; RM-1968; RM-2810; RM-2978]

## Amendment of Broadcast Equal Opportunity Rules and FCC Form 395; Order Extending Time To File Comments and Reply Comments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of comment and reply comment period.

**SUMMARY:** Action taken herein extends time for filing comments and reply comments in response to a Notice of Proposed Rule Making concerning modifications to the FCC's model equal employment opportunity ("EEO") program for broadcast applicants and licensees.

**DATE:** Comments must be filed on or before October 30, 1980, and reply comments must be filed on or before December 1, 1980.

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

**FOR FURTHER INFORMATION CONTACT:** Steven A. Bookshester, Broadcast Bureau (202) 653-7586.

**SUPPLEMENTARY INFORMATION:**

Adopted: October 22, 1980.

Released: October 23, 1980.

By the Chief, Policy and Rules Division:

1. On June 4, 1980, the Commission adoped a *Second Further Notice of Proposed Rule Making* concerning the above-captioned proceeding, FCC 80-328, 45 Fed. Reg. 42729, published June 25, 1980. The dates initially established for filing comments and reply comments were August 25, 1980, and September 25, 1980, respectively.

2. By *Order* released August 15, 1980, 45 Fed. Reg. 56116, published August 22, 1980, the Commission granted the request of the National Association of Broadcasters ("NAB") and extended the filing dates for comments and reply comments to October 24, 1980, and November 24, 1980, respectively. NAB had stated that it intended to conduct a study of the costs of compliance with the Commission's present and proposed EEO requirements, and would also solicit licensees' suggestions as to various EEO alternatives, including those proposed in the *Further Notice*.

3. Presently before the Commission is a motion filed on October 17, 1980, by the Broadcast Financial Management Association ("BFM"), seeking a further extension of time for the filing of comments and reply comments to January 10, 1981, and February 10, 1981, respectively. BFM states that it has authorized an outside consultant to conduct a study to determine specific problem areas which station personnel will encounter with the proposed revisions to the model EEO program and instructions, and additional time is necessary to collect and analyze data for this study.

4. Also before the Commission is a motion filed by NAB on October 21, 1980, requesting an extension for the filing of comments until November 3, 1980, or, in the alternative, October 30, 1980. In support of its motion, NAB states that the raw date from its survey of 300 stations, which was conducted by an outside firm, was not received until the weekend of October 18-19, 1980, and analysis cannot be completed by the present October 24, 1980, deadline.[1]

5. The Commission is of the view that the grant of an extension to October 30, 1980, so that NAB may complete its data analysis, would not unduly delay this proceeding, and would serve the public interest through its possible contribution to the development of a more complete record. On its own motion, the Commission will, concurrently, extend the date for filing reply comments to December 1, 1980, so that all parties may fully respond to the intitial pleadings. Further extensions of time are not contemplated.

6. Additionally, the Commission is not persuaded that the extension of time requested by BFM is warranted. Four months has already been provided for the filing of comments in this proceeding. An additional month remains for the filing of reply comments. We are of the view that the comment period provided, extended as discussed in paragraph 5 above, has been more than adequate, and the public interest would not be served by the further delay of more than two additional months requested by BFM.[2]

7. Accordingly, it is ordered, That the Motion for Extension of Time for filing comments in this proceeding filed by the National Association of Broadcasters is granted in part, to and including October 30, 1980, and is in all other respects denied.

8. It is further ordered, That the date for filing reply comments is hereeby extended to and including December 1, 1980.

9. It is further ordered, That the motion for extension of time filed by the Broadcast Financial Management Association is granted to the extent stated herein and is in all other respects denied.

10. This action is taken pursuant to authority found in Sections 4(i), and 5(d)(1) and 303(r) of the Communications Act of 1934, as amended and Section 0.281 of the Commission's Rules.

Federal Communications Commission.

**Henry L. Baumann,**

*Chief, Policy and Rules Division Broadcast Bureau*

[FR Doc. 80-36778 Filed 11-25-80; 8:45 am]

BILLING CODE 6712-01

[1] Section 1.46(b) of the Commission's Rules requires that such motions be filed at least seven days prior to the filing date, but permits us to consider late-filed motions such as NAB's when there are extenuating circumstances.

[2] BFM may still avail itself of the December 1, 1980, date for the filing of reply comments. Additionally, should BFM believe this matter of sufficient importance, it may wish to submit late-filed comments with a request for acceptance.

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 285

## Atlantic Bluefin Tuna; Public Hearings

**AGENCY:** National Oceanic and Atmospheric Administration/ Commerce.

**ACTION:** Notice of public hearings.

**SUMMARY:** The National Marine Fisheries Service (NMFS) will hold public hearings for the purpose of public input on amendments to the regulations for the Atlantic bluefin tuna fishery. NMFS is concerned that future longline activities in the Atlantic bluefin tuna fishery may pose a threat to the health of the resource, and compromise the United States' commitments developed within the International Commission for

the Conservation of Atlantic Tunas. Proposed regulations are being developed which will address the problem. These will be published in the **Federal Register** prior to the hearing dates. Copies of the proposed regulations will be available by contacting the Regional Director at the following address: Mr. Allen E. Peterson, Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930; telephone: (617) 281-3600.

**DATES:** Written comments on the amendments to the regulations for Atlantic bluefin tuna from members of the public may be submitted no later than December 29, 1980. Individuals or organizations wishing to comment on the amendments also may do so at public hearings to be held as follows:

December 8, 1980—Madiera Beach, Florida;
December 9, 1980—Ft. Pierce, Florida;
December 10, 1980—Corpus Christie, Texas;
December 11, 1980—Kenner, Louisiana;
December 16, 1980—Peabody, Massachusetts; and
December 18, 1980—Newark, New Jersey.

All of the above hearings will start at 7:00 p.m. and end at 9:30 p.m.

**ADDRESS:** Send comments to: Mr. Allen E. Peterson at the above address.

**Public Hearing Locations:**

Date and Location

December 8, 1980: City Hall, City of Madiera Beach, Madiera Beach, Florida 33738; Tel: (813) 391-9951.
December 9, 1980: Best Western Executive Inn, 3224 South U.S. 1, Ft. Pierce, Florida 33450; Tel: (305) 465-7000.
December 10, 1980: Texas A&M Research Center, Highway 44, Corpus Christie, Texas 78408; Tel: (512) 265-9201.
December 11, 1980: Best Western Int'l Hotel, 2610 Williams Blvd., Kenner, Louisiana 70062; Tel: (504) 466-1401.
December 16, 1980: Holiday Inn, Route 1, 1 Newbury Street, Peabody, Massachusetts 01960; Tel: (617) 535-4600.
December 18, 1980: Holiday Inn, 160 Holiday Plaza, Newark, New Jersey 07114; Tel: (201) 589-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Jerome or Mr. Arnet R. Taylor, National Marine Fisheries Service, State Fish Pier, 14 Elm Street, Gloucester, Massachusetts 01930; Telephone: (617) 281-3600.

Dated: November 21, 1980.

**Robert K. Crowell,**

*Deputy Executive, Director National Marine Fisheries Service.*

[FR Doc. 80-37042 Filed 11-25-80; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 45, No. 230
Wednesday, November 26, 1980

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

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Northern California Subcommittee of the Pacific Crest National Scenic Trail Advisory Council; Meeting

The Northern California subcommittee of the Pacific Crest National Scenic Trail Advisory Council Will Meet at 10:00 a.m. on Friday, January 23, 1981. The Meeting location Will Be Room 539, Appraiser's Building, 630 Sansome Street, San Francisco, California.

The purpose of the meeting is to review the alternatives for the pending Pacific Crest National Scenic Trail Comprehensive Plan for acquisition, management, development, and use of the trail. Other policy matters concerning the trail may also be considered.

The meeting will be open to the public. Persons who wish additional information should contact Alan Lamb, Recreation Staff, Pacific Southwest Region, Forest Service, 630 Sansome Street, San Francisco, California 94111. Phone (415) 556–6983.

Dated: November 18, 1980.

**Zane G. Smith, Jr.,**

*Regional Forester, Pacific Southwest Region.*

[FR Doc. 80-36876 Filed 11-25-80; 8:45 am]

BILLING CODE 3410-11-M

### Office of the Secretary

### Meat Import Limitations, First Quarterly Estimate

Pub. L. 88–482, approved August 22, 1964, as amended by the Meat-Import Act of 1979, (hereinafter referred to as the "Act"), provides for limiting the quantity of fresh, chilled, or frozen meat of cattle, sheep except lamb, and goats (TSUS 106.10, 106.22, and 106.25), and certain prepared or preserved beef and veal products (TSUS 107.55, 107.61, and 107.62), which may be imported into the United States in any calendar year. Such limitations are to be imposed when it is estimated by the Secretary of Agriculture that imports of articles provided for in TSUS 106.10, 106.22, 106.25, 107.55 and 107.62 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated quantity of meat articles prescribed by Section 2(c) of the Act.

In accordance with the requirements of the Act, the following first quarterly estimates for 1981 are published.

1. The estimated aggregate quantity of meat articles prescribed by Section 2(c) of the Act during the calendar year 1981 is 1,315 million pounds.

2. The estimated aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1981 is 1,458 million pounds.

Done at Washington, D.C. this 24th day of November 1980.

**Bob Bergland,**

*Secretary.*

[FR Doc. 80-37058 Filed 11-24-80; 3:13 am]

BILLING CODE 3410-10-M

### Soil Conservation Service

### Great Plains Conservation Program

**AGENCY:** Soil Conservation Service (SCS), USDA.

**ACTION:** Notice of decision to designate additional counties for participation in the Great Plains Conservation Program (GPCP).

**SUMMARY:** The Chief of the Soil Conservation Service designates 49 counties for participation in the Great Plains Conservation Program (GPCP). The counties are listed in Supplementary Information.

**EFFECTIVE DATE:** October 1, 1980.

**FOR FURTHER INFORMATION CONTACT:** Guy D. McClaskey, SCS, P.O. Box 2890, Washington, D.C. 20013, telephone 202–447–2324.

**SUPPLEMENTARY INFORMATION:** Under section 16(b)(1) of the Soil Conservation and Domestic Allotment Act, as amended 16 U.S.C. 590p(b)(1), and SCS regulations, 7 CFR Part 631.2, the Chief of SCS, USDA, gives notice that he has designated the following 49 counties for participation in the GPCP effective October 1, 1980:

**Montana**

Lewis and Clark

**Oklahoma**

| | |
|---|---|
| Kay | Cleveland |
| Noble | Poltawatomie |
| Logan | Garvin |
| Payne | Murray |
| Lincoln | Carter |
| Oklahoma | Love |
| McClain | |

**South Dakota**

| | |
|---|---|
| Marshall | Kingsbury |
| Day | Miner |
| Clark | |

**Texas**

| | |
|---|---|
| Val Verde | Frio |
| Edwards | Atascosa |
| Real | Dimmit |
| Kerr | La Salle |
| Bandera | McMullen |
| Kendall | Live Oak |
| Kinney | Webb |
| Uvalde | Duval |
| Medina | Zapata |
| Bexar | Jim Hogg |
| Maverick | Starr |
| Zavala | Hidalgo |

**Wyoming**

| | |
|---|---|
| Park | Washakie |
| Big Horn | Fremont |
| Hot Springs | Sweetwater |

The review process established by the Office of Management and Budget in Circular A–95 is not applicable since this action will not have a significant impact on area or community development.

(Catalog of Federal Domestic Assistance Program No. 10.900, Great Plains Conservation Program, Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is not applicable.)

**Norman A. Berg,**

*Chief.*

[FR Doc. 80-36892 Filed 11-25-80; 8:45 am]

BILLING CODE 3410-16-M

## CIVIL AERONAUTICS BOARD

**[Docket 38019 and 38961]**

### Wien Air Alaska, Mainline and Bush Mail Rates Investigation; Intra-Alaska Class Service Mail Rates; Conference

By Orders 80–11–81 and 80–11–82, the Board provided for a preliminary conference of the parties to these

proceedings, as well as other carriers holding certificates to provide intra-Alaska mail service, to be held on December 2, 1980. The Board directed that statements of position and issues be filed on or before November 21.

By letter dated November 14, 1980, counsel for Alaska International Air confirmed a duly authorized extension of the deadline for the referenced statements until November 24, 1980. In the same letter, counsel requested postponement of the conference until December 3, 1980 to accommodate parties travelling from Alaska.

Given the absence of objections, this request is granted. Accordingly, the Bureau of Domestic Aviation will hold a conference in the above referenced matters on December 3, 1980 at 10 a.m. in Room 910, Universal Building, 1825 Connecticut Ave. N.W., Washington, D.C.

Parties should be prepared to discuss revised procedural dates for the submission of data and arguments. Revised dates will be set at the conference.

Parties who have not already served the persons on the attached service list with copies of statements of positions and issues are requested to do so.

The conference will be open to the public, but only parties or Board staff will be permitted to participate. Persons not on the service list who wish to assume party status should contact Mr. Barry Molar (202) 673-5371. The provisions contained in 14 C.F.R. 302.313 and 14 C.F.R. 302.314 will not apply to the conference.

This notice will be published in the Federal Register.

Mark S. Kahan,

*Assistant Director, Fares, Rates and Tariffs.*

Service List for Administrative Conference

Alaska International Air, Inc., Box 60029, Airport Annex, Fairbanks, AK 99706.

Leonard N. Bebchick, Martin, Whitfield, Smith & Bebchick, 1701 Pennsylvanis Ave., N.W., Suite 1102, Washington, D.C. 20006.

Raymond J. Vecci, Vice President, PLanning & Assistant to the President, Alaska Airlines, Inc., Seattle-Tacoma International Airport, Seattle, Washington 98188.

Marshall S. Sinick, Fisher, Gelband and Sinick, Suite 440, 2020 K Street, N.W., Washington, D.C. 20006.

Air North d.b.a. Yukon Air Service, Box 60054, Fairbanks, AK 99701.

Michael J. Roberts, Verner, Liipfert, Bernhard & McPherson, Suite 1100 1660 L Street, N.W., Washington, D.C. 20036.

Kodiak-Western Alaska Airlines, Inc., Mr. Robert L. Hall, P.O. Box 2457, Kodiak, Alaska 99615.

Kodiak-Western Alaska Airlines, Inc., Mr. Jerrold Scoutt, Zuckert, Scoutt & Rasenberger, 888 17th Street, N.W., Washington, D.C. 20006.

Reeve Aleutian Airways, Inc., Mr. R. D. Reeve, 4700 W-International Airport Road, Anchorage, Alaska 99502.

Reeve Aleutian Airways, Inc., Mr. Lee Hydeman, Hydeman, Mason & Goodell, 1220 19th Street, N.W., Washington, D.C. 20036.

Munz Northern Airlines, Inc., P.O. Box 790, Nome, AK 99763.

James J. Flood, President, Wien Air Alaska, Inc., 4100 W. International Airport Road, Anchorage, Alaska 99520.

Theodore I. Seamon, Seamon, Wasko & Ozment, 1211 Connecticut Avenue, N.W., Suite 300, Washington, D.C. 20036.

Larry Ledlow, President, Western Yukon Air, P.O. Box 131, St. Marys, Alaska 99558.

Edwin O. Bailey, Kirkland and Ellis, 1776 K Street, N.W., Washington, D.C. 20006.

Robert A. Sherr, Room 9417, U.S. Postal Service, Washington, D.C. 20260.

[FR Doc. 80-36912 Filed 11-25-80; 8:45 am]

BILLING CODE 6320-01-M

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[Docket 38803]

## Application of Sun Pacific Airlines for Certificate Authority Under Subpart Q

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Notice of Order 80-11-107, application of Sun Pacific Airlines under Subpart Q for a Certificate of Public Convenience and Necessity for authority between and among San Francisco, Fresno, Bakersfield, Las Vegas, Los Angeles and Ontario (Docket 38803).

**SUMMARY:** The Board is proposing to grant a certificate of public convenience and necessity to Sun Pacific Airlines to authorize it to provide service in the markets listed in its application, subject to a favorable determination of its fitness (Docket 38865). The complete text of this order is available as noted below.

**DATES:** Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below no later than December 22, 1980, a statement of objections together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections.

**ADDRESSES:** Objections should be filed in Docket 38803, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

**FOR FURTHER INFORMATION CONTACT:** Steven B. Farbman, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5340.

**SUPPLEMENTARY INFORMATION:** Objections should be served upon the civic officials and airport managers at San Francisco, Bakersfield, Fresno, Los Angeles, Las Vegas and Ontario; the Governors of California and Nevada; the California Department of Transportation; the California Public Utilities Commission; the Nevada Department of Transportation; Sun Pacific Airlines; Swift Aire Lines; Inland Empire Airlines; Air California; and Gem Investors, d/b/a Golden Gate Airlines.

The complete text of Order 80-11-107 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 80-11-107 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: November 19, 1980.

Phyllis T. Kaylor,

*Secretary.*

[FR Doc. 80-36911 Filed 11-25-80; 8:45 am]

BILLING CODE 6320-01-M

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# CIVIL RIGHTS COMMISSION

## Colorado Advisory Committee; Amendment of Meeting Notice

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Colorado Advisory Committee to the Commission originally scheduled for December 2, 1980, at the St. John's Baptist Rectory, 315 4th Avenue, Longmont, Colorado 80501 (FR Doc. 80-35294) has been changed.

The meeting now will be held on December 2, 1980, beginning at 7:00 p.m., and will end at 10:00 p.m., at 1020 Fifteenth Street, Brooks Towers, Suite 2235, Denver, Colorado 80202. The purpose of the meeting is to listen to concerns about excessive police force, community relations in smaller Northern Colorado towns.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Minoru Yasui, 1150 South Williams, Denver, Colorado 80210, (303) 575-2621 or the Rocky Mountain Regional Office, 1020 Fifteenth Street, Suite 2235, Denver, Colorado, (303) 837-2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 19, 1980.

Thomas L. Neumann,

*Advisory Committee Management Officer.*

[FR Doc. 80-36902 Filed 11-25-80; 8:45 am]

BILLING CODE 6335-01-M

### District of Columbia Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee will convene at 2 p.m., and will end at 4 p.m., on December 11, 1980, at 2120 L Street NW., Lower Level Conference Room, Washington, D.C. 20037. The purpose of the meeting is to discuss concept papers on project ideas in the areas of equal employment opportunity and equal protection of the laws for Handicapped Americans.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Rev. Ernest Gibson, 1239 Vermont Avenue NW., Washington, D.C. 20005, (202) 638–1077 or the Mid-Atlantic Regional Office, 2120 L Street NW., Suite 510, Washington, D.C., 20037, (202) 254–6717.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 19, 1980.

**Thomas L. Neumann,**

*Advisory Committee Management Officer.*

[FR Doc. 80–36903 Filed 11–25–80; 8:45 am]

BILLING CODE 6335-01-M

### Florida Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 4 p.m., and will end at 6 p.m., on December 7, 1980, at the Hotel Everglades (Suite to be designated later), 3rd and Biscayne, Miami, Florida 33132. The purpose of the meeting is a briefing by the Office of General Counsel Staff on the Commission Hearing.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mr. Ted Nichols, University of Miami, Coral Gables, Florida 33124, (305) 284–3064 or the Southern Regional Office, Citizens Trust Bank Building, Room 362, 75 Piedmont Ave. NE., Atlanta, Georgia 30303, (404) 242–4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 19, 1980.

**Thomas L. Neumann,**

*Advisory Committee Management Officer.*

[FR Doc. 80–36905 Filed 11–25–80; 8:45 am]

BILLING CODE 6335-01-M

### Maine Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Maine Advisory Committee to the Commission will convene at 6 p.m., and will end at 8 p.m., on December 17, 1980, at the Maine Teachers Association, 35 Community Drive, Augusta, Maine. The purpose of the meeting is to review the final draft of the annual report on civil rights in Maine; report on the progress of sexual harassment projects and review proposals for new projects on women in nontraditional jobs, rights of the handicapped, domestic violence, and use of Medicaid funds.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Ms. Madeleine D. Giguere, 35 Orange Extension, Lewiston, Maine 34240 (207) 780–4100 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 21, 1980.

**Thomas L. Neumann,**

*Advisory Committee Management Officer.*

[FR Doc. 80–36901 Filed 11–25–80; 8:45 am]

BILLING CODE 6335-01-M

### Wyoming Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 10 a.m., and will end at 12 p.m., on December 6, 1980, at the Federal Building, 100 East B. Street, Room 3116, Casper, Wyoming 82601. The purpose of the meeting is to report on SAC chairs conference in Washington, D.C., and an update on the progress of research into working conditions for women and minorities in mineral extraction industries.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mrs. Jamie C. Ring, 520 Parkview Drive, Casper, Wyoming 82601, (307) 237–9504 or the Rocky Mountain Regional Office, 1020 Fifteenth Street, Suite 2235, Denver, Colorado 80202, (303) 837–2211.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 19, 1980.

**Thomas L. Neumann,**

*Advisory Committee Management Officer.*

[FR Doc. 80–36904 Filed 11–25–80; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Exemption of Foreign Air Carriers From Customs Duties and Taxes; Request for Finding of Reciprocity (Cuba)

Notice is hereby given that the Department of Commerce is undertaking to determine whether, pursuant to sections 309 and 317 of the Tariff Act of 1930, as amended (19 U.S.C. 1309 and 1317), and section 4221 of the Internal Revenue Code of 1954, as amended (26 U.S.C. 4221), the Government of Cuba allows substantially reciprocal customs and tax exemptions to aircraft of U.S. registry in connection with international commercial operations to those exemptions granted to aircraft of foreign registry under the aforementioned statutes. The basis of this undertaking is a request on behalf of Empresa Consolidada Cubana de Aviacion (Cubana) for a finding of such reciprocity.

The above-cited statutes provide exemptions for aircraft of foreign registry from payment of import duties and certain internal revenue taxes on the import or purchase of supplies in the United States for such aircraft in connection with their international commercial operations. "Supplies" as used in this context indicates a wide range of articles used by aircraft in international operations, including fuel and lubricants, spare parts, consumable supplies, and ground handling and support equipment. These exemptions apply upon a finding by the Secretary of Commerce, or his designee, and communicated to the Department of the Treasury, that such country allows, or will allow, "substantially reciprocal priviledges" to aircraft of U.S. registry with respect to imports or purchases of such supplies in that country.

Interested parties are invited to submit their views and comments in writing concerning this matter to Mr. Abraham Katz, Assistant Secretary for

International Economic Policy, Room 3830 B, U.S. Department of Commerce, Washington, D.C. 20230. All submissions should be made in five copies and should be received no later than December 23, 1980.

Copies of all written comments received will be available for public inspection between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, in the Freedom of Information Records Inspection Facility, International Trade Administration, Room 3102, Department of Commerce, Washington, D.C.

It is suggested that those desiring additional information contact Mr. C. William Johnson, International Services Division, Office of International Finance, Investment and Services, Room 2204, Washington, D.C. 20230, or call area code 202/377-5012.

**Abraham Katz,**

*Assistant Secretary for International Economic Policy.*

[FR Doc. 80-36925 Filed 11-25-80; 8:45 am]

BILLING CODE 3510-25-M

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## Massachusetts Institute of Technology; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No.: 80-00240. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Article: Klystron Oscillator, Type VRB-2113B. Manufacturer: Varian of Canada, Canada. Intended use of article: The article is intended to be used in radioastronomy investigations which will involve observing the emission of various rotational-state spectral line emissions, including the silicon monoxide line at 43.0 GHz as well as a variety of other known and hypothesized lines in the region between 38.0 and 44.0 GHz. The phenomena to be investigated will include: (a) the distribution of such emission in the sky to determine its association with celestial objects; and (b) its variation with frequency and time to improve the understanding of the physics of the objects and in some cases the mechanism of emission, where such mechanism is not obviously the usual thermal-equilibrium excited-line radiation. Application received by Commissioner of Customs: March 17, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a center frequency of 87.0 gigahertz. The National Bureau of Standards advises in its memorandum dated September 15, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

**Frank Creel,**

*Acting Director, Statutory Import Programs Staff.*

[FR Doc. 80-36914 Filed 11-25-80; 8:45 am]

BILLING CODE 3510-25-M

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## Sandia National Laboratories; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80-00200. Applicant: Sandia National Laboratories, Kirtland Air Force Base East, P.O. Box 5800, Albuquerque, NM 87185. Article: Image Converter Camera, 790. Manufacturer: John Hadland Photonics Ltd., United Kingdom. Intended use of article: The article is intended to be used for photo-optical measurements necessary for the study of generation of electrical discharges at threshold voltages and threshold ignition of explosive components. Application received by Commissioner of Customs: February 20, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: This application is a resubmission of Docket Number 79-00317 which was denied without prejudice to resubmission on December 17, 1979 for informational deficiencies. The foreign article provides up to 50 frames per event. The National Bureau of Standards advises in its memorandum dated June 5, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

**Frank Creel,**

*Acting Director, Statutory Import Programs Staff.*

[FR Doc. 80-36913 Filed 11-25-80; 8:45 am]

BILLING CODE 3510-25-M

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## San Diego State University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80-00250. Applicant: San Diego State University, Dept. of Civil Engineering, San Diego, CA 92182. Article: Geonor Consolidometer. Manufacturer: Geornor, Norway.

Intended use of article: The article is intended to be used in accomplishing required laboratory experiments in the courses: CE-462 (Soil Mechanics), CE-463 (Soil Mechanics Laboratory), CE-562 (Applied Soil Mechanics and Foundation Engineering), CE-579 (Highway Materials), CE-797 (Research). Application received by Commissioner of Customs: March 26, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved: No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a combination wide range (up to 1000 kilograms) loading frame and consolidometer. The National Bureau of Standards advises in its memorandum dated August 26, 1980 that (1) the combination of capabilities of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign ariticle, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank Creel,

*Acting Director, Statutory Import Progroms Staff.*

[FR Doc. 80-36915 Filed 11-25-80; 8:45 am]

BILLING CODE 3510-25-M

## San Diego Veteran's Medical Center; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket No. 80-00206. Applicant: San Diego Veteran's Medical Center, 3350 La Jolla Village Drive, San Diego, CA 92161. Article: Nanoliter Microperfusion Pump. Manufacturer: Wolfgang Hampel, West Germany. Intended use of article: The article is intended to be used for the investigation of tubulo-glomerular feedback in the kidney. Some studies will be performed on early proximal tubular reabsorption in tubules in the Munich-Wista rat kidney *in vivo.* Other studies examine the effect of distal tubular flow and fluid composition on proximal tubules. Application received by commissioner of Customs: February 26, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides perfusion rates in the zero to 50 nanoliters per minute range. the Department of Health and Human Services advises in its memorandum dated June 25, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Frank Creel.

*Acting Director, Stotutory Import Progroms Stoff.*

[FR Doc. 80-36916 Filed 11-25-80; 8:45 am]

BILLING CODE 3510-25-M

## Bethesda Hospital & Deaconess Association; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 80-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m., and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket Number: 80-00249. Applicant: Bethesda Hospital & Deaconess Association, 619 Oak Street, Cincinnati, Ohio 45206. Article: Octoson Multiple Transducer Echoscope. Manufacturer: Ausonics Ltd., Australia. Intended use of article: The article is intended to be used to expand both the technique and anatomical range of diagnostic ultrasonic imaging of breast, testicles, children's head, abdomen, thyroid, and heart. The article will also be used to enhance educational programs for trainees in the Radiology Department. Application received by Commissioner of Customs: March 26, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufacturered in the United States.

Reasons: The foreign article is equipped with eight transducers which provide a large field of view and compound scanning. The Department of Health and Human Services advises in its memorandum dated August 7, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank Creel,

*Acting Director, Statutory Import Progroms Staff.*

[FR Doc. 80-36919 Filed 11-25-80; 8:45 am]

BILLING CODE 3510-25-M

## Duke University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review

between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number: 80–00207. Applicant: Duke University, Durham, North Carolina 27710. Article: Replicator Head, 60 Well. Manufacturer: Biotec Aktiengesellschaft, Switzerland. Intended use of article: The article is intended to be used for precurosor analysis of immune cells. Application received by Commissioner of Customs: February 26, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article replicates simultaneously sixty small volume samples of less than 25 microliters. The Department of Health and Human Services advises in its memorandum dated July 17, 1980 that (1) the capability of the foreign described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank Creel,

*Acting Director, Statutory Import Programs Staff.*

[FR Doc. 80–36917 Filed 11–25–80; 8:45 am]

BILLING CODE 3510–25–M

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## Research Foundation of CUNY; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number: 80–00182. Applicant: Research Foundation of CUNY, Department of Psychology, Queens College of CUNY, Flushing, New York 11367. Article: Anomaloscope. Manufacturer: The Rayner Optical Co. Ltd., United Kingdom. Intended use of article: The article is intended to be used for research on certain types of colorblind subjects, in order to discern the type of cone mechanisms (present in the normal subject, but absent in some colorblind subjects) which interact with rods. Application received by Commissioner of Customs: February 6, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides the capabilities for reproducibly testing, detecting, and quantitatively assessing color vision and night blindness defects. The Department of Health and Human Services advises in its memorandum dated June 25, 1980 that (1) the capabilities of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank Creel,

*Acting Director, Statutory Import Programs Staff.*

[FR Doc. 80–36921 Filed 11–25–80; 8:45 am]

BILLING CODE 3510–25–M

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## San Diego State University; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number: 80–00241. Applicant: San Diego State University, Systems Ecology Research Group, San Diego, CA 92182. Article: Infrared Gas Analyzer ($CO_2$), ADC Type 225 Mk II. Manufacturer: Analytical Development Co., United Kingdom. Intended use of article: The article is intended to be used for studies of photosynthesis of higher plants in mediterranean ecosystems. Experiments will include $CO_2$ exchange of laboratory and in situ Chapparal plants, under varied regimes of soil and air temperature, light water availability, and nutrient concentration. Application received by Commissioner of Customs: March 17, 1980.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foregin article has single gas calibration and an accuracy of $\pm$ 1% full scale reading when operated on the irregular frequency of a portable generator (60$\pm$3 Hertz). The Department of Health and Human Services advises in its memorandum dated August 7, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank Creel,

*Acting Director, Statutory Import Program Staff.*

[FR Doc. 80–36918 Filed 11–25–80; 8:45 am]

BILLING CODE 3510–25–M

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## University of California, Berkeley; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c)

of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 3109 of the Department of Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Docket Number: 80–00248. Applicant: University of California, Berkeley, Purchasing Department, 2405 Bowditch Street, Berkeley, California 94720. Article: Excimer Laser, Model TE–861 and Accessories. Manufacturer: Lumonics Ltd., Canada. Intended use of article: The article is intended to be used to study a variety of organic molecules in the gas phase, liquid phase, solid state and chemi-sorbed or physi-sorbed on surfaces. The objective is to unveil new chemical and physical properties of material and to develop novel laser devices. This system will allow innovative long shots and high risk experiments to be performed in an efficeint way. Application Received by Commissioner of Customs: March 24, 1980.

Comments: No comments have been received with respect to this application.

Decison: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States.

Reasons: The foreign article provides a maximum pulse energy per pulse of 250 milijoules and a high repetition rate of 75 hertz, both using krypton fluoride. The National Bureau of Standards advises in its memorandum dated August 27, 1980 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

**Frank Creel,**

*Acting Director, Statutory Import Programs Staff.*

[FR Doc. 80-36920 Filed 11-25-80; 8:45 am]

BILLING CODE 3510-25-M

## National Bureau of Standards

## Federal Information Processing Standards 60-1, 61, 62, 63; Editorial Changes

Under the provisions of Pub. L. 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary of Commerce is authorized to establish uniform automatic data processing standards. On February 16, 1979, notice was given in the **Federal Register** (44 FR 10098–10101) announcing that the Secretary of Commerce had approved three input/output (I/O) Federal Information Processing Standards (FIPS): (1) I/O Channel Interface, (2) Channel Level Power Control Interface, and (3) Operational Specifications for Magnetic Tape Subsystems, designated Federal Information Processing Standards Publication (FIPS PUB) 60 (which has been redesignated as 60–1), FIPS PUB 61, and FIPS PUB 62, respectively. On August 27, 1979, notice was given in the **Federal Register** (44 FR 50078–50079) announcing that the Secretary had approved a fourth I/O channel level interface standard, Operational Specifications for Rotating Mass Storage Subsystems, designated FIPS PUB 63.

These standards were the subject of corrections and revisions announced in the **Federal Register** on August 27, 1979 (44 FR 50079–50080), August 31, 1979 (44 FR 51294) and December 3, 1979 (44 FR 69317). An interim revision of FIPS PUBS 60–1 through 63 regarding verification procedures and guidance concerning technical interface implementation approaches was announced in the **Federal Register** on June 25, 1980 (45 FR 42783–42784).

Now it has been determined that FIPS PUBS 60–1, 61, 62, and 63 require several editorial changes.

A. The following editorial changes are made to FIPS PUBS 60–1:

Page 2 insert the following new paragraph after 4th paragraph: Regulations concerning the specific use of this standard in Federal procurement will be issued by the General Services Administration to be a part of the Federal Property Management Regulations.

Page 18, 6th full paragraph: Delete "or 'address in' " after " 'select in' " and change " 'operation in'," after "and" to " 'operational in' ,."

Page 21, last paragraph, third line: Change "48" before the word signal to "72."

Page 26, first paragraph designated as paragraph 2, 6th line: Change "with" to "within" after the word "address."

Page 30, paragraph 2.5.3: Delete last sentence. Substitute in its place: "Any status (except zero status presented in response to a command other than test I/O) presented by a control unit in any interface sequence (except the control-unit-busy sequence) may be stacked."

Page 40, second paragraph of paragraph 2.8.3.2: Delete the second line in the paragraph, and substitute in its place: "control unit power is off and electrical bypassing is effective. For control units, the internal resistence."

Page 46, following the first paragraph of paragraph 3.3.1: Insert "The receiver should not be damaged by:"

Page 50, bottom row of pin assignment diagram: Reverse the two diagrams so that "Control Unit in Connector 3 ('B' Style)" appears in the right-hand column with "B" group, and "Channel/Control Unit out Connector 3 ('A' Style)" appears in the left-hand column with the "A" group.

B. The following editorial changes are made to FIPS PUB 61:

Page 11, Figure 3: In left-hand column of figure 3: Change "System Power-On Contracts" to "System Power-On Contacts."

Page 17, Figure 8: Change ".345" to ".395" in the Typical Single Circuit Receptacle Housing group.

C. The following editorial changes are made to FIPS PUB 62:

Page 10, Figure 2: The top portion of the right-hand box at the top of the figure should read: "Channel Switch 1"

Page 11, paragraph 1.5.4: Delete "as specified by document ANSI X3B1/556–1972, entitled Magnetic Tape for Information Interchange"

Page 21, paragraph 3.1, Bit 4 entry: Delete second sentence under Interpretation column and substitute the following new sentence in its place: "Channel End is set in ending status for burst commands (e.g., Read, Write, and Sense) and in initial status for motion control and non-motion control commands (e.g., Rewind, Backspace Block, and Mode Set)."

D. The following editorial change is made to FIPS PUB 63:

Page 43, paragraph 3.2.2, line 4: Change "0, 2 and 3" to "1, 2 and 3." Line 6: Change "1, 4, 5 and 6," to "0, 4, 5 and 6,."

Questions regarding these editorial changes should be addressed to Steve A. Recicar, System Components Division, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921–3723.

Dated: November 20, 1980.

Ernest Ambler,

*Director.*

[FR Doc. 80-36820 Filed 11-25-80; 8:45 am]

BILLING CODE 3510-13-M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Privacy Act of 1974; Amendments to Systems of Records

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of addition and deletions of systems of records.

**SUMMARY:** The Department of the Army proposes to amend its inventory of systems notices by adding 1 and deleting 2 systems of records subject to the Privacy Act of 1974. The system being added relates to grievances filed by Army employees under part 771 of regulations issued by the Office of Personnel Management (OPM). The case files contain all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original correspondence and exhibits. The system also includes files and records of internal grievance and arbitration systems established through negotiations with recognized labor organizations. Records are to be maintained in the servicing civilian personnel office for each Army installation or activity.

**EFFECTIVE DATE:** 1 December 1980.

**ADDRESS:** Mr. Richard S. Christian, The Adjutant General's Office (DAAG-AMR-R), 1000 Independence Avenue, SW, Washington, DC 20310; telephone 202/693-0973.

**SUPPLEMENTARY INFORMATION:** The Department of the Army has been advised by the Office of Management and Budget that OPM plans to delete, effective January 1, 1981, the Government-wide system "OPM/GOVT-2, Grievance Records" because it has been decided that such records would be more appropriately maintained in individual agency systems of records. Information called for in the system set forth below duplicates the information in the OPM system. Thus, the proposed Army system is not a new system of records and no report thereon is necessary. The OPM system was published in the Federal Fegister of May 29, 1979 (44 FR 30884), and was amended by a notice published in the **Federal Register** of October 26, 1979 (44 FR 61708).

Department of the Army systems of records have been published in the following editions of the Federal Register:

FR Doc. 79-37052 (44 FR 73729) December 17, 1979
FR Doc. 80-594 (45 FR 1658) January 8, 1980
FR Doc. 80-3891 (45 FR 8399) February 7, 1980
FR Doc. 80-7515 (45 FR 15736) March 11, 1980
FR Doc. 80-9633 (45 FR 20992) March 31, 1980
FR Doc. 80-10014 (45 FR 21673) April 2, 1980
FR Doc. 80-150501-M (45 FR 26117) April 17, 1980
FR Doc. 80-13708 (45 FR 29390) May 2, 1980
FR Doc. 80-18501 (45 FR 41478) June 19, 1980
FR Doc. 80-20779 (45 FR 46842) July 11, 1980
FR Doc. 80-21847 (45 FR 48936) July 22, 1980
FR Doc. 80-29170 (45 FR 62875) September 22, 1980
FR Doc. 80-32460 (45 FR 68996) October 17, 1980
FR Doc. 80-33133 (45 FR 70298) October 23, 1980
FR Doc. 80-34706 (45 FR 73728) November 6, 1980
FR Doc. 80-35825 (45 FR 75734) November 17, 1980

M. S. Healy,

*OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.*

November 19, 1980.

### Addition

**AO812.03DAPE**

**SYSTEM NAME:**

812.03 Grievance Records

**SYSTEM LOCATION:**

Records are located in the servicing civilian personnel offices for each Army activity or installation.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current or former employees of the Department of the Army who have submitted grievances in accordance with part 771 of the regulations of the office of Personnel Management (5 CFR 771) or through a negotiated grievance procedure.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records relating to grievances filed by Army employees under part 771 of regulations issued by the Office of Personnel Management. The case file contains all documents related to the grievance, including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, a copy of the original and final decisions, and related correspondence and exhibits. The system includes files and records of internal grievance and arbitration systems established through negotiations with recognized labor organizations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 1302, 3301, 3302, E.O. 10577, 3 CFR 1954-1958 Comp., p. 218, E.O. 10987, 3 CFR 1959-1963 Comp., p. 519, agency employees, for personal relief in a matter of concern or dissatisfaction which is subject to the control of agency management.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records and information in these records may be used:

a. To disclose pertinent information to the appropriate Federal, state, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the agency becomes aware of an indication of a violation of potential violation of civil or criminal law or regulation.

b. To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

c. To disclose information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuing of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

d. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

e. To dislcose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

f. By the National Archives and Records Service (General Services Administration) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

g. By the Department of the Army or by the Office of Personnel Management in the production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the

selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

h. To disclose information to officials of the Merit Systems Protection Board, including the Office of the Special Counsel; the Federal Labor Relations Authority and its General Counsel, or the Equal Employment Opportunity Commission when requested in performance of their authorized duties.

i. To disclose, in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

j. To provide information to officials of labor organizations reorganized under the Civil Service Reform Act when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting work conditions.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS FOR THE SYSTEM:**

**STORAGE:**

Maintained in file folders.

**RETRIEVABILITY:**

By the names of the individuals on whom the records are maintained. (Records may also be filed by bargaining unit.)

**SAFEGUARDS:**

Records are maintained in lockable metal filing cabinets to which only authorized personnel have access.

**RETENTION AND DISPOSAL:**

These records are destroyed 7 years after closing of the case. Disposal is by shredding or burning.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of Civilian Personnel, Office of the Deputy Chief of Staff for Personnel, Room 2C-681, The Pentagon, Washington, DC 20310.

**NOTIFICATION PROCEDURE:**

It is required that individuals submitting grievances by provided a copy of the record under the grievance process. They may, however, contact the Army personnel or designated office where the action was processed regarding the existence of such records on them. They must furnish the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing the case and kind of action taken.

d. Organization and activity where employed at time grievance was initiated.

**RECORDS ACCESS PROCEDURES:**

It is required that individuals submitting grievances be provided a copy of the record under the grievance process. However, after the action has been closed, and individual may request access to the official copy of the grievance filed by contacting the personnel or designated office where the action was processed.

Individuals must provide the following information for their records to be located and identified:

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organization and activity where employed at time grievance was initiated.

Individuals requesting access must also follow the Privacy Act regulations of the Office of Personnel Management regarding access to records and verification of identity (5 CFR 297.203 or 297.201).

**CONTESTING RECORD PROCEDURES:**

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determining if the record accurately documents the action of the Army's ruling on the case, and will not include a review of the merits of the action, determination, or finding.

Individuals wishing to request amendment to their records to correct factual errors should contact their servicing civilian personnel office. Individuals must furnish the following information for their records to be located and identified.

a. Name.

b. Date of birth.

c. Approximate date of closing of the case and kind of action taken.

d. Organization and activity where employed at time grievance was initiated.

Individuals requesting amendment must also follow the Privacy Act regulations of the Office of Personnel Management regarding amendment to the records and verification of identity (5 CFR 297.208 and 297.201).

**RECORD SOURCE CATEGORIES:**

Information in this system of records is provided:

a. By the individual on whom the record is maintained.

b. By testimony of witnesses.

c. By officials of the Department of the Army.

d. From related correspondence from organizations or persons.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**Deletions**

**AO807.09aDAPE**

*System name:*

807.09 Grievances and Appeals Under Negotiated Grievance Procedures (44 FR 73912), December 17, 1979.

*Reason:*

Records are described in system of records AO812.03DAPE, being added herein.

**AO812.04DAPE**

*System name:*

812.04 NAF Complaint, Appeal & Grievance Case Files (44 FR 73917), December 17, 1979.

*Reason:*

Records are described in system of records AO812.03DAPE, being added herein.

[FR Doc. 80-36775 Filed 11-25-80; 8:45 am]
BILLING CODE 3710-08-M

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## Department of the Navy

## Privacy Act of 1974; Deletion of Systems of Records

**AGENCY:** Department of the Navy (DON).

**ACTION:** Notice of deletion to systems of records.

**SUMMARY:** The Department of the Navy is deleting two systems of records which were formerly subject to the Privacy Act of 1974.

**DATES:** The systems are deleted as of December 26, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Gwendolyn R. Rhoads, Privacy Act Coordinator, Office of the Chief of Naval Operations (OP-09B1P), Department of the Navy, The Pentagon, Washington, D.C. 20350, telephone: 202-694-2004.

**SUPPLEMENTARY INFORMATION:** The Navy systems of records notices as prescribed by the Privacy Act of 1974, Title 5, U.S.C., Section 552a (P.L. 93-579) have been published in the **Federal** Register as follows:

FR Doc 79-36400 (44 FR 67703) November 27, 1979

FR Doc 79-36798 (44 FR 68947) November 30, 1979

FR Doc 79-37052 (44 FR 74553) December 17, 1979
FR Doc 80-6599 (45 FR 13794) March 3, 1980
FR Doc 80-14965 (45 FR 32037) May 15, 1980
FR Doc 80-15427 (45 FR 33679) May 20, 1980
FR Doc 80-17286 (45 FR 38099) June 6, 1980
FR Doc 80-19603 (45 FR 43841) June 30, 1980
FR Doc 80-20317 (45 FR 43938) July 8, 1980
FR Doc 80-23111 (45 FR 50851) July 31, 1980
FR Doc 80-24237 (45 FR 53508) August 12, 1980
FR Doc 80-26396 (45 FR 57514) August 28, 1980
FR Doc 80-26960 (45 FR 58651) September 4, 1980
FR Doc 80-27976 (45 FR 59938) September 11, 1980
FR Doc 80-29172 (45 FR 62876) September 22, 1980
FR Doc 80-29774 (45 FR 63898) September 26, 1980
FR Doc 80-33134 (45 FR 70301) October 23, 1980

**M. S. Healy,**
*OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.*
November 20, 1980.

**Deletions**

**N00015.ONI53-1A**

*System name:*

Status of Downed Naval Aviation Personnel, Southeast Asia Operations (44 FR 74579) December 17, 1980.

*Reason:*

This system has been discontinued.

**N62932 COMSYSTOSHOPRE**

*System name:*

Commissary Store Monetary Allowance Records (44 FR 74633) December 17, 1980.

*Reason:*

This system has been discontinued.

[FR Doc. 80-36773 Filed 11-25-80; 8:45 am]
BILLING CODE 3810-71-M

## Department of the Navy

## U.S. Marine Corps

## Privacy Act of 1974; Deletion and Amendments to Systems of Records

**AGENCY:** Department of the Navy (U.S. Marine Corps).

**ACTION:** Notice of deletion and amendments to systems of records.

**SUMMARY:** The U.S. Marine Corps proposes to delete one and amend four systems of records subject to the Privacy Act of 1974. The specific changes to the systems being amended are set forth below, followed by the system published in its entirety, as amended.

**DATES:** The system shall be amended as proposed without further notice on December 26, 1980 unless comments are received on or before December 26, 1980 which result in a contrary determination.

**ADDRESS:** Send comments to the system manager identified in the record system notice.

**FOR FURTHER INFORMATION CONTACT:** Mrs. B. L. Thompson, Privacy Act Coordinator, Headquarters, U.S. Marine Corps, Washington, D.C. 20380, telephone: 202-694-4115

**SUPPLEMENTARY INFORMATION:** The Marine Corps systems of records notices as prescribed by the Privacy Act of 1974, Public Law 93-579 (5 U.S.C. 552a) have been published in the **Federal Register** as follows:

FR Doc 79-36297 (44 FR 68946) November 30, 1979
FR Doc 79-37052 (44 FR 74495) December 17, 1979
FR Doc 80-4470 (45 FR 9316) February 19, 1980
FR Doc 80-5182 (45 FR 10840) February 19, 1980
FR Doc 80-5420 (45 FR 11523) February 21, 1980
FR Doc 80-6233 (45 FR 13182) February 28, 1980
FR Doc 80-15426 (45 FR 33677) May 20, 1980
FR Doc 80-16549 (45 FR 37254) June 2, 1980
FR Doc 80-26959 (45 FR 58646) September 4, 1980
FR Doc 80-32461 (45 FR 69280) October 20, 1980

The proposed amendments are not within the purview of the provisions of 5 U.S.C. 552a(o) of the Act which requires the submission of a new or altered system report.

**M. S. Healy,**
*OSD Federal Register Liaison Officer, Washington Headquarters Services, Department of Defense.*
November 19, 1980.

**Deletion**

**MMN00024**

*System name:*

Absentee Processing File (44 FR 74543) December 17, 1979.

*Reason:*

This system has been incorporated into system MMN00001 appearing in this edition.

**Amendment**

**MMN00001**

*System name:*

Deserter Inquiry File (44 FR 74530) December 17, 1979.

*Changes:*

*System name:*

Delete the entire entry and substitute: "Absentee Processing and Deserter Inquiry File."

*System location:*

Delete the entire entry and substitute: "Primary System—Absentee and Deserter Section, Manpower Plans and Policy Division, Manpower Department (Code MP), Headquarters, U.S. Marine Corps, Washington, D.C. 20380.

Decentralized Segments—U.S. Marine Corps commands to which the absentee or deserter is assigned for duty or administration of official records. See the organizational elements of the U.S. Marine Corps as listed in the Directory of the Department of the Navy Mailing Addresses."

*Categories of individuals covered by the system:*

At the end of the paragraph, delete the words "within the last 90 days."

*Categories of records in the system:*

Delete the entire entry and substitute: "File contains personal identification data, parent command, notations of arrests, nature and dispositions of criminal charges, and other pertinent information which is necessary to monitor, control and identify absentees and deserters."

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

In the first paragraph, delete the words "Manpower Plans and Policy Division" and add the following before the beginning of the paragraph:

"*Internal:*

Headquarters, U.S. Marine Corps, Marine Corps commands, activities, and organizations—To coordinate the identification, apprehension and return of Marine absentees and deserters in accordance with current regulations."

Delete paragraph four in its entirety. Add the following as the second paragraph under internal users: "The Department of Defense (DOD)—To coordinate with other components of DOD as may be required to report, identify, apprehend and return Marine absentees and deserters to Marine Corps control."

Add the following word before the beginning of the second paragraph: "*External:*"

Delete the last paragraph in its entirety.

*Storage:*

Delete the entire entry and substitute the following: "Records are stored on magnetic tapes and disks, microform, and file folders."

*Retrievability:*

Delete the entire entry and substitute the following: "Records may be accessed by name and social security number."

*Retention and disposal:*

Delete the entire entry and substitute the following: "Records vary in the period of time retained. Records on magnetic tapes and disks are destroyed by erasing after disposition of the individual's case. Paper records are maintained only as long as necessary to transfer information to the official personnel record, then they are destroyed."

*Record access procedures:*

Delete the second paragraph in its entirety and substitute the following: "Written requests for information should contain full name of the individual, date and place of birth, social security number and signature.

*System manager(s) and address:*

Add after the phrase "The Commandant of the Marine Corps" the words "(Code MP)".

*Systems exempted from certain provisions of the act:*

Delete the entire entry and substitute the word: "None."

**MMN00022**

*System name:*

Vehicle Control System

*Changes:*

*Categories of records in the system:*

Delete the entire entry and substitute: "File contains records of each individual who has registered a vehicle on the installation concerned to include decal data, insurance information, state of registration, auto license plate information, and personal history data required for vehicle registration and identification. File also contains notations of traffic violations, citations, suspensions, application for government vehicle operator's I.D. card, operator qualifications and record licensing examination and performance, record of failures to qualify for Government Motor Vehicle Operator's permit, record of government motor vehicle and other vehicle accidents, information on student driver training, and identification for parking control."

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Delete the entire entry and substitute the following:

*"Internal:*

Headquarters, U.S. Marine Corps, Marine Corps commands, activities and organizations—For car pool locator service, vehicle registration, parking control, insurance information, verification and identification of vehicles. Records on official government drivers relating to their ability to operate a motor vehicle are used to manage a safe and responsive motor transport organization. Certain information is used to conduct accident prevention programs, revoke or suspend government motor vehicle permits and in disciplinary proceedings.

Department of Defense—By officials and employees of DOD in the performance of their official duties relating to vehicle control.

*External:*

Federal, state and local government agencies—By officials and employees to assist in the official execution of their duties when disclosure of such records is warranted."

*Safeguards:*

Delete the entire entry and substitute: "Records are maintained in areas accessible only to authorized personnel. Areas are locked during nonduty hours and buildings are protected by security guards."

*Retention and disposal:*

Delete the entire entry and substitute: "Records are maintained for one year after transfer or separation from the installation concerned. Paper records are then destroyed and records on magnetic tapes are erased."

*Notification procedures:*

Delete the entry and substitute: "Information may be obtained from the system manager. Written requests should contain full name and social security number. Individuals visiting the installation concerned should provide proper identification such as military identification, driver's license or other suitable identification."

*Record access procedures:*

Delete the entire entry and substitute: "Requests for access should be addressed to the system manager. Written requests should contain full name and social security number. Individuals visiting the installation should provide proper identification."

**MMN00023**

*System name:*

Prisoner Records (44 FR 74543) December 17, 1979

*Changes:*

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Add the following to the beginning of the first paragraph:

*"Internal:*

Headquarters, U.S. Marine Corps, Marine Corps commands, activities, and organizations—"

Delete paragraph three in its entirety. Add the following as the second paragraph under internal users: "Department of Defense and its components—By officials and employees of the Department of Defense in the performance of their official duties."

Add the following word before the beginning of the second paragraph: *"External:"*

*Safeguards:*

Delete the entire entry and substitute "Records are maintained in areas accessible only to authorized personnel. Areas are locked during nonduty hours and buildings are protected by security guards."

*Retention and disposal:*

Delete the entire entry and substitute: "Records are maintained at varying lengths of time. Paper records are destroyed at the end of the appropriate retention period and magnetic tapes are erased."

*Notification procedures:*

Delete the entry and substitute: "Information may be obtained from the system manager. Written requests should contain full name and social security number. Individuals visiting the installation concerned should provide proper identification such as military identification, driver's license or other suitable identification."

*Record access procedures:*

Delete the entry and substitute: "Requests for access should be addressed to the system manager. Written requests should contain full name and social security number. Individuals visiting the installation should provide proper identification."

**MFD00003**

*System name:*

Joint Uniform Pay Military System/ Manpower Management System

(JUMPS/MMS) (45 FR 58647) September 4, 1980

*Changes:*

*Categories of individuals covered by the system:*

Add the following to the end of the sentence ". . . certain civilians and other service personnel who have attended formal Marine Corps schools."

*Categories of records in the system:*

Add the following to the end of the last sentence: ". . . promotional data."

*Routine uses of records maintained in the system, including catagories of users and the purpose of such uses:*

Add the following word before the beginning of the first paragraph: *"Internal:"*

Add the following word before the beginning of the third paragraph: *"External:"*

*Retention and disposal:*

Delete the first sentence and substitute: "Magnetic records are maintained on all military personnel and certain civilians while they are in service or employed by the service and for a period of 6 months after separation.

Add the following words to the end of the second sentence: ". . . then they are destroyed."

*Record source categories:*

After the word "individual" delete the word "Marine".

**MMN00001**

**SYSTEM NAME:**

Absentee Processing and Deserter Inquiry File

**SYSTEM LOCATION:**

Primary System: Absentee and Deserter Section, Manpower Plans and Policy Division, Manpower Department (Code MP), Headquarters, U.S. Marine Corps, Washington, D.C. 20380.

Decentralized Segments—U.S. Marine Corps commands to which the absentee or deserter is assigned for duty or administration of official records. See the organizational elements of the U.S. Marine Corps as listed in the Directory of the Department of the Navy Mailing Addresses.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Marine Corps absentees and deserters; Marines in hands of civil authorities, foreign and domestic; Marines who fail to comply with orders to new duty stations; suspected and convicted absentees and deserters who have returned to military control.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

File contains personal identification data, parent command, notation of arrests, nature and dispositions of criminal charges, and other pertinent information which is necessary to monitor, control and identify absentees and deserters.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title 5, U.S. Code 301.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*Internal:*

Headquarters, U.S. Marine Corps, Marine Corps commands, avtivities, and organizations—To coordinate the identification, apprehension and return of Marine absentees and deserters in accordance with current regulations. To record and monitor deserter/absentee cases entered into the National Crime Information Center's Wanted Persons File; to monitor and assign absentees upon their return to military control, to ensure that absentees are formally charged in accordance with the Uniform Code of Military Justice prior to expiration of the Statute of Limitations; to monitor Marine absentees and deserters believed to be located in foreign countries; to monitor Marines who have failed to comply with permanent change of station (PCS) orders or orders to travel and report without escort; to ensure correspondence pertaining to absentees and deserters received by the Marine Corps is processed in a timely manner; to ensure that appropriate action is taken within the Manpower Management System to join or drop absentees to desertion; to provide periodic management reports concerning absentees and deserters as directed by higher authority.

The Department of Defense (DOD)—To coordinate with other components of DOD as may be required to report, identify, apprehend and return Marine absentees and deserters to Marine Corps control.

*External:*

Comptroller General of the U.S.—To respond to the Comptroller General or any of his authorized representatives in the course of the performance of duties of the General Accounting Office relating to Marine Corps Manpower Management Programs.

The Attorney General of the U.S.—To coordinate with the Attorney General or his authorized representatives in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice as carried out as the legal representative of the Executive Branch.

Civilian Law Enforcement Agencies—To coordinate with appropriate federal, state, and local law enforcement agencies as may be required to report, identify, apprehend and return Marine absentees and deserters to Marine Corps control.

Courts—To respond to court orders in connection with matters before a court.

Congress of the U.S.—To respond to inquiries of the Senate or the House of Representatives of the United States or any committee or subcommittee thereof or any joint committee or joint subcommittee of the Congress on matters within their jurisdiction as may be requested of the Marine Corps.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored on magnetic tapes and disks, microform, and in file folders.

**RETRIEVABILITY:**

Records may be accessed by name and social security number.

**SAFEGUARDS:**

Building employs security guards. Computer terminals and records are located in areas accessible only to authorized personnel that are properly screened, cleared and trained. Use of terminals requires knowledge of passwords.

**RETENTION AND DISPOSAL:**

Records vary in the period of time retained. Records on magnetic tapes and disks are destroyed by erasing after disposition of the individual's case. Paper records are maintained only as long as necessary to transfer information to the official personnel record, then they are destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

The Commandant of the Marine Corps (Code MP), Headquarters, U.S. Marine Corps, Washington, D.C. 20380.

**NOTIFICATION PROCEDURE:**

Information may be obtained from: The Commandant of the Marine Corps (Code MP), Headquarters, U.S. Marine Corps, Washington, D.C. 20380, Telephone: Area Code (202) 694–2927.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to: The Commandant of the Marine Corps (Code MP), Headquarters,

U.S. Marine Corps, Federal Office Builiding 2, Washington, D.C. 20380.

Written requests for information should contain the full name of the individual, date and place of birth, social security number and signature.

For personal visits, the individual should be able to provide military identification card, driver's license or other type of identification bearing picture or signature or by providing verbal data sufficient to ensure that the individual is the subject of the inquiry.

CONTESTING RECORD PROCEDURES:

The rules for contesting contents and appealing initial determination may be obtained from the Commandant of the Marine Corps (Code JA), Headquarters, U.S. Marine Corps, Washington, D.C. 20380.

RECORD SOURCE CATEGORIES:

Information in the system is obtained from the Marine Corps Military Personnel Records; from the individual's commanding officer, officer-in-charge, federal, state and local law enforcement agencies, lawyers, judges, Members of Congress, relatives of the individual and private citizens, the Veterans' Administration and the individuals themselves.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SYSTEM NAME:

Vehicle Control System.

SYSTEM LOCATION:

Organizational elements of the U.S. Marine Corps as listed in the Directory of the Department of the Navy Activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have motor vehicles, boats, or trailers registered at a particular Naval installation on either a permanent or temporary basis.

All individuals who apply for a Government Motor Vehicle Operator's license.

All individuals who possess a Government Motor Vehicle Operator's license with authority to operate government motor vehicles.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contains records of each individual who has registered a vehicle on the installation concerned to include decal data, insurance information, state of registration, auto license plate information, and perrsonal historyu data required for vehicle registration and identification. File also contains notations of traffic violations, citations, suspensions, applications for Government Vehicle Operator's I.D. card, operator qualifications and record licensing examination and performance, record of failures to qualify for government motor vehicle operator's permit, record of government motor vehicle and other vehcile accidents, information on students driver training and identification for parking control.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S. Code 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

*Internal:*

Headquarters, U.S. Marine Corps, Marine Corps commands, activities and organizations—For car pool locator service, vehicle registration, parking control, insurance information, verification and identification of vehicles. Records on official government drivers relating to their ability to operate a motor vehicle are use to manage a safe and responsive motor transport organization. Certain information is used to conduct accident prevention programs, revoke or suspend government motor vehicle permits and in disciplinary proceedings.

Department of Defense—By officials and employees of DOD in the performance of their official duties relating to vehicle control.

*External:*

Federal, state and local government agencies—By officials and employees to assist in the official execution of their duties when disclosure of such records is warranted.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tapes.

RETRIEVABILITY:

Name, social security number, case number, organization, decal number, state license plate number, vehicle description.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel. Areas are locked during nonduty hours and buildings are protected by security guards.

RETENTION AND DISPOSAL:

Records are maintained for one year after transfer or separation from the installation concerned. Paper records are then destroyed and records on magnetic tapes are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer of the activity in question. See Directory of Department of the Navy Mailing Addresses.

NOTIFICATION PROCEDURE:

Information may be obtained from the system manager. Written requests should contain full name and social security number. Individuals visiting the installation concerned should provide proper identification such as military identification, driver's license or other suitable identification.

RECORD ACCESS PROCEDURES:

Requests for access should be addressed to the system manager. Written requests should contain full name and social security number. Individuals visiting the installation should provide proper identification.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determination by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

MMN00023

SYSTEM NAME:

Prisoner Records.

SYSTEM LOCATION:

Organizational elements of the U.S. Marine Corps as listed in the Directory of the Department of the Navy Activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel who are confined in a detailed, adjudged or sentenced status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in the Manpower Management System data base, personal history to include civilian and military legal status, confinement progress reports and medical related information. Such other records as: Prisoner Conduct Record, Prisoner Confinement and Release Order, Prisoners Request for Restoration or Clemency, Prisoner Waiver of

Restoration or Clemency, Court-martial Progress Report, Prisoner Identification Badge, Prisoner Data Card, Work and Training Report, Mail and Visiting List, Segregation Data Card, Prisoner Refusal to Eat Report, Prisoner Initial Contact Sheet, Prisoner Personal History, Prisoner Spot Evaluation Report, Counselor Continuation Sheet, Disciplinary Report, Prisoner Request Form, Prisoner Request for Funds Form, Prisoner Request for Pastoral Counseling, Prisoner Visiting Officer Form, Telephone and/or Visit Authorization Form, Receipt for Deposit Form, Prisoner Credit Chit, Prisoner Identification Form, Clothing/Health and Comfort Inventory Form, Work Program Request, Library Card, Psychiatric Evaluation and Medical Reports.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Title 5, U.S. Code 301.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

*Internal:*

Headquarters, U.S. Marine Corps, Marine Corps commands, activities, and organizations—To provide an all inclusive file on each individual prisoner, to assist facility staff evaluation of personnel, to assign prisoners to programs, to assign custodial classification, to provide psychiatric and medical treatment, to provide a proper mixture of individual and group counseling in the preparation of the prisoner for further military service, or to prepare him for his future adjustment to civilian life. Routinely used by local correctional personnel in the day-to-day management of prisoners within established programs, by medical personnel, local commanders and higher headquarters in the management and implementation of correctional programs.

Department of Defense and its components—By officials and employees of the Department in the performance of their official duties.

*External:*

Congress of the U.S.—By the Senate or House of Representatives of the U.S. or any committee or subcommittee thereof on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U.S.—By the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office relating to the Marine Corps.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

File folders, card files, punched cards, magnetic tapes.

**RETRIEVABILITY:**

Name, social security number, case number, organization.

**SAFEGUARDS:**

Records are maintained in area accessible only to authorized personnel. Areas are locked during nonduty hours and buildings are protected by security guards.

**RETENTION AND DISPOSAL:**

Records are maintained at varying lengths of time. Paper records are destroyed at the end of the appropriate retention period and magnetic tapes are erased.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commanding Officer of the activity in question. See Directory of Department of the Navy Mailing Addresses.

**NOTIFICATION PROCEDURE:**

Information may be obtained from the system manager. Written requests should contain full name and social security number. Individuals visiting the installation concerned should provide proper identification such as military identification, driver's license or other suitable identification.

**RECORD ACCESS PROCEDURES:**

Requests for access should be addressed to the system manager. Written requests should contain full name and social security number. Individuals visiting the installation should provide proper identification.

**CONTESTING RECORD PROCEDURES:**

The agency's rules for contesting contents and appealing initial determination may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individual concerned, other records of the activity, investigators, witnesses, correspondents.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**MFD0003**

**SYSTEM NAME:**

Joint Uniform Military Pay System/Manpower Management System (JUMPS/MMS)

**SYSTEM LOCATION:**

Primary System—Marine Corps Central Design and Programming Activity, 1500 East 95th Street, Kansas City, Missouri 64131; Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197.

Decentralized Segments—There are nine Satellite/Command Data Processing Installations (SDPI/CDPI) which maintain files with similar records at the following locations: SDPI 02, Marine Corps Base, Camp Lejeune, NC 28542; SDPI 03, Marine Corps Base, Camp Pendleton, CA 92055; SDPI 06, FMF Pacific, FPO San Francisco, CA 96610; SDPI 09, Headquarters U.S. Marine Corps, Washington, D.C. 20380; SDPI 11, Marine Corps Recruit Depot, Parris Island, SC 29905; SDPI 15, Marine Corps Recruit Depot, San Diego, CA 92140; SDPI 17, Marine Corps Base, Quantico, VA 22134; SDPI 27, Marine Corps Base, Camp S. D. Butler, FPO Seattle, WA 98773; First Marine Brigade, FPO San Francisco, CA 96615; SDPI 16, Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Marine Corps military personnel on active duty for 31 days or longer, certain civilians and other service personnel who have attended formal Marine Corps schools.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

File contains personnel and pay data which includes: Name, grade, SSN, date of birth, citizenship, marital status, home of record, dependents information, record of emergency data, enlistment contract or officer acceptance form information, duty status, population group, sex, ethnic group, duty station/personnel assignment and unit information, security investigation, military pay record data such as information contained on the Leave and Earnings Statement which may include base pay/allowances/allotments/bond authorization, health care coverage, special pay and bonus data, Federal and State Withholding/Income Tax Data, Federal Indemnity Compensation Act Tax Withholding Data, Serviceman's Group Life Insurance Deductions, leave account, wage and tax summaries, separation document code, test scores/information, language proficiency, military/civilian/off-duty education, training information, awards, combat tour information, aviation/pilot/flying time data, lineal precedence number, limited duty officer/warrant officer footnotes, TAD data, power of attorney, moral code, conduct and proficiency

marks, years in service, promotional data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 and 37, U.S. Code Section 5031 and 5201.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

*Internal:*

Headquarters, U.S. Marine Corps and Marine Corps commands, activities and organizations—By officials and employees of the Marine Corps in the performance of their assigned duties in matters relating to a Marine's automated personnel and/or pay record.

Department of Defense and its components—By officials and employees of the Department in the performance of their official duties.

*External:*

The Attorney General of the U.S.—By officials and employees of the Office of the Attorney General in connection with litigation, law enforcement of other matters under the direct jurisdiction of the Department of Justice or as carried out as the legal representative of the Executive Branch agencies.

Courts—By officials of duly established local, state and federal courts as a result of court order pertaining to matters properly within the purview of said court.

Congress of the U.S.—By the Senate or the House of Representatives of the U.S. or any committee or subcommittee thereof, any joint committee or Congress or subcommittee or joint committee on matters within their jurisdiction requiring disclosure of the files.

The Comptroller General of the U.S.—By the Comptroller General or any of his authorized representatives in the course of performance of duties of the General Accounting Office relating to the Marine Corps.

The American Red Cross and the Navy Relief Society—By officials and employees of the American Red Cross and the Navy Relief Society in the performance of their duties. Access will be limited to those portions of the members record required to effectively assist the member.

Federal, state and local government agencies—By officials and employees of federal, state and local government through official request for information with respect to law enforcement investigatory procedures, criminal prosecution, civil court action and regulatory order.

To provide information to another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States which has been authorized by law to conduct law enforcement activities pursuant to a request that the agency initiate criminal or civil action against an individual on behalf of the U.S. Marine Corps, The Department of the Navy, or the Department of Defense.

To provide information to individuals pursuant to a request for assistance in a criminal or civil action against a member of the U.S. Marine Corps by the U.S. Marine Corps, the Department of the Navy, or the Department of Defense.

Department of Health and Human Services (DHHS)—Disclosure of the name, rank or grade, and Social Security Account Number of each Marine Corps active duty military member to the Inspector General of DHHS for the specific purpose of comparison with appropriate rolls reflecting recipients of Aid to Families with Dependent Children (AFDC).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data is recorded on magnetic records and disks, punch cards, computer printouts, microform, file folders, and other documents.

RETRIEVABILITY:

The data contained in magnetic records can be displayed on cathode-ray tubes, it can be computer printed on paper, and it can be converted to microform for information retrieval; the data in the supporting file folders and other manual records is retrieved manually. Computerized and conventional indices are required to retrieve individual records from the system. Normally, all types of records are retrieved by Social Security Number and name.

SAFEGUARDS:

Building management employs security guards; building is locked nights and holidays. Authorized personnel may enter and leave the building during nonworking hours but must sign in and out. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

Access to personal information is limited to authorized personnel with a need-to-know. Access is restricted to specific applications programs, records, and files to which personnel have a specific and recorded need-to-know. On line data sets (both tape and disk) pertaining to personal information are password protected, areas are controlled and access lists are used. The files are also protected at a level appropriate to the type of information being processed.

RETENTION AND DISPOSAL:

Magnetic records are maintained on all military personnel and certain civilians while they are in service, or employed by the service and for a period of 6 months after separation. Paper and film records are maintained for a period of 10 years after the final transaction, then they are destroyed. End calendar and fiscal year "snapshots" of the MMS data base are maintained indefinitely in magnetic form at headquarters, U.S. Marine Corps.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps, Codes FD/MP, Headquarters, U.S. Marine Corps, Washington, D.C. 20380.

NOTIFICATION PROCEDURE:

Requests from individuals for information concerning pay related matters should be addressed to the Commandant of the Marine Corps (Code FD). Requests from individuals for information concerning personnel matters should be addressed to the Commandant of the Marine Corps (Code MP).

Requesting individual must supply full name and Social Security Number. The requester may visit the Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197 to obtain information on whether the system contains records pertaining to him or her.

In order to personally visit the above address and obtain information, individuals must present a military identification card, a driver's license, or other suitable proof of identity.

RECORD ACCESS PROCEDURES:

Information on JUMPS may be obtained from the member's local disbursing officer. Information on MMS may be obtained for the member's immediate commanding officer. Requests for information from persons no longer in service should be signed by the person requesting the information. Dates of service, Social Security Number, and full name of requester should be printed or typed on the request. It should be sent to the Marine Corps Finance Center, 1500 East 95th Street, Kansas City, Missouri 64197

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

**RECORD SOURCE CATEGORIES:**

Recruiting offices, disbursing offices, administrative offices, and the individual Marine are the prinicpal sources of the information contained in the JUMPS/MMS record for that person.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 80-36774 Filed 11-25-80; 8:45am]

**BILLING CODE 3810-71-M**

## Department of the Navy

### Chief of Naval Operations Executive Panel Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Force Enhancement Sub-Panel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on December 10-11, 1980, from 8:00 a.m. to 5:00 p.m. each day, at 2000 N. Beauregard St., Alexandria, VA. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions of cover and deception systems and procedures and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in Section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Commander Catherine Z. Becker, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 N. Beauregard Street, Room 392, Alexandria, VA 22311. Phone (703) 756-1205.

**P. B. Walker,**

*Captain, JAGC, U.S. Navy, Alternate Federal Register Liaison Officer.*

November 24, 1980.

[FR Doc. 80-36955 Filed 11-24-80; 11:16 am]

**BILLING CODE 3810-71-M**

## DEPARTMENT OF EDUCATION

### Fund for the Improvement of Postsecondary Education; Closing Date for Transmittal of Applications for Fiscal Year 1981

**AGENCY:** Department of Education.

**ACTION:** Change in Closing Date for Transmittal of Applications for Fiscal Year 1981.

**SUMMARY:** Two closing dates are extended for the Fund for the Improvement of Postsecondary Education Program. These program announcements were contained in the "Direct Grant Program Application Notices for Fiscal Year 1980," published in the Federal Register on October 7, 1981 (45 FR 66564—66618). The New closing dates are as follows:

84.116D Fund for the Improvement of Postsecondary Education. New Closing Date—December 2, 1980.

84.116K Fund for the Improvement of Postsecondary Education. New Closing Date—January 21, 1981.

Applicants should refer to the Federal Register announcement on October 7 for the necessary information to apply.

**FOR FURTHER INFORMATION CONTACT:** For 84.116D, Diana Hayman (202) 245-8091; for 84.116K, Lynn De Meester (202) 245-8091.

**F. James Rutherford,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 80-36746 Filed 11-25-80; 8:45 am]

**BILLING CODE 4000-01-M**

## DEPARTMENT OF ENERGY

### National Petroleum Council, Hazardous Wastes Task Group of the Committee on Environmental Conservation; Meeting

Notice is hereby given that the Hazardous Wastes Task Group of the Committee on Environmental Conservation will meet in December 1980. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Environmental Conservation will analyze the environmental problems of the oil and gas industries and the impact of current environmental control regulations on the avilability and costs of petroleum products and natural gas. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location and agenda of the Hazardous Wastes Task Group meeting follows:

The Hazardous Wastes Task Group will hold its first meeting on Wednesday, December 3, 1980, starting at 1:00 p.m., in the Conference Room of the National Petroleum Council, 1625 K Street, N.W., Washington, D.C.

The tentative agenda for the meeting follows:

1. Review Task Group assignment from the NPC Committee on Environmental Conservation.
2. Discuss Task Group study approach and individual assignments.
3. Discuss Task Group Schedule.
4. Discuss any other matters pertinent to the overall assignment of the Hazardous Wastes Task Group.

The meeting is open to the public. The Chairman of the Hazardous Wastes Task Group 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 Hazardous Wastes Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform L. A. Vickers, Office of Oil and Natural Gas, Resource Applications, 202/633-8383, prior to the meeting and reasonable provision will be made for their appearance of the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room IE-190, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on November 20, 1980.

**R. D. Langenkamp,**

*Deputy Assistant Secretary, Resource Development & Operations, Resource Applications.*

November 20, 1980.

[FR Doc. 80-36930 Filed 11-25-80; 8:45 am]

**BILLING CODE 6450-01-M**

### Action on Consent Order With the Gulf Oil Corporation

**AGENCY:** Department of Energy.

**ACTION:** Adoption of Proposed Consent Order as final.

**SUMMARY:** The Office of Special Counsel for Compliance (OSC) hereby gives the notice required by 10 CFR 205.199J that it has adopted the Consent Order with the Gulf Oil Corporation, executed on November 21, 1979, and published in 45 FR 6158, January 25, 1980.

As required by the regulation cited above, OSC has solicited comments on the Consent Order for a period of not less than 30 days following publication of the notice cited above. No comments were received. OSC has determined that the Consent Order should be made final without modification. The Consent

Order is effective as an order at the Department of Energy (DOE) on November 26, 1980.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth D. Sampath, Esq. Department of Energy, OSC, 1421 Cherry Street, Philadelphia, PA 19102.

Copies of the Consent Order may be obtained by written request at the freedom of Information Reading Room, Forrestal Building, 1000 Independence Ave. SW., Room 6A152.

Issued in Washington, D.C. on the 16th day of June, 1980.

**Paul L. Bloom,**

*Special Counsel for Compliance.*

[FR Doc. 80-36929 Filed 11-26-80; 8:45 am]

BILLING CODE 6450-01-M

## Compliance With the National Environmental Policy Act; Final Guidelines

**AGENCY:** Department of Energy.

**ACTION:** Adoption of special procedures for major system acquisition projects involving the competitive procurement process.

**SUMMARY:** The Department of Energy (DOE) hereby adopts the special procedures for major system acquisition projects involving the competitive procurement of a site and/or process as previously proposed in its final guidelines for compliance with the National Environmental Policy Act (NEPA). The procedures are applicable to all organizational units of DOE, except the Federal Energy Regulatory Commission (FERC) which is an independent regulatory commission within DOE not subject to the supervision or direction of the other parts of DOE.

**EFFECTIVE DATE:** November 26, 1980.

**FOR FURTHER INFORMATION CONTACT:**

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Office of Environmental Compliance and Overview, Room 4G-064, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585

Stephen H. Greenleigh, Esq., Assistant General Counsel for Environment, Room 6D-033, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585 (202) 252-6947

**SUPPLEMENTARY INFORMATION:** .

The DOE published its final guidelines for compliance with NEPA in the Federal Register on March 28, 1980 (45FR 20694). In the final guidelines DOE specifically requested public comment on Paragraph B.3.(c)(2), which was added and published as interim procedures to provide for NEPA compliance for major system acquistion projects involving the competitive procurement of a site and/or process. The competitive procurement process has confidentiality requirements established pursuant to 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential or trade secret information. The special procedures provide for compliance with NEPA to the fullest extent possible.

The environmental impact analysis required by the special procedures will ensure consideration of environmental factors in selection decisions between competing sites and/or processes. If selected sites and/or processes are likely to have significant effects on the quality of the human environment the special procedures provide that DOE will prepare an EIS before making a go/no-go decision.

A 30-day period was established for public comment on the special procedures which are reprinted below. No written comments were received during the public comment period and accordingly, DOE hereby adopts the interim special procedures as final.

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

**Ruth C. Clusen,,**

*Assistant Secretary for Environment.*

### DOE NEPA Guidelines Paragraph B.3.(c)(2)

(c) *Project level decisionmaking.* At this level of decisionmaking, DOE is deciding on specific actions to execute a program or to perform a regulatory responsibility. Project level decisions are generally represented by the approval or projects, by the approval of disapproval of applications, or by the decisions on applications rendered in adjudicatory proceedings.

(1) * * *

(2) For major system acquisition projects involving selection of sites and/or processes by competitive procurement, DOE will:

(i) Require that environmental data and analyses be submitted as a discrete part of an offeror's proposal. (The level of detail required for environmental data and analyses will be specified by DOE for each applicable procurement action. The data will be limited to that reasonably available to offerors.)

(ii) Independently evaluate and verify the accuracy of environmental data and anlyses submitted by offerors.

(iii) For proposals in the competitive range, prepare and consider before the selection of sites and/or processes an environmental impact analysis in accordance with the following:

(a) In order to Comply with 18 U.S.C. 1905 which prohibits DOE from disclosing business, confidential, or trade secret information, the environmental impact analysis will be subject to the confidentiality requirements of the competitive procurement process and therefore exempt from mandatory public disclosure.

(b) The environmental impact analysis will be based on the environmental data and analyses submitted by offerors and on supplemental information developed by DOE as necessary for a reasoned decision.

(c) The environmental impact analysis will focus on environmental issues that are pertinent to a decision on proposals in the competitive range and will include:

(1) A brief discussion of the purpose of each proposal including any site or process variations having environmental implications.

(2) For each proposal, a discussion of the salient characteristics of the proposed sites and/or processes as well as alternative sites and/or processes reasonably available to the offeror or to DOE.

(3) A brief comparative evaluation of the environmental impacts of the proposals. This evaluation will focus on significant environmental issues and clearly identify and define the comparative environmental merits of the proposals.

(4) A discussion of the environmental impacts of each proposal. This discussion will address direct and indirect effects, short-term and long-term effects, proposed mitigation measures, adverse effects which cannot be avoided, areas where important environmental information is incomplete or unavailable, unresolved environmental issues, and practicable mitigating measures not included in the proposal.

(5) To the extent known for each proposal, a list of Federal, State, and local government permits, licenses, and approvals which must be obtained in implementing the proposal.

(iv) Document the consideration given to environmental factors in a publicly-available selection statement to record that the relevant environmental consequences of reasonable alternatives have been evaluated in the selection process. The selection statement will not contain business, confidential, trade secret or other information the disclosure of which is prohibited by 18 U.S.C. 1905 or the confidentiality requirements of the competitive procurement process. The selection

statement will be filed with the Environmental Protection Agency.

(v) If the selected sites and/or processes are likely to have significant effects on the quality of the human environment, phase subsequent contract work to allow publicly available EIS's to be prepared, considered and published in full conformance with the requirements of 40 CFR Parts 1500-1508 and in advance of a go/no-go decision.

[FR Doc. 80-36815 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

## Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Japan Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval for the supply of 438.55 grams of uranium, enriched to 2.38% in U-235, to be used as standard reference material by the Japan Nuclear Fuel Company, Ltd.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material under Contract Number S-JA-288 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 20, 1980.

**Harold D. Bengelsdorf,**

*Director for Nuclear Affairs, International Nuclear and Technical Programs.*

[FR Doc. 80-36818 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

## Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval for the sale of .55 grams of natural uranium and .55 grams of thorium to the CEA, France for use as standard reference materials.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that the furnishing of the nuclear material under Contract Number S-EU-669 will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteeen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 20, 1980.

**Harold D. Bengelsdorf,**

*Director for Nuclear Affairs International Nuclear and Technical Programs.*

[FR Doc. 80-36819 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

## Economic Regulatory Administration

**[ERA Docket No. 80-CERT-037]**

## National Steel Corp., Recertification of Eligible Use of Natural Gas To Displace Fuel Oil

On October 21, 1980, National Steel Corporation (National Steel), Weirton Steel Division, Three Springs Drive, Weirton, West Virginia 26062, filed an application with the Administrator of the Economic Regulatory Administration (ERA) pursuant to 10 CFR Part 595 for recertification of an eligible use of 3,000 Mcf of natural gas per day, which is estimated to displace approximately 600,000 gallons (14,286 barrels) of No. 6 fuel oil (1.4 percent sulfur) per month at National Steel's Weirton Steel Division located in Weirton, West Virginia. The eligible seller of the natural gas is David S. Towner Enterprises and the gas will be transported by the Columbia Gas Transmission Corporation. Notice of that application was published in the Federal Register (45 FR 73730, November 6, 1980) and an opportunity for public comment was provided for a period of ten (10) calendar days from the date of publication. No comments were received.

On June 21, 1979, National Steel received the original certification (ERA Docket No. 79-CERT-003) of an eligible use of natural gas for use at the Weirton facility for a period of one year. The original certificate expired on June 20, 1980, but the applicant did not file for recertification until October 21. 1980.

The ERA has carefully reviewed National Steel's application for recertification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that National Steel's application satisfies the criteria enumerated in 10 CFR Part 595, and, therefore, has granted the recertification and transmitted that recertification to the Federal Energy Regulatory Commission. More detailed information including a copy of the application, transmittal letter, and the actual recertification are available for public inspection at the ERA, Division of Natural Gas Docket Room, Room 7108, RG-55, 2000 M Street NW., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C. November 20, 1980.

**F. Scott Bush,**

*Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.*

[FR Doc. 80-36816 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

## Peterson Petroleum, Inc.; Action Taken on Consent Order

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of action taken and opportunity for comment on Consent Order.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and on potential claims against the refunds deposited in an escrow action established pursuant to the Consent Order.

**DATE:** Effective date: October 27, 1980.

**COMMENTS BY:** December 26, 1980.

**ADDRESS:** Send comments to: Herbert Maletz, New York Audit Director, Northeast District, 252 Seventh Avenue, New York, New York 10001, (212) 620-6706.

**FOR FURTHER INFORMATION CONTACT:** Herbert Maletz, New York Audit Director, Northeast District, 252 Seventh Avenue, New York, New York 10001, (212) 620-6706.

**SUPPLEMENTARY INFORMATION:** On October 27, 1980, the Office of Enforcement of the ERA executed a Consent Order with Peterson Petroleum, Inc. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

### I. The Consent Order

Peterson Petroleum, Inc. (Peterson), with its home offices located in Hudson, New York, is a firm engaged in the resale of motor gasoline and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Peterson, the Office of Enforcement of the ERA, and Peterson entered into a Consent Order, the significant terms of which are as follows:

1. During the period May 1, 1979 through June 30, 1979 (audit period), Peterson allegedly overcharged its wholesale class of purchaser in the resale of motor gasoline.

2. It is alleged that Peterson incorrectly computed its maximum legal selling price in its sales of motor gasoline to the classes of purchaser listed above during the audit period. As a result, Peterson charged prices in excess of those permitted under 10 CFR 212.93(a).

3. This Consent Order constitutes neither an admission by Peterson that it has violated the Mandatory Petroleum Price Regulations nor a finding by ERA that Peterson has violated such regulations.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

### II. Disposition of Refunded Overcharges

In this Consent Order, Peterson to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I.1. above, the sum of $32,816.16.

In order to accomplish the refund of overcharges, Peterson will issue, during the refund period, certified checks made payable to the United States Department of Energy and delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the Peterson refund amount in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the Peterson refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.299I(a).

### III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the Peterson refund amounts should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to this refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Herbert Maletz, New York Audit Director, Northeast District, 252 Seventh Avenue, New York, New York 10001. You may obtain a free copy of this Consent Order by writing to the same address or by calling (212) 620-6706.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Peterson Petroleum, Inc. Consent Order". We will consider all comments we receive by 4:30 p.m., local time, on (30 days from publication). You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Philadelphia, Pennsylvania on the 3d day of November 1980.

**Edward Momorella,**

*Northeast District Manager of Enforcement.*

[FR Doc. 80-36817 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

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## Alaska Power Administration

**[Rate Order No. APA-4]**

## Eklutna Project; Order Confirming and Approving an Extension of Power Rates on an Interim Basis

**AGENCY:** Alaska Power Administration, Department of Energy.

**ACTION:** Notice of extension of power rates on an interim basis—Eklutna Project, Alaska.

**SUMMARY:** Notice is given of a Rate Order, No. APA-4, of the Assistant Secretary for Resource Applications, extending power rates on an interim basis for power marketed by the Alaska Power Administration from the Eklutna Project, Alaska.

**FOR FURTHER INFORMATION CONTACT:**

James A. Braxdale, Office of Power Marketing Coordination, Department of Energy, Room 3349, 12th and Pennsylvania Avenue, NW, Washington, D.C. 20461 (202) 633-8338.

Gordon J. Hallum, Chief, Power Division, Alaska Power Administration, Department of Energy, P.O. Box 50, Juneau, Alaska 99802 (907) 586-7405.

**SUPPLEMENTARY INFORMATION:** By Delegation Order No. 0204-33, effective January 1, 1979 (43 FR 60636, December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis. The same delegation order delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation.

Pursuant to the delegation order, on December 4, 1979, the Assistant Secretary issued Rate Order No. APA-2 (44 FR 70861 December 10, 1979) confirming and approving on an interim basis, effective January 1, 1980, Rate Schedules A-F8 and A-N7 for power marketed by the Alaska Power Administration from the Eklutna Project. The rates are to remain in effect for a period of 12 months unless the period is

extended or until the FERC confirms and approves them, or substitute rates, on a final basis. The rates were submitted to the FERC for confirmation and approval on a final basis on December 4, 1979.

The FERC has not yet acted on the rates, and the purpose of Rate Order No. APA-4 is to extend the power rates for another 12 months (through December 31, 1981) unless further extended or until the FERC confirms and approves them, or substitute rates, on a final basis.

Issued in Washington, D.C., November 20, 1980.

Ruth M. Davis,

*Assistant Secretary, Resource Applications.*

**Assistant Secretary for Resource Applications, Department of Energy**

In the Matter of: Alaska Power Administration—Eklutna Project Power Rates; Rate Order No. APA-4.

**Order Confirming and Approving an Extension of Power Rates on an Interim Basis**

November 20, 1980.

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565, the functions of the Secretary of the Interior and the Federal Power Commission under the Eklutna Project Act of July 31, 1950, 64 Stat. 382, as amended were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. This rate order is issued pursuant to the delegation to the Assistant Secretary.

**Background**

Pursuant to Delegation Order No. 0204-33, on December 4, 1979, the Assistant Secretary for Resource Applications issued Rate Order No. APA-2 (44 FR 70861, December 10, 1979) confirming and approving on an interim basis, effective January 1, 1980, Rate Schedules A-F8 and A-N7 for power marketed by the Alaska Power Administration's Eklutna Project. The rate order stated that the rates "* * * shall remain in effect on an interim basis for a period of 12 months unless such period is extended or until the FERC confirms and approves them, or substitute rates, on a final basis." The rate schedules were submitted to the FERC for confirmation and approval on a final basis by the Assistant Secretary's letter of December 4, 1979.

**Discussion**

Inasmuch as the Federal Energy Regulatory Commission is not expected to complete its confirmation and approval of the Eklutna Project power rate by December 31, 1980, a further extension of the interim rate is necessary.

**Order**

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective January 1, 1981, an extension of existing Rate Schedules A-F8 and A-N7. These rates shall remain in effect through December 31, 1981, unless extended, or until the FERC confirms and approves them, or substitute rates, on a final basis.

Issued in Washington, D.C., November 20, 1980.

Ruth M. Davis,

*Assistant Secretary, Resource Applications.*

**Eklutna Project, Alaska—Schedule A-F8**

*Schedule of Rates for Wholesale Firm Power Service*

*Effective:* January 1, 1980.

*Available:* In the area served by the Eklutna Project, Alaska.

*Applicable:* To wholesale power customers for general power service.

*Character and Conditions of Service:* Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

*Monthly Rate:*

Capacity Charge: None.

Energy Charge: All energy at 12.5 mills per kilowatt-hour.

*Minimum Annual Capacity Charge: None.*

*Billing Demand:* Not applicable.

*Adjustments For Transformer Losses:* If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

*For Power Factor:* None. The customer will normally be required to maintain a power factor at the point of delivery of between 90 percent lagging and 90 percent leading.

*For Auxiliary Power Service:* Auxiliary power supplies may be used in conjunction with the service hereunder if the parties hereto, prior to the Contractor's utilization of any such auxiliary power supply, have entered into a written operating agreement defining the procedure by which the amount of power and energy supplied by the United States will be determined.

**Eklutna Project, Alaska—Schedule A-N7**

*Schedule of Rates for Nonfirm Service*

*Effective:* January 1, 1980.

*Available:* In the area served by the Eklutna Project, Alaska.

*Applicable:* To firm power customers normally maintaining generating facilities or other sources of energy sufficient to supply their requirements.

*Character and Conditions of Service:* Alternating current, sixty cycles, three-phase, delivered and metered at points of delivery and voltage to be determined by the Alaska Power Administration.

*Monthly Rate:*

Demand Charge: None.

Energy Charge: 6.0 mills per kilowatt-hour for all energy under this schedule.

*Minimum Bill:* None.

*Adjustments For Character and Conditions of Service:* None.

*For Transformer Losses:* If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

[FR Doc. 80-36928 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-01-M

## Federal Energy Regulatory Commission

### Advisory Committee on Revision of Rules of Practice and Procedure, Subcommittee on Review of Commission Decisional Process; Meeting

November 20, 1980.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Subcommittee on Review of the Commission Decisional Process of the Advisory Committee on Revision of Rules of Practice and Procedure will meet Thursday, December 4, 1980, from 2:00 p.m. to 5:00 p.m., at the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Room 9306, Washington, D.C.

The purpose of the meeting is to discuss alternative means by which the Commission may permit natural gas pipelines, local distribution companies, and end-users of natural gas to buy and sell surplus entitlements of natural gas.

The meeting is open to the public. A transcript of the meeting will be available for public review and copying at FERC's Division of Public Information, Room 1000, 825 N. Capitol Street NE., between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday except Federal holidays. In

addition, any person may purchase a copy of the transcript from the reporter.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 80-36794 Filed 11-25-80; 8:45 am]

**BILLING CODE 6450-85-M**

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**[Project No. 3523]**

## Atlantic Power Development Corp.; Application for Preliminary Permit

November 19, 1980.

Take notice that Atlantic Power Development Corporation (Applicant) filed on October 2, 1980, and application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3523 to be known as the Monongahela Lock and Dam No. 8 Hydroelectric Project located on the Monongahela River in Fayette County., Pennsylvania. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas F. Nolan IV, Attorney at Law, 401 C Street N.E., Washington D.C. 20002. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

*Project Description*—The proposed project would utilize the existing Corps of Engineers' Monongahela River Lock and Dam No. 8 and would consist of a powerhouse with one or more generating units having a total rated capacity of 5,900 kW, and a transmission line. The project would be capable of generating up to 33,100 MWh annually saving the equivalent of 55,000 barrels of oil.

*Purpose of Project*—Energy generated at the project would be sold to the local electric public utility.

*Proposed Scope and Cost of Studies under Permit*—The work proposed under the preliminary permit would include economic analysis environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $88,000.

*Purpose of Preliminary Permit* —A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other information necessary for inclusion in an application for a license.

*Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

*Competing Applications*—Anyone desiring to file a competing application must submit to the Commission, on or before January 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). AS competing application must conform with the requirements of 18 CFR 4.33(a) and (d) (1980).

*Comments, Protests, or Petitions to Intervene*—Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be received on or before January 23, 1981.

*Filing and Service of Responsive Documents*—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", OR "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3523. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to: Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 80-36800 Filed 11-25-80; 8:45 am]

**BILLING CODE 6450-85-M**

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**[Project No. 3521]**

## Atlantic Power Development Corp.; Application for Preliminary Permit

November 19, 1980.

Take notice that Atlantic Power Development Corporation (Applicant) filed on October 2, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for proposed Project No. 3521 to be known as the Monongahela Lock and Dam No. 7 Hydroelectric Project located on the Monongahela River in Fayette County, Pennsylvania. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Thomas F. Nolan IV, Attorney at Law, 401 C Street NE., Washington, D.C. 20002. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

*Project Description*—The proposed project would utilize the existing Corps of Engineers' Monongahela River Lock and Dam No. 7 and associated reservoir and would consist of a powerhouse with one or more generating units having a total rated capacity of 8,200 kW, and a transmission line. The Applicant estimates that the average annual energy output would be 46,000 MWh annually, saving the equivalent of 76,000 barrels of oil.

*Purpose of Project*—Energy generated at the project would be sold to the local public utility.

*Proposed Scope and Cost of Studies under Permit*—The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on results of these studies, Applicant would decide whether to proceed with more detailed studies and the preparation of an application for license to construct and operate the project. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $95,000.

*Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for license.

*Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

*Competing Applications*—Anyone desiring to file a competing application must submit to the Commission, on or before January 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

*Comments, Protests, or Petitions to Intervene*—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rule of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comment does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 23, 1981.

*Filing and Service of Responsive Documents*—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "Comments", "Notice of Intent to file Competing Application", "Competing Application", "Protest", or "Petition to Intervene", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3521. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First Street, NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 80-36801 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

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**[Docket No. ER79-370]**

## Consolidated Edison Company of New York, Inc.; Order Accepting Rates for Filing, Granting Waiver of Notice Requirements, Granting Waiver of Regulations and Allowing Intervention

Issued November 19, 1980.

On September 26, 1980, Consolidated Edison Company of New York (Con Ed) completed its filing of two proposed supplements to its Transmission Agreement with the Power Authority of the State of New York (PASNY) for the transmission of power to PASNY retail customers located in Con Ed's service area.[1] The proposed transmission charges would increase revenues for a twelve month period ending March 31, 1980 by approximately $5.2 million (20%). Con Ed has requested waiver of the notice requirements to permit an effective date of April 24, 1979 for its Supplement No. 5 and July 21, 1979 for its Supplement No. 6 to correspond with the effective dates approved by the New York Public Service Commission for Con Ed's retail rates for the PASNY customers. Con Ed has also requested waiver of provisions of Section 35.13 of the Commission's regulations to allow Con Ed to submit a Period I study employing cost of service data based on calendar year 1977.

Notice of the filing was issued on May 21, 1979, with protests or petitions to intervene due on or before June 11, 1979. On June 11, 1979, PASNY filed a petition to intervene. In support of its petition, PASNY states that the proposed rates will be passed on directly to its retail customers and that its interests in this docket are not adequately represented by any other party. PASNY has not requested a hearing.

### Background

Con Ed originally submitted for filing in the instant docket one supplement to its Transmission Agreement with PASNY on May 15, 1979. Con Ed requested in the filing that the Commission waive its regulations which required the company to file a case-in-chief, noting that the proposed rates represented PASNY's proportionate share of a retail rate increase granted to Con Ed by the New York Public Service Commission. Con Ed's proposed rate schedules contained rates that consisted of the company's charges to PASNY's retail customers without any breakdown between charges for transmission (jurisdictional) services and distribution and metering (non-jurisdictional) services. By letter dated July 18, 1979, the Secretary informed Con Ed that its submittal was deficient with respect to Sections 35.1 and 35.13 of the Commission's regulations and directed Con Ed to submit appropriate case-in-chief materials along with rate schedules that clearly and specifically set forth the company's jurisdictional transmission charges. On November 19, 1979, Con Ed was informed by the Director of the Office of Electric Power Regulations that its May 15, 1979 submittal remained deficient and was directed to comply with the July 18, 1979

[1] Con Ed's filing was originally submitted by the company on May 15, 1979 and found to be deficient, as discussed below.

letter order of the Commission within fifteen days. Con Ed did not comply within fifteen days. Instead, on December 3, 1979, Con Ed filed a letter requesting the Commission to reconsider its submittal and again requested waiver of the regulations. At a March 12, 1980 Commission meeting, the Commission, in considering Con Ed's motion for reconsideration, requested its staff to meet with representatives of Con Ed in the hope that efforts could be made to resolve the problems relating to Con Ed's submittals. Conferences and discussions were subsequently held between the Commission Staff and Con Ed. The instant submittal containing the revised rate form is the result of these conferences and discussions.

The problems which the Commission has been faced with as a result of Con Ed's filing are not new to this Commission. In Docket No. ER77-52, Con Ed's proposed rate schedules were accepted for filing by letter order. However, the letter order provided that Con Ed was to file transmission rates to PASNY derived from a specific cost-of-service study within six months, in compliance with Section 35.13 of the Commission's regulations. in Docket Nos. ER78-6 and ER78-365, Con Ed also failed to file in compliance with the Commission's regulations. The filing in Docket No. ER78-6 was rejected while the filing in Docket No. ER78-365 was twice made deficient for failure to comply with the regulations.

### Discussion

Con Ed has proposed a wheeling charge of $1.763/kW or .494 cents/kWh under its Supplement No. 5 and $1.778/kW or .498 cents/kWh under Supplement No. 6. The rate design allows Con Ed to bill on either a kW or kWh basis depending on available metering. The Commission's review of Con Ed's filing in this case indicates that the rates proposed by the company for jurisdictional service would not result in excess revenues. The Commission will therefore accept the rates for filing as ordered below. The Commission will also grant Con Ed's request for waiver of the notice requirements as well as the applicable provisions of Section 35.13 of the regulations. Such waivers will be granted, however, with the clear understanding that Con Ed will submit its future filings in a manner which clearly and specifically sets forth the rates for service to PASNY subject to the Commission's jurisdiction in compliance with the Commission's regulations.

Prior to the instant revised submittal, Con Ed's filings have patently failed to provide the information necessary for the Commission staff to perform an adequate evaluation of the Con Ed's jurisdictional rates to PASNY. Even in the present filing, the Commission has waived its regulations in several respects in consideration of the unusual situation involved in the Con Ed/PASNY service arrangement and the regulatory burdens as would follow from insistence on full compliance with our filing requirements. It is understood that information adequate to our task will be provided with respect to future filings, recognizing that similar waivers may be proper to future filings, and might be granted upon appropriate application by Con Ed at the time of such filing.

*The Commission orders:*

(A) Waiver of the notice requirements of § 35.3 of the Commission's regulations is hereby granted.

(B) Con Ed's submittal is hereby accepted for filing with Supplement No. 5 to become effective as of April 24, 1979 and Supplement No. 6 to become effective July 21, 1979, as requested.

(C) Waiver of the filing requirements under section 35.13 is hereby granted.

(D) PASNY's petition to intervene is granted.

(E) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

**Kenneth F. Plumb,**
*Secretary.*

[FR Doc. 80-36802 Filed 11-25-80; 8:45 am]
**BILLING CODE 6450-85-M**

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**[Project Nos. 5, 2776]**

## Montana Power Co. and Confederated Salish and Kootenai Tribes of the Flathead Reservation; Competing Applications for New Major License for Constructed Project

November 18, 1980.

Take notice that the Montana Power Company (MPC) filed on June 1, 1976, and the Confederated Salish and Kootenai Tribes (Tribes) of the Flathead Reservation filed on June 2, 1976, competing applications for a new major license [pursuant to the Federal Power Act, 16 U.S.C. § 791(a)–825(r)] for the constructed Kerr Project, located on the Flathead River in Flathead and Lake Counties, Montana. FERC Project No. 5 has been assigned to MPC's Application while FERC Project No. 2776 has been assigned to the Tribes Application. The original license for Project No. 5 expired on May 22, 1980. The license for Kerr Project No. 5 is currently operating under an annual license.

Correspondence concerning MPC's application should be directed to: Mr. J. A. McElwain, President, the Montana Power Company, 40 East Broadway, Butte, Montana 59701, with copies to Lee S. Sherline, Leighton & Sherline, Suite 406, 1701 K Street, NW., Washington, D.C. 20006. Correspondence concerning the Tribes' application should be directed to: Richard Anthony Baenen, Esquire, Wilkinson, Cragun & Baker, 1735 New York Avenue, NW., Washington, D.C. 20006, with copies to Major Fred J. Houk, Jr., Tribal Secretary, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Dixon, Montana 59831.

*Project Description*—The Kerr Project consists of: (1) a 204-foot high by 381-foot long concrete arch dam with 14 overflow spillway sections each 21 feet long and 27 feet high; (2) Flathead Lake, a natural lake, with storage capacity of 1.2 million acre-feet between elevations 2883 feet and 2893 feet; (3) two intake structures; (4) three 23-foot diameter concrete lined horseshoe power tunnels, each about 800 feet long; (5) serving a powerhouse containing three Francis-type turbine-generating units each rated at 60 Mw; (6) a substation, which is an extension of the powerhouse, containing the main power transformers; (7) three 1,500-foot long,.115-kV transmission lines connecting the powerhouse to the Kerr switchyard (Kerr switchyard is a part of MPC's interconnected transmission system); and (8) appurtenant facilities.

Available recreation activities at the project include hunting, fishing, camping, hiking, boating, swimming, and winter sports. Several private, commercial, and public facilities are available at the project. A park and a scenic overlook is provided, at the project, by MPC. Neither MPC nor the Tribes proposed to construct additional recreational facilities at the project.

Accoridng to MPC's application: (1) the project output is incorporated into MPC's transmission distribution system for use within its service area; (2) the estimated net investment in the project is $17.1 million as of May 22, 1980, which is less that its estimate of fair value of $76.4 million; (3) the estimated severence damages in the event of takeover by the United States is $350 million; (4) the taxes paid by the company for the fiscal year 1975–76 amounted to $543,000. According to the Tribes' application the use of the power generated by the project would be the same if the Tribes were to receive the license for the Kerr Project. The Tribes state that they would operate wholly in the State of Montana.

*Competing Applications*—Anyone desiring to file a competing application

must submit to the Commission, on or before January 26, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than May 26, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33(b) and (c), )*as amended* 44 *Fed. Reg.* 61328, October 25, 1979). A competing application must conform with the requirements of 18 CFR, 4.33(a) and (d), (*as amended,* 44 FR 61328, October 25, 1979).

*Comments, Protests, or Petitions to Intervene*—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR, § 1.8 or § 1.10 (1979). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protests, or petitions to intervene must be filed on or before January 26, 1981. The Commission's address is: 825 North Capitol Street, NE., Washington D.C. 20426. The application is on file with the Commssion and is available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 80-36796 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

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**[Project No. 3468]**

## Pacific Northwest Generating Co.; Application for Preliminary Permit

November 19, 1980.

Take notice that Pacific Northwest Generating Company (Applicant) filed on September 15, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3468 to be known as Owyhee Tunnel No. 1 Project located on the Owyhee River in Malheur County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. David E. Piper, Pacific Northwest Generating Company, 8383 N.E. Sandy Blvd., Portland, Oregon 97220. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

*Project Description*—The proposed project would consist of: (1) construction of a new intake structure at the existing intake for Tunnel No. 1; (2) an underground powerhouse with a rated capacity of 8.0 MW; (3) a 200-foot long tailrace tunnel discharging into the existing Tunnel No. 1; and (4) a transmission line extending to an existing substation near the right abutment of Owyhee Dam.

The Applicant estimates that the average annual energy output would be 23,600 MWh.

*Purpose of Project*—Power produced by the project would be used to meet the needs of the Pacific Northwest Generating Company's members.

*Proposed Scope and Cost of Studies under Permit*—Applicant would undertake a study of the technical, environmental, economic, and financial feasibility of the project. If the project is determined to be feasible, a preliminary design and environmental study would be conducted to allow Applicant to prepare and file an application for license. The cost of the feasibility study is estimated at $75,300.

*Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

*Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

*Competing Applications*—Anyone desiring to file a competing application must submit to the Commission, on or before January 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

*Comments, Protests or Petitions to Intervene*—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 23, 1981.

*Filing and Service of Responsive Documents*—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3468. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory application, application, or petition to intervene must also be served upon each

representative of the Applicant specified in the first paragraph of this notice.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 80-36805 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

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**[Project No. 3467]**

## Pacific Northwest Generating Co.; Application for Preliminary Permit

November 19, 1980.

Take notice that Pacific Northwest Generating Company (Applicant) filed on September 15, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)–825(r)] for proposed Project No. 3467 to be known as Owyhee Dam Project located on the Owyhee River in Malheur County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. David E. Piper, Pacific Northwest Generating Company, 8383 N.E. Sandy Blvd., Portland, Oregon 97220. Any person who wishes to file a response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

*Project Description*—The proposed project would consist of: (1) replacing one or two of the needle valves on the dam with gate valves; (2) a 130-foot long steel penstock; (3) a powerhouse at the toe of the dam with a rated capacity of 5.5 MW; and (4) a transmission line extending to an existing substation near the right abutment of the dam.

*Purpose of Project*—Power produced by the project would be used to meet the needs of the Pacific Northwest Generating Company's members.

*Proposed Scope and Cost of Studies Under Permit*—Applicant would undertake a study of the technical, environmental, economic, and financial feasibility of the project. If the project is determined to be feasible, a preliminary design and environmental study would be conducted to allow Applicant to prepare and file an application for license. The cost of the feasibility study is estimated at $61,300.

*Purpose of Preliminary Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for license while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

*Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

*Competing Applications*—Anyone desiring to file a competing application must submit to the Commission, on or before January 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1980).

*Comments, Protests, or Petitions to Intervene*—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 23, 1981.

*Filing and Service of Responsive Documents*—Any comments, notices of intent, competing applications, protests, or petitions to intervene must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTESTS", or "PETITION TO INTERVENE", as applicable. Any of these filings must also state that it is made in response to this notice of application for perliminary permit for Project No. 3467. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street., NE., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 80-36806 Filed 11-24-80; 8:45 am]

BILLING CODE 6450-85-M

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**[Docket No. CI81-22-000]**

## Southern Union Gathering Co.; Petition for Declaratory Order

November 19, 1980.

Take notice that on October 20, 1980, Southern Union Gathering Company (Petitioner), 1800 First International Building, Dallas, Texas 75270, filed in Docket No. CI81-22-000 a petition pursuant to Section 16 of the Natural Gas Act and § 1.7(c) of the Commission's Rules of Practice and Procedure (18 CFR 1.7(c)) for an order declaring that Petitioner's exchanges of natural gas constitute field gathering operations and are thus exempt from the jurisdiction of the Commission under Section 1(b) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Petitioner states that it participates in exchange arrangements of natural gas on a gas-for-gas basis with Northwest Pipe Line Corporation (Northwest) under an agreement dated December 1, 1976, and with El Paso Natural Gas Company (El Paso) under an agreement dated May 1, 1975. It is stated that the exchanges are at the wellhead with imbalance volumes to be corrected by deliveries at points of interconnection of the companys' gathering systems. It is stated that Petitioner operated under an agreement with El Paso dated January 1, 1962, but that on January 31, 1974, pursuant to an order by the U.S. District Court for the District of Colorado, Northwest acquired from El Paso title to

certain gathering facilities in the San Juan Basin of New Mexico and Colorado. Petitioner asserts that the 1976 agreement with Northwest was essentially a continuation of the prior exchange with El Paso except that a sales arrangement for imbalances was dropped.

It is stated that in Docket Nos. CP78-116, *et al.*, Northwest obtained a certificate of public convenience and necessity for its participation in the 1976 exchange agreement with Petitioner. Believing itself aggrieved by the orders which asserted jurisdiction over the agreement, Petitioner states, it filed a petition for review with the U.S. Court of Appeals for the Fifth Circuit in *Southern Union Gathering Company* v. *Federal Energy Regulatory Commission*, No. 79-3051. It is stated that the case is now in abeyance pending this petition for a declaratory order.

Petitioner states that the purpose in filing the petition is to determine Petitioner's responsibility for obtaining authorization from the Commission for the exchange of gas with Northwest and El Paso. Furthermore, Petitioner states that due to El Paso's uncertainty as to the jurisdictional nature of that agreement the imbalance of the El Paso-Petitioner gas exchange progressively worsens. Petitioner, therefore, requests a declaratory order stating that both exchange agreements constitute field gathering operations and are therefore exempt from the Commission's jurisdiction.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 17, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 80-36807 Filed 11-25-80; 8:45 am]

**BILLING CODE 6450-85-M**

**[Docket No. TC81-9-000]**

## Texas Gas Transmission Corp.; Informal Settlement Conference Regarding Curtailment Plan

November 20, 1980.

Take notice that an informal conference in the above captioned Docket will be held on December 3, 1980, at 2 p.m. at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. All parties should be prepared to discuss the technical aspects and possible settlement of the proposal noticed in the Federal Register on October 7, 1980 (45 FR 68445-6). All persons are invited to attend; however, mere attendance and/or participation in this conference will not serve to make such persons formal parties to this proceeding. Copies of this notice are also being served on all parties to the former Texas Gas curtailment proceeding, Docket No. RP72-64.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 80-36808 Filed 11-25-80; 8:45 am]

**BILLING CODE 6450-85-M**

[Volume 320]

## Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

November 19, 1980.

| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| KANSAS CORPORATION COMMISSION | | | | | | | | |
| -THE MAURICE L BROWN COMPANY | | | | | RECEIVED: 11/03/80 JA: KS | | | |
| 8104594 | K 80-0076 | 1505520365 | 103 | | S W MAUNE #4 | HUGOTON | 109.5 | KANSAS-NEBRASKA NATU |
| LOUISIANA OFFICE OF CONSERVATION | | | | | | | | |
| -BASS ENTERPRISES PRODUCTION CO | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104776 | 80-3774 | 1711122421 | 102 | | CV DAVIS RB SUP CONTINL FOREST #1 | MIDDLEFORK | 73.0 | UNITED GAS PIPELINE |
| -CARMET OIL INC | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104745 | 80-3741 | 1703121207 | 103 | | BOISE SOUTHERN #2 | GRAND CANE | 0.0 | LOUISIANA INTRASTATE |
| 8104746 | 80-3742 | 1703121282 | 103 | | BOISE SOUTHERN #3 | GRAND CANE | 0.0 | LOUISIANA INTRASTATE |
| -CEKA GAS CORP | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104788 | 80-3788 | 1711122001 | 108 | | MSC NO 6 | MONROE | 5.4 | INTERNATIONAL MINERA |
| -DANIEL OIL COMPANY | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104763 | 80-3760 | 1710922287 | 103 | | C L & F #3 SERIAL #168631 | BAYOU PENCHANT FIELD | 270.0 | TENNESSEE GAS PIPELI |
| 8104762 | 80-3759 | 1710922288 | 103 | | C L & F #4 SERIAL #16832 | BAYOU PENCHANT FIELD | 270.0 | TENNESSEE GAS PIPELI |
| -GEORGE R SCHURMAN | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104759 | 80-3756 | 1703121209 | 103 | | HUNTER #2 | SPIDER | 72.0 | LOUISIANA INTRASTATE |
| 8104760 | 80-3757 | 1703121337 | 103 | | HUNTER #3 | SPIDER | 110.0 | LOUISIANA INTRASTATE |
| -GULF OIL CORPORATION | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104720 | 80-3716 | 1707522486 | 103 | | QUARANTINE BAY SL 195 QQ #287 | QUARANTINE BAY | 730.0 | UNITED GAS PIPELINE |
| *8104723 | 80-3719 | 1707522573 | 103 | | S L 192 PP NO 139 | WEST BAY | 67.5 | TEXAS EASTERN TRANSM |
| *8104724 | 80-3720 | 1707522651 | 103 | | SL 192 PP NO 140-D | WEST BAY | 135.0 | TEXAS EASTERN TRANSM |
| -HARVEY BROYLES | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104744 | 80-3740 | 1701320415 | 103 | | SLI RA SUB T A LOE EST #3-D | BEAR CREEK | 300.0 | SOUTHERN NATURAL GAS |
| -KERR-MCGEE CORPORATION | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104778 | 80-3778 | 1772620198 | 103 | | BRS 20 6900 RA SU S L 2000 NO 58-D | BRETON SOUND BLOCK 20 | 8.0 | SOUTHERN NATURAL GAS |
| 8104777 | 80-3777 | 1772620186 | 103 | | BRS 20 6900 RASU SL 2000 NO 53-D | BRETON SOUND BLOCK 20 | 4.0 | SOUTHERN NATURAL GAS |
| -M T HERBST | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104722 | 80-3718 | 1707321052 | 108 | | WEST VIRGINIA #1 | MONROE GAS ROCK | 3.5 | CITY OF MONROE |
| 8104721 | 80-3717 | 1707320870 | 108 | | WEST VIRGINIA #2 | MONROE GAS ROCK | 0.6 | CITY OF MONROE |
| -MARATHON OIL COMPANY | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104753 | 80-3750 | 1711900802 | 108 | | CVSU SUNRAY MCCOOK & HIBBLER #2 | COTTON VALLEY | 3.0 | UNITED GAS PIPE LINE |
| -MARSHALL EXPLORATION INC | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104769 | 80-3767 | 1703120905 | 108 | | FBG RA SU 110 SANDERS #1 | LOGANSPORT | 13.0 | TENNESSEE GAS PIPELI |
| 8104772 | 80-3770 | 1703120893 | 108 | | FBG RA SU 131 MARY WALLACE #1 | LOGANSPORT | 6.0 | TENNESSEE GAS PIPELI |
| 8104771 | 80-3769 | 1703120898 | 108 | | FBG RA SU 132 WALLACE #1 | LOGANSPORT | 9.0 | TENNESSEE GAS PIPELI |
| 8104770 | 80-3768 | 1703120899 | 108 | | FBG RA SU 145 KATIE ROBINSON #1 | LOGANSPORT | 10.0 | TENNESSEE GAS PIPELI |
| 8104768 | 80-3766 | 1703120810 | 108 | | FBG RA SU 68 MRS TATE YARBROUGH #1 | LOGANSPORT | 22.0 | TENNESSEE GAS PIPELI |
| -MID LOUISIANA GAS COMPANY | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104752 | 80-3749 | 1711121921 | 103 | | MLGC FEE GAS NO 809 | MONROE FIELD | 11.8 | |
| 8104787 | 80-3787 | 1711122535 | 103 | | MLGC FEE GAS NO 907 | MONROE FIELD | 36.0 | |

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| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| 8104786 | 80-3786 | 1711122537 | 103 | | MLGC FEE GAS NO 909 | MONROE FIELD | 32.4 | |
| 8104785 | 80-3785 | 1711122568 | 103 | | MLGC FEE GAS NO 923 | MONROE FIELD | 36.7 | |
| 8104784 | 80-3784 | 1711122569 | 103 | | MLGC FEE GAS NO 924 | MONROE FIELD | 36.4 | |
| 8104783 | 80-3783 | 1711122571 | 103 | | MLGC FEE GAS NO 926 | MONROE FIELD | 108.0 | |
| 8104782 | 80-3782 | 1711122584 | 103 | | MLGC FEE GAS NO 927 | MONROE FIELD | 51.1 | |
| 8104781 | 80-3781 | 1711122585 | 103 | | MLGC FEE GAS NO 928 | MONROE FIELD | 30.9 | |
| 8104780 | 81-3780 | 1711122587 | 103 | | MLGC FEE GAS NO 930 | MONROE FIELD | 87.8 | |
| -MOBIL EXPLORATION INC | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104719 | 80-2834 | 1702321486 | 102 | | FREMEAUX NO 1 | CAMERON CANAL FIELD | 0.0 | |
| -NIP N' TUCK MINERALS INC | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104767 | 80-3765 | 1706721559 | 103 | | PIPES #9 | MONROE GAS FIELD | 80.0 | LOUISIANA GAS SERVIC |
| -PLACID OIL COMPANY | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104761 | 80-3758 | 1701320377 | 103 | | VUG BODCAW NO 4 | LUCKY | 200.0 | TEXAS EASTERN TRANSM |
| -RELIANCE TR-JV | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104748 | 80-3745 | 1711122288 | 103 | | E JOHNSON #2 | MONROE | 30.0 | TEXAS GAS TRANSMISSI |
| 8104756 | 80-3753 | 1711122158 | 108 | | H D GREEN #1 | MONROE GAS FIELD | 12.8 | TEXAS GAS TRANSMISSI |
| 8104757 | 80-3754 | 1711122224 | 108 | | H D GREEN #3 | MONROE GAS FIELD | 5.5 | TEXAS GAS TRANSMISSI |
| 8104749 | 80-3746 | 1711122669 | 103 | | J D TAYLOR #2 | MONROE | 40.0 | TEXAS GAS TRANSMISSI |
| 8104751 | 80-3748 | 1711122611 | 103 | | J D TAYLOR #3 | MONROE GAS FIELD | 40.0 | TEXAS GAS TRANSMISSI |
| 8104750 | 80-3747 | 1711122227 | 103 | | J D TAYLOR #5 | MONROE | 40.0 | TEXAS GAS TRANSMISSI |
| 8104765 | 80-3763 | 1711122190 | 103 | | OLINKRAFT #11 | MONROE | 30.0 | TEXAS GAS TRANSMISSI |
| 8104766 | 80-3764 | 1711122191 | 103 | | OLINKRAFT #12 | MONROE | 30.0 | TEXAS GAS TRANSMISSI |
| 8104764 | 80-3762 | 1711122192 | 103 | | OLINKRAFT #13 | MONROE | 30.0 | TEXAS GAS TRANSMISSI |
| 8104790 | 80-3744 | 1711122705 | 103 | | R L EDWARDS #3 | MONROE | 40.0 | TEXAS GAS TRANSMISSI |
| 8104747 | 80-3743 | 1711122617 | 103 | | T BAKER #1 | MONROE | 30.0 | TEXAS GAS TRANSMISSI |
| -ROY M TEEL | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104755 | 80-3752 | 1711120823 | 108 | | EXXON 29-7 | MONROE GAS ROCK FIELD | 25.4 | LOUISIANA POWER & LI |
| -SAWYER DRILLING & SERVICE INC | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104754 | 80-3751 | 1703121187 | 103 | | HOSS RA SU DD YOUNG #1 | BETHANY-LONGSTREET | 400.0 | LOUISIANA INTRASTATE |
| -SHELL OIL CO | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104779 | 80-3779 | 1772120313 | 103 | | SPB 27 M6 RA SU SL 1012 NO 292 | SOUTH PASS BLOCK 27 | 55.0 | TENNESSEE GAS PIPELI |
| -TENNECO OIL COMPANY | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104743 | 80-3739 | 1701320419 | 103 | | E F LESTER NO 1 | LAKE BISTINEAU | 250.0 | |
| -TEXACO INC | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| *8104732 | 80-3728 | 1710922156 | 102 | | CI LWR 15000 R010 SU SL 188 691 | CAILLOU ISLAND | 109.0 | KAISER ALUMINUM & CH |
| *8104775 | 80-3773 | 1710922273 | 102 | | CI LWR 15000 R010 SU SL 188 695 | CAILLOU ISLAND | 115.0 | KAISER ALUMINUM & CH |
| *8104726 | 80-3722 | 1710921949 | 107 | | LB LM-2 SU LB U-39 24 | LAKE BARRE | 10.0 | HOOKER CHEMICALS & P |
| *8104739 | 80-3735 | 1705120507 | 103 | | LFT NVUR RIGOLETS C F CO 161 | LAFITTE | 50.0 | KAISER ALUMINUM & CH |
| *8104741 | 80-3737 | 1700720251 | 103 | | P R NORMAN ET AL B-9 | GRAND BAYOU | 2555.0 | KAISER ALUMINUM & CH |
| *8104740 | 80-3736 | 1710922065 | 103 | | SL 2703 33 | CAILLOU ISLAND | 25.0 | KAISER ALUMINUM & CH |
| *8104727 | 80-3723 | 1710922213 | 103 | | SL 301 TERREBONNE BAY 354 | CAILLOU ISLAND | 155.0 | KAISER ALUMINUM & CH |
| *8104737 | 80-3733 | 1705721395 | 103 | | SL 378 CATFISH LAKE 111 | GOLDEN MEADOW | 1.0 | KAISER ALUMINUM & CH |
| 8104725 | 80-3721 | 1709920789 | 103 | | ST MARTIN PARISH SCH BD 20 | PLUMB BOB | 7.0 | UNITED GAS PIPE LINE |
| *8104731 | 80-3727 | 1710922001 | 103 | | VU-3 BSE U-3 53 | BAY ST ELAINE | 5.0 | KAISER ALUMINUM & CH |
| *8104730 | 80-3726 | 1710921981 | 103 | | VU-7 BSE U-7 30 | BAY ST ELAINE | 1.0 | KAISER ALUMINUM & CH |
| *8104728 | 80-3724 | 1710922029 | 103 | | VU-7 BSE U-7 32 | BAY ST ELAINE | 1100.0 | KAISER ALUMINUM & CH |
| *8104729 | 80-3725 | 1710922068 | 103 | | VU-8 BSE U-8 14 | BAY ST ELAINE | 1500.0 | KAISER ALUMINUM & CH |
| *8104734 | 80-3730 | 1710922141 | 103 | | VUF LP U-6 38 | LAKE PELTO | 50.0 | KAISER ALUMINUM & CH |
| *8104742 | 80-3738 | 1710921969 | 103 | | VUG LP U-7 40 | LAKE PELTO | 15.0 | KAISER ALUMINUM & CH |
| *8104735 | 80-3731 | 1710922000 | 103 | | VUG LP U-7 43 | LAKE PELTO | 30.0 | KAISER ALUMINUM & CH |
| 8104758 | 80-3755 | 1710922170 | 103 | | VUM DGL U-13 99 | DOG LAKE | 10.0 | TEXAS GAS TRANSMISSI |
| *8104738 | 80-3734 | 1710922057 | 103 | | VUM LP U-13 68 | LAKE PELTO | 1385.0 | KAISER ALUMINUM & CH |

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| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| *8104733 | 80-3729 | 1710921942 | 103 | | 16B R832 VUA LP U-7 38 | LAKE PELTO | 5,0 | KAISER ALUMINUM & CH |
| *8104736 | 80-3732 | 1710921999 | 103 | | 17 R832 VUA LP U-6 36 | LAKE PELTO | 50,0 | KAISER ALUMINUM & CH |
| -UNION OIL COMPANY OF CALIF | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104789 | 80-3789 | 1710922300 | 103 | | LL&E B NO 49 | LAKE HATCH | 150,0 | COLUMBIA GAS TRANSMI |
| -VIKING RESOURCES | | | | | RECEIVED: 11/03/80 JA: LA | | | |
| 8104774 | 80-3772 | 1707321467 | 103 | | SPADES NO 1 | MONROE | 27,0 | PETRO-LEWIS FUNDS IN |
| 8104773 | 80-3771 | 1707322155 | 103 | | SPADES NO 3 | MONROE | 31,0 | PETRO-LEWIS FUNDS IN |
| NORTH DAKOTA GEOLOGICAL SURVEY | | | | | | | | |
| -NORTHWEST EXPLORATION COMPANY | | | | | RECEIVED: 11/03/80 JA: ND | | | |
| 8104591 | 296 | 3310500861 | 102 | | PEDERSON NO 1 | TEMPLE BAY | 114,0 | AMINOIL USA |
| 8104592 | 288 | 3310500813 | 102 | | RYE #1 | WILD CAT RED RIVER | 182,0 | AMINOIL USA INC |
| NEW MEXICO DEPARTMENT OF ENERGY & MINERALS | | | | | | | | |
| -AMERADA HESS CORPORATION | | | | | RECEIVED: 11/05/80 JA: NM | | | |
| 8104832 | | 3002526535 | 103 | | STATE L GAS COMM #3 | EUMONT | 156,0 | NORTHERN NATURAL GAS |
| 8104833 | | 3002526548 | 103 | | STATE WE B #6 | EUMONT | 93,0 | EL PASO NATURAL GAS |
| 8104831 | | 3002526549 | 103 | | STATE WE F #4 | EUMONT | 377,0 | EL PASO NATURAL GAS |
| -EL PASO NATURAL GAS COMPANY | | | | | RECEIVED: 11/05/80 JA: NM | | | |
| 8104835 | | 3003922311 | 103 | | RINCON UNIT #21A | BLANCO MESAVERDE | 70,0 | EL PASO NATURAL GAS |
| 8104829 | | 3003922065 | 103 | | SAN JUAN 29-7 UNIT #31A | BLANCO MESAVERDE | 220,0 | EL PASO NATURAL GAS |
| -ELLIOTT A RIGGS | | | | | RECEIVED: 11/04/80 JA: NM | | | |
| 8104813 | | 3004500000 | 108 | | #1 MARTIN | AZTEC FRUITLAND | 14,9 | EL PASO NATURAL GAS |
| -GETTY OIL COMPANY | | | | | RECEIVED: 11/05/80 JA: NM | | | |
| 8104834 | | 3002526825 | 103 | | STATE AP NO 1 | VACUUM ABO REEF | 97,0 | PHILLIPS PETROLEUM C |
| -SUPRON ENERGY CORPORATION | | | | | RECEIVED: 11/05/80 JA: NM | | | |
| 8104836 | | 3004523943 | 103 | | PAYNE 3-A | BASIN DAKOTA | 336,0 | SOUTHERN UNION GAS C |
| 8104837 | | 3004523943 | 103 | | PAYNE 3-A | BLANCO MESAVERDE | 517,0 | SOUTHERN UNION GAS C |
| -UNION TEXAS PETROLEUM | | | | | RECEIVED: 11/03/80 JA: NM | | | |
| 8104593 | | 3004522366 | 103 | | MADDOX COM NO 1-A | BLANCO MESAVERDE | 182,0 | EL PASO NATURAL GAS |
| -YATES PETROLEUM CORPORATION | | | | | RECEIVED: 11/05/80 JA: NM | | | |
| 8104830 | | 3001523304 | 103 | | SRC KZ STATE #7 | PENASCO DRAW SA YESO (AS | 0,0 | TRANSWESTERN PIPELIN |
| OKLAHOMA CORPORATION COMMISSION | | | | | | | | |
| -BOBBY J DARNELL | | | | | RECEIVED: 11/04/80 JA: OK | | | |
| *8104792 | 06040 | 3507322170 | 103 | | HUDSON #1 | SOONER TREND | 25,0 | EXXON CORP |
| 8104793 | 06039 | 3508321064 | 103 | | LULU WILLIAMS #1 | WEST LAWRIE | 37,0 | EASON OIL CO |
| -EL PASO NATURAL GAS COMPANY | | | | | RECEIVED: 11/04/80 JA: OK | | | |
| 8104809 | 05987 | 3514920064 | 107 | | MELVIN #1 | ELK CITY SPRINGER | 5475,0 | EL PASO NATURAL GAS |
| -MARSHALL OIL CORP | | | | | RECEIVED: 11/04/80 JA: OK | | | |
| 8104798 | 06034 | 3513721797 | 103 | | ELLISON #1 | STAGE STAND | 73,0 | ARKANSAS LOUISIANA G |
| -OMNI OIL & GAS INC | | | | | RECEIVED: 11/04/80 JA: OK | | | |
| 8104811 | 05934 | 3507322390 | 103 | | MURPHY 1 NO 1 | SOONER TREND | 182,5 | CITIES SERVICE GAS C |
| -PHILLIPS PETROLEUM COMPANY | | | | | RECEIVED: 11/04/80 JA: OK | | | |
| 8104812 | 05744 | 3513900000 | 108 | | LEE #1 | OKLAHOMA HUGOTON | 20,0 | PANHANDLE EASTERN PI |
| 8104807 | 06015 | 3501721371 | 103 | | MCCARTHY B #1 | N CONCHO | 0,0 | PANHANDLE EASTERN |
| 8104808 | 06072 | 3501721355 | 102 | | MCCARTHY C #1 | N CONCHO | 0,0 | PANHANDLE EASTERN |
| 8104806 | 06016 | 3501721366 | 103 | | MCCARTHY D #1 | N CONCHO | 0,0 | PANHANDLE EASTERN |
| 8104805 | 06017 | 3501730012 | 103 | | SCHROEDER B #1 | N CONCHO | 0,0 | PANHANDLE EASTERN |

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| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| 8104804 | 06019 | 3501721312 | 103 | | WIEWEL B #1 | N CONCHO | 0,0 | PANHANDLE EASTERN PI |
| -SHAR-ALAN OIL CO | | | | | RECEIVED: 11/04/80 JA: OK | | | |
| 8104794 | 06038 | 3507322282 | 103 | | CUPPS #2 | SOONER TREND | 134,0 | PHILLIPS PETROLEUM C |
| -SOUTHLAND ROYALTY CO | | | | | RECEIVED: 11/04/80 JA: OK | | | |
| 8104796 | 06036 | 3515120977 | 102 | | MARIE #1-11 | FREEDOM 7L | 75,0 | PANHANDLE EASTERN PI |
| -SOUTHPORT EXPLORATION INC | | | | | RECEIVED: 11/04/80 JA: OK | | | |
| 8104795 | 06037 | 3509321679 | 103 | | E MONGOLD NO 1-1 | ORION | 55,0 | PHILLIPS PETROLEUM C |
| 8104797 | 06035 | 3505920883 | 103 | | NIGHSWUNGER NO 1-34 | SELMAN | 0,0 | MICHIGAN-WISCONSIN P |
| -SUN OIL COMPANY (DELAWARE) | | | | | RECEIVED: 11/04/80 JA: OK | | | |
| 8104801 | 05972 | 3501900000 | 108 | | RICKETTS NO 4 | SHO-VEL-TUM | 1,0 | MOBIL OIL CORP |
| 8104803 | 05968 | 3513700000 | 108 | | TOM BRYANT NO 1 | SHO-VEL-TUM | 11,0 | MOBIL OIL CORP |
| -TENNECO OIL COMPANY | | | | | RECEIVED: 11/04/80 JA: OK | | | |
| 8104802 | 02663 | 3508336667 | 108 | | E COLUMBIA OSWEGO LIME UT #12-2 | COLUMBIA EAST | 3,0 | EASON OIL CO |
| 8104799 | 02668 | 3507336127 | 108 | | E COLUMBIA OSWEGO LIME UT #2-1 | COLUMBIA EAST | 3,0 | EASON OIL CO |
| 8104800 | 02667 | 3507336132 | 108 | | E COLUMBIA OSWEGO LIME UT #8-2 | COLUMBIA EAST | 3,0 | EASON OIL CO |
| -UNIVERSAL RESOURCES CORPORATION | | | | | RECEIVED: 11/04/80 JA: OK | | | |
| 8104791 | 03041 | 3501120482 | 108 | | GOFORTH #1-30 | OKEENE NORTHWEST | 18,0 | DELHI GAS PIPELINE C |
| -WALTER A KELLY JR | | | | | RECEIVED: 11/04/80 JA: OK | | | |
| 8104810 | 05474 | 3511900000 | 103 | | OLIVE EAGLES (CASSIE SNELL) #5 | SEC 29-19N-5E NORTH MARC | 4,4 | COLORADO GAS COMPRES |
| UTAH DIVISION OF OIL,GAS, & MINING | | | | | | | | |
| -TEXAS OIL & GAS CORP | | | | | RECEIVED: 11/03/80 JA: UT | | | |
| 8104590 | K-128-1 | 4301930634 | 103 | | TEXAS PACIFIC STATE #1 | WILDCAT | 365,0 | NORTHWEST PIPELINE C |
| -TEXAS OIL & GAS CORP | | | | | RECEIVED: 11/04/80 JA: UT | | | |
| 8104814 | | 4301930670 | 103 | | TEXAS PACIFIC STATE #2 | SAN ARROYO | 456,0 | NORTHWEST PIPELINE C |
| VIRGINIA DEPARTMENT OF LABOR & INDUSTRY | | | | | | | | |
| -TEXAS INTERNATIONAL PET CORP | | | | | RECEIVED: 11/03/80 JA: VA | | | |
| 8104586 | | 4502720259 | 103 | | ISLAND CREEK #1 | KEEN MOUNTAIN | 30,0 | |
| 8104587 | | 4502720275 | 103 | | ISLAND CREEK #10 | KEEN MOUNTAIN FIELD | 73,0 | |
| 8104585 | | 4502720280 | 103 | | ISLAND CREEK #14 | KEEN MOUNTAIN FIELD | 23,0 | |
| 8104589 | | 4502720261 | 103 | | ISLAND CREEK #3 | KEEN MOUNTAIN | 71,0 | |
| 8104588 | | 4502720269 | 103 | | ISLAND CREEK #6 | KEEN MOUNTAIN | 0,0 | |
| WEST VIRGINIA DEPARTMENT OF MINES | | | | | | | | |
| -ALLEGHENY & WESTERN ENERGY CORP | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104596 | | 4703501508 | 108 | | ROBERT L PARSONS FARM #1 | WASHINGTON | 10,0 | COLUMBIA GAS TRANSMI |
| 8104600 | | 4703501509 | 108 | | ROBERT L PARSONS FARM #2 | WASHINGTON | 10,0 | COLUMBIA GAS TRANSMI |
| 8104598 | | 4703501503 | 108 | | WENDELL O CASTO FARM #2 | WASHINGTON DISTRICT | 5,0 | COLUMBIA GAS TRANSMI |
| 8104597 | | 4703501504 | 108 | | WENDELL O CASTO FARM #3 | WASHINGTON DISTRICT | 5,0 | COLUMBIA GAS TRANSMI |
| 8104599 | | 4703501501 | 108 | | WENDELL O CASTO FARM #4 | WASHINGTON DISTRICT | 5,0 | COLUMBIA GAS TRANSMI |
| -ALLEGHENY LAND & MINERAL COMPANY | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104652 | | 4709701901 | 103 | | A-781 | WASHINGTON | 0,0 | CONSOLIDATED GAS SUP |
| -APPALACHIAN EXPLORATION & DEVEL INC | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104700 | | 4701501201 | 108 | | CARPER DORSEY #1 | PLEASANT | 11,0 | CABOT CORP |
| 8104662 | | 4701900406 | 102 | | ELI DEWS #1 | MT COVE | 36,0 | EQUITABLE GAS CO |
| 8104649 | | 4707900911 | 108 | | G W SMITH #2 | UNION | 15,8 | CABOT CORP |
| 8104699 | | 4701900344 | 108 | | GOAD GAS UNIT #2 | MT COVE | 20,0 | EQUITABLE GAS CO |
| 8104698 | | 4707900862 | 108 | | MCLEAN HEIRS A-7 | UNION | 19,0 | CABOT CORP |
| 8104622 | | 4708100394 | 108 | | PINEY COKING COAL A-49 | SLAB FORK | 18,9 | CABOT CORP |

26 3 696

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| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| 8104636 | | 4708100399 | 108 | | PINEY COKING COAL A-50 | SLAB FORK | 18.9 | CABOT CORP |
| 8104635 | | 4708100400 | 108 | | PINEY COKING COAL A-51 | SLAB FORK | 18.9 | CABOT CORP |
| 8104630 | | 4708100397 | 108 | | PINEY COKING COAL A-63 | SLAB FORK | 18.9 | CABOT CORP |
| 8104650 | | 4707900869 | 108 | | PUTNAM LAND COMPANY B-6 | UNION | 18.9 | CABOT CORP |
| 8104701 | | 4701900311 | 108 | | STANLEY U FOX #1 | MT COVE | 12.0 | EQUITABLE GAS CO |
| -BAILEY GAS CO | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104661 | | 4709920993 | 108 | | BAILEY GAS CO #1 | SOUTHERN WEST VIRGINIA | 1.0 | GAS SUPPLY CORP |
| -BLANKENSHIP GAS CO | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104660 | | 4709921452 | 108 | | BLANKENSHIP GAS CO #1 | SOUTHERN WEST VIRGINIA | 14.0 | GAS SUPPLY CORP |
| -CITIES SERVICE COMPANY | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104619 | | 4708100161 | 108 | | DICKINSON A-4 | CLEARFORK | 2.4 | COLUMBIA GAS TRANSMI |
| 8104618 | | 4708100176 | 108 | | DICKINSON A-7 | CLEARFORK | 5.2 | COLUMBIA GAS TRANSMI |
| 8104637 | | 4708100125 | 108 | | DICKINSON C-1 | CLEARFORK | 5.3 | COLUMBIA GAS TRANSMI |
| 8104634 | | 4703902099 | 108 | | HARDY A NEWBURG #25 | DAVIS CREEK | 13.5 | COLUMBIA GAS TRANS C |
| 8104633 | | 4708100053 | 108 | | ROWLAND LAND CO A-10 | CLEARFORK | 2.6 | COLUMBIA GAS TRANSMI |
| 8104632 | | 4708100069 | 108 | | ROWLAND LAND CO A-14 | CLEARFORK | 6.6 | COLUMBIA GAS TRANSMI |
| 8104621 | | 4708100123 | 108 | | ROWLAND LAND CO A-21 | CLEARFORK | 13.2 | COLUMBIA GAS TRANSMI |
| 8104620 | | 4708100128 | 108 | | ROWLAND LAND CO A-22 | CLEARFORK | 6.5 | COLUMBIA GAS TRANSMI |
| 8104617 | | 4708100185 | 108 | | ROWLAND LAND CO A-30 | CLEARFORK | 8.3 | COLUMBIA GAS TRANSMI |
| 8104631 | | 4708100189 | 108 | | ROWLAND LAND CO A-31 | CLEARFORK | 3.3 | COLUMBIA GAS TRANSMI |
| -COLUMBIA GAS TRANSMISSION CORP | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104653 | | 4705900880 | 108 | | CENTRAL TRUST CO 820300 | WEST VIRGINIA FIELD AREA | 16.0 | |
| 8104696 | | 4700500058 | 108 | | HORSE CREEK L & M 805274 | WEST VIRGINIA FIELD AREA | 3.6 | |
| -CONSOLIDATED GAS SUPPLY CORPORATION | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104614 | | 4703301200 | 108 | | C M LANG 12312 | WEST VIRGINIA OTHER A857 | 21.0 | GENERAL SYSTEM PURCH |
| 8104613 | | 4704501018 | 108 | | CHARLESTON NATIONAL BANK 12511 | PINEVILLE FIELD AREA A59 | 21.0 | GENERAL SYSTEM PURCH |
| 8104612 | | 4704700706 | 108 | | CONSOLIDATED COAL CO 12377 | PINEVILLE A59442 | 7.0 | GENERAL SYSTEM PURCH |
| 8104694 | | 4709100103 | 108 | | JOHN H GRIMES 11839 | W VA OTHER A 83772 | 6.0 | GENERAL SYSTEM PURCH |
| 8104615 | | 4702102920 | 108 | | LOHAN-PEARCY 12352 | WEST VIRGINIA OTHER A857 | 9.0 | GENERAL SYSTEM PURCH |
| 8104611 | | 4705500062 | 108 | | POCAHONTAS LAND CORP 12366 | PINEVILLE A59442 | 2.0 | GENERAL SYSTEM PURCH |
| 8104616 | | 4700501070 | 108 | | SIDNEY WHITE 12421 | WEST VIRGINIA OTHER A857 | 2.0 | GENERAL SYSTEM PURCH |
| -DAMSON OIL CORPORATION | | | | | RECEIVED: 10/27/80 JA: WV | | | |
| 8104595 | | 4701500800 | 108 | | ELK RIVER #17 | | 20.2 | EQUITABLE GAS CO |
| -EARL STEWART | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104642 | | 4708503524 | 108 | | HARRIS #3 | TURTLE RUN | 1.7 | CARNEGIE NATURAL GAS |
| 8104651 | | 4708503526 | 108 | | HARRIS #4 | TURTLE RUN | 1.7 | CARNEGIE NATURAL GAS |
| 8104645 | | 4708503535 | 108 | | KUHN #3 | TURTLE RUN | 1.3 | CARNEGIE NATURAL GAS |
| 8104643 | | 4708503530 | 108 | | PRUNTY #1 | TURTLE RUN | 0.6 | CARNEGIE NATURAL GAS |
| 8104644 | | 4708503532 | 108 | | PRUNTY #2 | TURTLE RUN | 5.0 | CARNEGIE NATURAL GAS |
| 8104646 | | 4708503595 | 108 | | PRUNTY #3 | TURTLE RUN | 0.6 | CARNEGIE NATURAL GAS |
| -ENERGEX CORP | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104602 | | 4710700490 | 108 | | FRANCES CARTER #1 | FRANCES CARTER TRACT | 0.0 | CONSOLIDATED GAS SUP |
| 8104601 | | 4710700718 | 108 | | FRANCES CARTER #2 | FRANCES CARTER TRACT | 0.0 | CONSOLIDTED GAS SUPP |
| -GIL CO W VA O & G JT VENT | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104695 | | 4702102534 | 108 | | CONALLY 25 | RICH BOTTOM | 2.1 | CONSOLIDATED GAS COR |
| -JAMES F SCOTT | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104641 | | 4703301085 | 108 | | B BROWN (S-219) | COAL DISTRICT | 16.0 | CONSOLIDATED GAS SUP |
| -N G & K E BUSCH | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104638 | | 4710520273 | 108 | | M RICHTER NO 17 | BURNING SPRINGS DISTRICT | 0.5 | PENNZOIL CO |
| -N G & K E BUSCH DBA RICHTER OIL CO | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104608 | | 4710520339 | 108 | | M RICHTER NO 8 | BURNING SPRINGS DISTRICT | 0.5 | PENNZOIL CO |
| -ONE MILE GAS CO | | | | | RECEIVED: 11/03/80 JA: WV | | | |

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| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| 8104697 | | 4704320304 | 108 | | L R SWEETLAND #2 | SHERIDAN DISTRICT | 6.0 | PENNZOIL CO |
| -PATRICK H CUNNINGHAM | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104640 | | 4703301712 | 108 | | JOHN HUSTEAD #1 | EAGLE | 20.0 | CONSOLIDATED GAS SUP |
| -PENNZOIL COMPANY | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104676 | | 4708703035 | 108 | | CHAMBERS HEIRS #10 | SMITHFIELD | 1.6 | CONSOLIDATED GAS SUP |
| 8104679 | | 4708703033 | 108 | | CHAMBERS HEIRS #11 | SMITHFIELD | 1.6 | CONSOLIDATED GAS SUP |
| 8104680 | | 4708703049 | 108 | | CHAMBERS HEIRS #12 | SMITHFIELD | 1.6 | CONSOLIDATED GAS SUP |
| 8104681 | | 4708703036 | 108 | | CHAMBERS HEIRS #13 | SMITHFIELD | 1.6 | CONSOLIDATED GAS SUP |
| 8104677 | | 4708703052 | 108 | | CHAMBERS HEIRS #3 | SMITHFIELD | 1.6 | CONSOLIDATED GAS SUP |
| 8104678 | | 4708702994 | 108 | | CHAMBERS HEIRS #6 | SMITHFIELD | 1.6 | CONSOLIDATED GAS SUP |
| 8104682 | | 4708703030 | 108 | | DAVID SIMMONS #10 | SMITHFIELD | 1.6 | CONSOLIDATED GAS SUP |
| 8104683 | | 4708702988 | 108 | | DAVID SIMMONS #12 | SMITHFIELD | 1.6 | CONSOLIDATED GAS SUP |
| 8104684 | | 4708703053 | 108 | | DAVID SIMMONS #14 | SMITHFIELD | 1.6 | CONSOLIDATED GAS SUP |
| 8104685 | | 4708703048 | 108 | | DAVID SIMMONS #15 | SMITHFIELD | 1.6 | CONSOLIDATED GAS SUP |
| 8104686 | | 4708703045 | 108 | | DAVID SIMMONS #17 | SMITHFIELD | 1.6 | CONSOLIDATED GAS SUP |
| 8104687 | | 4708703031 | 108 | | DAVID SIMMONS #23 | SMITHFIELD | 1.6 | CONSOLIDATED GAS SUP |
| 8104688 | | 4708702986 | 108 | | DAVID SIMMONS #24 | SMITHFIELD | 1.6 | CONSOLIDATED GAS SUP |
| 8104689 | | 4708702746 | 108 | | DAVID SIMMONS #8 | SMITHFIELD | 1.6 | CONSOLIDATED GAS SUP |
| 8104691 | | 4702101283 | 108 | | F S WILT #6 | TANNER | 1.8 | CONSOLIDATED GAS SUP |
| 8104639 | | 4702102084 | 108 | | F S WILT #7 | TANNER | 2.1 | CONSOLIDATED GAS SUP |
| 8104629 | | 4702102165 | 108 | | FRED WILT #8 | TANNER | 2.1 | CONSOLIDATED GAS SUP |
| 8104625 | | 4702103290 | 108 | | G C FISHER #1 | TANNER | 2.0 | CONSOLIDATED GAS SUP |
| 8104692 | | 4702100013 | 108 | | GAINER-URPMAN #1 | TANNER | 2.9 | CONSOLIDATED GAS SUP |
| 8104626 | | 4702101847 | 108 | | GAINER-URPMAN #2 | TANNER | 2.9 | CONSOLIDATED GAS SUP |
| 8104690 | | 4702101850 | 108 | | GAINER-URPMAN #3 | TANNER | 2.9 | CONSOLIDATED GAS SUP |
| 8104623 | | 4702103401 | 108 | | H A GAINER #1 | TANNER | 1.1 | CONSOLIDATED GAS SUP |
| 8104665 | | 4703301765 | 108 | | HALL & WHITE #1 | WOLF SUMMIT | 0.3 | CONSOLIDATED GAS SUP |
| 8104624 | | 4702103312 | 108 | | I N HARDMAN #2 | TANNER | 4.7 | CONSOLIDATED GAS SUP |
| 8104628 | | 4702102193 | 108 | | O W GUMM #1 | TANNER | 16.1 | CONSOLIDATED GAS SUP |
| 8104627 | | 4702103247 | 108 | | W F WEAVER #1 | TANNER | 0.8 | CONSOLIDATED GAS SUP |
| 8104664 | | 4704500180 | 108 | | YAWKEY-FREEMAN #104 | YAWKEY-FREEMAN | 16.5 | CONSOLIDATED GAS SUP |
| 8104663 | | 4704500161 | 108 | | YAWKEY-FREEMAN #98 | YAWKEY-FREEMAN | 18.2 | CONSOLIDATED GAS SUP |
| -R & S PETROLEUM INC | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104610 | | 4700100883 | 108 | | E HATHAWAY #1 | VALLEY | 14.2 | PETRO-LEWIS FUNDS IN |
| 8104607 | | 4700100885 | 108 | | E HATHAWAY #2 | VALLEY | 14.2 | PETRO-LEWIS FUNDS IN |
| 8104609 | | 4700100886 | 108 | | E HATHAWAY #3 | VALLEY | 14.2 | PETRO-LEWIS FUNDS IN |
| -ROCKWELL PETROLEUM COMPANY | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104648 | | 4701702303 | 108 | | WEBBER #1 | TOMS FORK | 8.0 | COLUMBIA GAS TRANSMI |
| -SOUTHEASTERN GAS COMPANY | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104647 | | 4704302400 | 108 | | LEE SANSOM #15 | SHERIDAN | 1.5 | PENNZOIL CO |
| -SPARTAN GAS CO | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104693 | | 4707900920 | 108 | | ESTAL BURNS 1-8-198 | CURRY | 7.0 | PENNZOIL CO |
| -SPARTAN GAS COMPANY | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104702 | | 4701120600 | 108 | | SYLVIA SOWARDS 1-8-199 | GRANT | 9.0 | PENNZOIL CO |
| -SQUAW OIL CO | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| *8104659 | | 4708501568 | 108 | | LAURA CUNNINGHAM #1 | | 2.3 | HOPE NATURAL GAS CO |
| -UNION DRILLING INC | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104673 | | 4709701474 | 108 | | CLUADE H WINEMILLER #1 - 1299 | BANKS DISTRICT | 21.0 | COLUMBIA GAS TRANS C |
| 8104668 | | 4709701726 | 108 | | D F HUFFMAN #1 - 1353 | BANKS DISTRICT | 17.8 | COLUMBIA GAS TRANS C |
| 8104674 | | 4709701769 | 108 | | EXANNA P BUTCHER #1 - 1409 | BANKS DISTRICT | 5.4 | COLUMBIA GAS TRANS C |
| 8104666 | | 4709701768 | 108 | | EXANNA P BUTCHER #1 - 1410 | MEADE DISTRICT | 11.5 | COLUMBIA GAS TRANS C |
| 8104655 | | 4709701818 | 108 | | GLEN & JANIS MARSH #1 - 1433 | MEADE DISTRICT | 20.3 | COLUMBIA GAS TRANS C |

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| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| 8104658 | | 4709701778 | 108 | | GLENN MADDIX #1 - 1415 | BANKS DISTRICT | 11,3 | COLUMBIA GAS TRANS C |
| 8104654 | | 4709701819 | 108 | | HANIFAN & GEORGE #1 - 1439 | WASHINGTON DISTRICT | 21,4 | COLUMBIA GAS TRANS C |
| 8104656 | | 4709701817 | 108 | | J B & NINA MARSH #1 - 1432 | MEADE DISTRICT | 12,4 | COLUMBIA GAS TRANS C |
| 8104671 | | 4709701643 | 108 | | MILDRED C POTTER #2 - 1366 | MEADE DISTRICT | 17,5 | COLUMBIA GAS TRANS C |
| 8104672 | | 4709701478 | 108 | | MYRTLE M WARNER #1 - 1297 | MEADE DISTRICT | 20,0 | COLUMBIA GAS TRANS C |
| 8104675 | | 4709701770 | 108 | | PAUL & JUANITA WINANS #1 - 1407 | UNION DISTRICT | 12,2 | COLUMBIA GAS TRANS C |
| 8104667 | | 4709701728 | 108 | | R F NESBITT #1 - 1398 | UNION DISTRICT | 7,5 | COLUMBIA GAS TRANS C |
| 8104657 | | 4709701815 | 108 | | R S SMALLRIDGE #1 - 1434 | BANKS DISTRICT | 12,6 | COLUMBIA GAS TRANS C |
| 8104670 | | 4709701653 | 108 | | RUTH Y HALL #1 - 1369 | MEADE DISTRICT | 19,0 | COLUMBIA GAS TRANS C |
| 8104669 | | 4709701722 | 108 | | S C RUSMISELL #2 - 1392 | UNION DISTRICT | 15,0 | COLUMBIA GAS TRANS C |
| -W & J OIL AND GAS PRODUCERS | | | | | RECEIVED: 11/03/80 JA: WV | | | |
| 8104606 | | 4702101746 | 108 | | C O RADCLIFF #1 | TROY FIELD | 2,5 | EQUITABLE GAS CO |
| 8104605 | | 4702101705 | 108 | | E B YOUNG #1 | TROY FIELD | 4,0 | CONSOLIDATED GAS SUP |
| 8104603 | | 4702101583 | 108 | | VIDA WINCE NO 1 | TROY FIELD | 1,0 | CONSOLIDATED GAS SUP |
| 8104604 | | 4702101676 | 108 | | VIDA WINCE NO 2 | TROY FIELD | 1,0 | CONSOLIDATED GAS SUP |
| WYOMING OIL & GAS CONSERVATION COMMISSION | | | | | | | | |
| -AMOCO PRODUCTION CO | | | | | RECEIVED: 11/04/80 JA: WY | | | |
| 8104815 | NG 131-80 | 4902320291 | 103 | | CHAMPLIN 149 AMOCO D #1 | BRUFF | 250,0 | CITIES SERVICE GAS C |
| 8104816 | NG 132-80 | 4903721226 | 102 | | CHAMPLIN 285 AMOCO D #1 | FABIAN DITCH | 350,0 | CITIES SERVICE GAS C |
| 8104820 | NG-136-80 | 4904120228 | 102 | | CLARENCE LOWHAM #1 | YELLOW CREEK | 800,0 | MOUNTAIN FUEL SUPPLY |
| 8104821 | NG 137-80 | 4904120267 | 102 | | RYCKMAN CREEK UNIT #27 | RYCKMAN CREEK | 82,0 | NORTHWEST PIPELINE C |
| -BELCO PETROLEUM CORPORATION | | | | | RECEIVED: 11/04/80 JA: WY | | | |
| 8104828 | NG 144-80 | 4903520552 | 103 | | ELBU 27-32 | EAST LA BARGE | 222,0 | NORTHWEST PIPELINE C |
| -CITIES SERVICE COMPANY | | | | | RECEIVED: 11/04/80 JA: WY | | | |
| 8104819 | NG 135-80 | 4900525489 | 102 | | CHRISTENSEN F-1 | PUMPKIN BUTTES | 10,0 | |
| -DAVIS OIL COMPANY | | | | | RECEIVED: 11/04/80 JA: WY | | | |
| 8104824 | NG 141-80 | 4900921620 | 102 | | #1 BABE | | 9,6 | PHILLIPS PETROLEUM C |
| 8104826 | NG-143-80 | 4900921593 | 102 | | #2 M E | WILDCAT | 23,2 | PHILLIPS PETROLEUM C |
| 8104817 | NG 133-80 | 4900921584 | 102 | | EBERSPECHER #3 | | 145,0 | PHILLIPS PETROLEUM C |
| 8104827 | NG 145-80 | 4900921596 | 102 | | MORTON SCOTT #1 | SCOTT FIELD | 8,2 | PHILLIPS PETROLEUM C |
| 8104825 | NG-142-80 | 4900921487 | 102 | | MORTONS #1 | WILDAT | 14,6 | PHILLIPS PETROLEUM C |
| 8104818 | NG-134-80 | 4900720525 | 102 | | WINDY MILL #1 | FILMORE | 123,6 | PANHANDLE EASTERN PI |
| -MARATHON OIL COMPANY | | | | | RECEIVED: 11/04/80 JA: WY | | | |
| 8104823 | NG 139-80 | 4900720458 | 102 | | STANDARD DRAW #3-16 | STANDARD DRAW | 0,0 | |
| 8104822 | NG 138-80 | 4903721422 | 102 | | WAMSUTTER UNIT A #10 | WAMSUTTER | 483,0 | COLORADO INTERSTATE |
| ** U.S. GEOLOGICAL SURVEY - CASPER,WY | | | | | | | | |
| -SHELL OIL CO | | | | | RECEIVED: 11/03/80 JA: MT 5 | | | |
| 8104713 | M 32-0 | 2508321262 | 102 | | USA 11X-12 | CRANE | 60,5 | MONTANA DAKOTA UTILI |
| -TRICENTROL UNITED STATES INC | | | | | RECEIVED: 11/03/80 JA: MT 5 | | | |
| 8104714 | M-167-0 | 2500521881 | 108 | | US 13-4-T26N-R19E | SHERARD UNIT | 15,0 | NORTHERN NATURAL GAS |
| 8104704 | M152-0 | 2500522115 | 103 | | US 27-6-T31N-R18E | TIGER RIDGE UNIT | 190,0 | NORTHERN NATURAL GAS |
| -BROWNLIE WALLACE ARMSTRONG & BANDER | | | | | RECEIVED: 11/03/80 JA: ND 5 | | | |
| 8104717 | ND 178-0 | 3305300985 | 102 | | ALLEN-FEDERAL #2-41 | MONDAK | 7,5 | MONTANA DAKOTA UTILI |
| 8104718 | ND 179-0 | 3305300936 | 102 | | FEDERAL #11-44 | MONDAK | 7,5 | MONTANA DAKOTA UTILI |
| -JOSEPH J C PAINE AND ASSOCIATES | | | | | RECEIVED: 11/03/80 JA: ND 5 | | | |
| 8104711 | ND 87-0 | 3301100278 | 103 | | FEDERAL #1-10 | LITTLE MISSOURI | 1,7 | MONTANA DAKOTA UTILI |
| 8104712 | ND 86-0 | 3301100239 | 102 | | FEDERAL #2-23 | LITTLE MISSOURI | 11,0 | MONTANA DAKOTA UTILI |
| -TENNECO OIL COMPANY | | | | | RECEIVED: 11/03/80 JA: ND 5 | | | |

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| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| 8104708 | WD 129-0 | 3300700401 | 102 | | BENJAMIN USA 1-18 | BIG STICK | 155,0 | WESTERN GAS PROCESSU |
| 8104710 | ND 96-0 | 3300700345 | 102 | | STUART USA #1-31 | WILDCAT | 128,0 | WESTERN GAS PROCESSU |
| -DAVIS OIL COMPANY | | | | | RECEIVED: 11/03/80 JA: WY 5 | | | |
| 8104716 | W 160-0 | 4900920246 | 103 | | BLACKJACK UNIT #3 | WILDCAT | 10,9 | PANHANDLE EASTERN PI |
| -PACIFIC TRANSMISSION SUPPLY COMPANY | | | | | RECEIVED: 11/03/80 JA: WY 5 | | | |
| 8104706 | W 158-0 | 4900720491 | 102 | | PTS 3-10 FEDERAL | ECHO SPRINGS | 100,0 | PACIFIC GAS AND ELEC |
| 8104705 | W 157-0 | 4900720461 | 102 | | PTS 3-18A FEDERAL | ECHO SPRINGS | 1000,0 | PACIFIC GAS AND ELEC |
| 8104709 | W-175-0 | 4903721358 | 102 | | PTS 3-24A FEDERAL | SIBERIA RIDGE | 80,0 | |
| -TEXACO INC | | | | | RECEIVED: 11/03/80 JA: WY 5 | | | |
| 8104707 | W 114-0 | 4903721482 | 103 | | GOVERNMENT R M DONLEY (NCT-1) #1 | BRUFF | 803,0 | MOUNTAIN FUEL SUPPLY |
| 8104715 | W-163-0 | 4903721510 | 107 | | TABLE ROCK UNIT NO 43 | TABLE ROCK | 1500,0 | COLORADO INTERSTATE |
| -UNION OIL COMPANY OF CALIF | | | | | RECEIVED: 11/03/80 JA: WY 5 | | | |
| *8104703 | W-154-0 | 4900525264 | 103 | | JAYSON UNIT #3-10 | HILIGHT | 140,0 | MCCULLOCH GAS PROCES |

OTHER PURCHASERS VOLUME NO 1320

| | |
|---|---|
| 8104659 | HOPE NATURAL GAS CO |
| 8104703 | PHILLIPS PETROLEUM CO |
| 8104723 | UNITED GAS P L CO |
| 8104724 | UNITED GAS P L CO |
| 8104726 | AMERICAN CYANAMID CO |
| 8104727 | AMERICAN CYANAMID CO |
| 8104728 | AMERICAN CYANAMID CO |
| 8104729 | AMERICAN CYANAMID CO |
| 8104730 | AMERICAN CYANAMID CO |
| 8104731 | AMERICAN CYANAMID CO |
| 8104732 | AMERICAN CYANAMID CO |
| 8104733 | AMERICAN CYANAMID CO |
| 8104734 | AMERICAN CYANAMID CO |
| 8104735 | AMERICAN CYANAMID CO |
| 8104736 | AMERICAN CYANAMID CO |
| 8104737 | AMERICAN CYANAMID CO |
| 8104738 | AMERICAN CYANAMID CO |
| 8104739 | AMERICAN CYANAMID CO |
| 8104740 | AMERICAN CYANAMID CO |
| 8104741 | AMERICAN CYANAMID CO |
| 8104742 | AMERICAN CYANAMID CO |
| 8104775 | AMERICAN CYANAMID CO |
| 8104792 | PANHANDLE EASTERN |

BILLING CODE 6450-85-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before December 11, 1980.

Please reference the FERC Control Number (JD No) in all correspondence related to these determinations.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 80-36797 Filed 11-25-80; 8:45 am]

BILLING CODE 6450-85-M

[Volume 321]

## Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

November 19, 1980.

| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| CALIFORNIA DEPARTMENT OF CONSERVATION | | | | | | | | |
| -BUTTES RESOURCES CO | | | | | RECEIVED: 11/07/80 JA: CA | | | |
| 8104894 | AO-6-0014 | 0401120136 | 102 | | POUNDSTONE 19-1 | GRIMES GAS FIELD | 182.5 | PACIFIC GAS & ELECTR |
| -COASTAL OIL & GAS CORP | | | | | RECEIVED: 11/07/80 JA: CA | | | |
| 8104893 | AO-6-0018 | 0401120126 | 102 | | ARBUCKLE ROAD #1 | GRIMES FIELD | 1181.0 | PACIFIC GAS & ELECTR |
| -MCFARLAND ENERGY INC | | | | | RECEIVED: 11/07/80 JA: CA | | | |
| 8104892 | AO-6-0019 | 0406720137 | 102 | | POPPY RIDGE #1 | POPPY RIDGE FIELD | 200.0 | |
| 8104896 | AO-6-0020 | 0406720149 | 102 | | POPPY RIDGE #2 | POPPY RIDGE FIELD | 100.0 | |
| -MCOR OIL & GAS CORP | | | | | RECEIVED: 11/07/80 JA: CA | | | |
| 8104897 | AO-6-0016 | 0409520378 | 102 | | HASTINGS RANCH #1-22 | LINDSEY SLOUGH PROSPECT | 767.0 | PACIFIC GAS & ELECTR |
| 8104898 | AO-6-0015 | 0409520390 | 102 | | MCCULLOCH NO 1-21 HASTINGS RANCH | LINDSEY SLOUGH PROSPECT | 2737.0 | PACIFIC GAS & ELECTR |
| 8104895 | AO-6-0017 | 0409520395 | 102 | | MCCULLOCH NO 2-21 HASTINGS RANCH | LINDSEY SLOUGH PROSPECT | 2190.0 | PACIFIC GAS AND ELEC |
| NEW MEXICO DEPARTMENT OF ENERGY & MINERALS | | | | | | | | |
| -ADAMS EXPLORATION CO | | | | | RECEIVED: 11/06/80 JA: NM | | | |
| 8104862 | | 3001523036 | 103 | | ANN COM #1 | MALAGA MORROW (GAS) | 150.0 | EL PASO NATURAL GAS |
| -AMOCO PRODUCTION CO | | | | | RECEIVED: 11/06/80 JA: NM | | | |
| *8104873 | | 3002526713 | 103 | | GRIZZELL S #4 | UND DRINKARD | 60.0 | GETTY OIL CO |
| *8104883 | | 3002526338 | 103 | | MCQUATTERS #4 | HARDY DRINKARD | 35.7 | GETTY OIL CO |
| *8104884 | | 3002526531 | 103 | | MCQUATTERS #5 | HARDY BLINEBRY | 20.1 | GETTY OIL CO |
| *8104885 | | 3002526531 | 103 | | MCQUATTERS #5 | HARDY DRINKARD | 3.6 | GETTY OIL CO |
| *8104874 | | 3002526109 | 103 | | STATE C TRACT 11 #9 | HARDY DRINKARD | 12.8 | GETTY OIL CO |
| 8104882 | | 3001523202 | 103 | | STATE IC COM #1 | UND MORROW | 622.0 | EL PASO NATURAL GAS |
| 8104881 | | 3001523349 | 103 | | STATE IL COM #1 | WILDCAT MORROW | 207.0 | EL PASO NATURAL GAS |
| 8104875 | | 3001523198 | 103 | | STATE IE COM #1 | UND MORROW | 950.0 | EL PASO NATURAL GAS |
| -ARCO OIL AND GAS COMPANY | | | | | RECEIVED: 11/06/80 JA: NM | | | |
| 8104876 | | 3002526882 | 103 | | FREDERICK H CURRY WN NO 4 | LANGLIE MATTIX 7 RIVERS | 55.0 | EL PASO NATURAL GAS |
| 8104878 | | 3002526527 | 103 | | W F HANAGAN NO 5 | JALMAT | 3.0 | EL PASO NATURAL GAS |
| -DEPCO INC | | | | | RECEIVED: 11/06/80 JA: NM | | | |
| 8104887 | | 3000500000 | 103 | | MESA STATE COM #1 | CROW FLATS | 21.9 | |
| -EL PASO NATURAL GAS COMPANY | | | | | RECEIVED: 11/06/80 JA: NM | | | |
| 8104869 | | 3003922065 | 103 | | SAN JUAN 29-7 UNIT #31A | BASIN DAKOTA | 100.0 | EL PASO NATURAL GAS |
| -ENSERCH EXPLORATION INC | | | | | RECEIVED: 11/06/80 JA: NM | | | |
| 8104871 | | 3000560675 | 103 | | J G O'BRIEN NO 1 | WILDCAT | 216.0 | |
| -GETTY OIL COMPANY | | | | | RECEIVED: 11/06/80 JA: NM | | | |
| 8104866 | | 3002512432 | 108 | | HOBBS A WELL NO 6 | JUSTIS BLINEBRY AND JUST | 8.0 | EL PASO NATURAL GAS |
| 8104889 | | 3004100000 | 108 | | HOBBS T NO 12 | CHAVEROO SAN ANDRES | 1.0 | CITIES SERVICE CO |
| 8104865 | | 3002509363 | 108 | | J H WATKINS WELL NO 1 | LANGLIE-MATTIX | 6.7 | PHILLIPS PETROLEUM C |
| 8104891 | | 3002500000 | 108 | | LOVINGTON SAN ANDRES NO 10 | LOVINGTON SAN ANDRES | 1.0 | PHILLIPS PETROLEUM |
| 8104868 | | 3002510676 | 108 | | SKELLY PENROSE B UNIT WELL NO 57 | LANGLIE-MATTIX | 1.6 | GETTY OIL CO |

| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| 8104867 | | 3002510541 | 108 | | SKELLY PENROSE B UNIT WELL NO 9 | LANGLIE-MATTIX | 2,6 | GETTY OIL CO |
| 8104890 | | 3002500000 | 108 | | STATE P UNIT WELL NO 6 | LOVINGTON PADDOCK | 3,0 | PHILLIPS PETROLEUM C |
| -HIXON DEVELOPMENT COMPANY | | | | | RECEIVED: 11/06/80 JA: NM | | | |
| 8104863 | | 3004524323 | 103 | | SAM JACKSON STATE COM WELL NO 1 | WAW-FRUITLAND-PC | 22,7 | EL PASO NATURAL GAS |
| 8104886 | | 3004524224 | 103 | | VIRGINIA STATE WELL NO 3 | WAW-FRUITLAND-PC | 2,6 | EL PASO NATURAL GAS |
| -MADDOX ENERGY CORPORATION | | | | | RECEIVED: 11/06/80 JA: NM | | | |
| 8104870 | | 3001500000 | 103 | | SPENCER COM | ATOKA PENN | 73,0 | TRANSWESTERN PIPELIN |
| -MARALO INC | | | | | RECEIVED: 11/06/80 JA: NM | | | |
| 8104877 | | 3002500000 | 103 | | MARALO 16 STATE #10 | SIOUX TANSILL YATES | 11,0 | EL PASO NATURAL GAS |
| -NORTHWEST PIPELINE CORPORATION | | | | | RECEIVED: 11/03/80 JA: NM | | | |
| *8104861 | | 3004523539 | 103 | | MADDOX #1A PC | BLANCO PICTURED CLIFF | 22,0 | EL PASO NATURAL GAS |
| -NORTHWEST PIPELINE CORPORATION | | | | | RECEIVED: 11/06/80 JA: NM | | | |
| *8104864 | | 3004523539 | 103 | | MADDOX #1A MV | BLANCO MESAVERDE | 190,0 | EL PASO NATURAL GAS |
| -PENNZOIL COMPANY | | | | | RECEIVED: 11/06/80 JA: NM | | | |
| 8104888 | | 3001500000 | 108 | | MOORE COM #1 CA SW 810 | SOUTH CARLSBAD | 14,0 | EL PASO NATURAL GAS |
| -PHILLIPS PETROLEUM COMPANY | | | | | RECEIVED: 11/06/80 JA: NM | | | |
| 8104872 | | 3002526758 | 103 | | LEAMEX NO 25 | UNDESIGNATED LEAMEX (WOL | 55,0 | EL PASO NATURAL GAS |
| -WESTERN RESERVES OIL COMPANY | | | | | RECEIVED: 11/03/80 JA: NM | | | |
| 8104860 | | 3000500000 | 103 | | WESTERN HOLLY 32 STATE NO 2 | TOM-TOM (SAN ANDRES) | 10,0 | TRANSWESTERN PIPELIN |
| -YATES PETROLEUM CORPORATION | | | | | RECEIVED: 11/06/80 JA: NM | | | |
| 8104879 | | 3001523409 | 103 | | NORTH MILLMAN UNIT NO 2 | SOUTH MILLMAN MORROW | 0,0 | TRANSWESTERN PIPELIN |
| 8104880 | | 3001523353 | 103 | | RIO PENASCO KD COM NO 2 | BOYD MORROW | 0,0 | TRANSWESTERN PIPELIN |

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OHIO DEPARTMENT OF NATURAL RESOURCES

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| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| -APPALACHIAN PETROLEUM CORP | | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104945 | | 3416725247 | 103 | | RODGERS ET AL #1 | ADAMS | 3,5 | COLUMBIA GAS TRANSMI |
| -BELDEN & BLAKE & CO 74 | | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104956 | | 3415123330 | 103 | | M & J PRINCEHORN 1-960 | TUSCARAWAS | 36,5 | |
| -BELDEN & BLAKE CO L P NO 75 | | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104957 | | 3415123318 | 103 | | J & D GLICK COMM #1-992 | TUSCARAWAS | 36,5 | |
| 8104958 | | 3415123300 | 103 | | W & M KAYLOR COMM #2-993 | SUGARCREEK | 36,5 | |
| -BERRESFORD ENTERPRISES INC | | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104946 | | 3416725207 | 103 | | HAINES #1 | WATERFORD | 6,0 | |
| 8104949 | | 3416725060 | 103 | | MILDRED EPLER #1 | ADAMS | 6,0 | |
| 8104948 | | 3416725154 | 103 | | MILDRED EPLER #2 | ADAMS | 6,0 | |
| 8104947 | | 3416725205 | 103 | | PAUL DIETZ #1 | WATERFORD | 6,0 | |
| 8104953 | | 3416723810 | 103 | | WILLIAM BONAR #1 | DUNHAM | 3,0 | |
| -BROILCO INC | | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104925 | | 3410322219 | 103 | | PEEBLES #2 | HINCKLEY | 20,0 | |
| -BUCKEYE CRUDE EXPLORATION INC | | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104943 | | 3416725725 | 103 | | OLLIE WAGNER #3 | ADAMS | 21,9 | |
| 8104942 | | 3416725730 | 103 | | OLLIE WAGNER #4 | ADAMS | 20,1 | |
| -BUCKHORN OIL COMPANY INC | | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104913 | | 3407522616 | 103 | | TAYLOR #2 | KILLBUCK | 20,0 | COLUMBIA GAS TRANSMI |
| -CHESTNUT MEADOWS DEVELOPMENT CO | | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104924 | | 3410322218 | 103 | | CHESTNUT MEADOWS #3 | WADSWORTH | 2,0 | EAST OHIO GAS CO |
| -EDLICO INC | | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104920 | | 3408923833 | 103 | | YOUNG #1 | EDEN | 20,0 | COLUMBIA GAS TRANSMI |
| -FORAKER PRODUCING COMPANY INC | | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104929 | | 3411925335 | 103 | | C MOORE #4 | NEWTON | 8,0 | |
| -GASEARCH INC | | | | | RECEIVED: 11/07/80 JA: OH | | | |

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| JD NO | JA DKT | API NO | SEC | D WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|
| 8104955 | | 3415521446 | 103 | HAGOOD UNIT #2 | VIENNA | 20,0 | |
| •HILLTOP DEVELOPMENT CORP | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104922 | | 3408923877 | 103 | #2 LICKING VALLEY SCHOOL BOARD | MADISON | 14,0 | NATIONAL GAS & OIL C |
| •INLAND DRILLING CO INC | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104902 | | 3400721458 | 103 | BALL #1 | CHERRY VALLEY | 0,5 | |
| 8104941 | | 3413321980 | 103 | CLAPP-STROUP UNIT #1 | NELSON | 1,1 | |
| 8104940 | | 3413321979 | 103 | CLAPP-ZUVAR #1 | NELSON | 1,1 | |
| 8104965 | | 3413322159 | 103 | DAVIES #1 | NELSON | 1,1 | |
| 8104899 | | 3400721032 | 103 | HARGAS #1 | NEW LYME | 0,5 | |
| 8104966 | | 3413322080 | 103 | KLINE UNIT #1 | FREEDOM | 1,1 | |
| 8104939 | | 3413321896 | 103 | LEE #3 | FREEDOM | 0,1 | |
| 8104961 | | 3413322354 | 103 | LENTZ #1 | FREEDOM | 107,4 | |
| 8104964 | | 3413322146 | 103 | MCCOY #1 | NELSON | 1,1 | |
| 8104967 | | 3413322060 | 103 | VINE-SEMAN #2 | NELSON | 1,1 | |
| •JIMMY HAMILTON GAS & OIL | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104950 | | 3416705044 | 103 | ELMER HEARN WELL NO 144 | LUDLOW | 15,0 | COLUMBIA GAS TRANSMI |
| 8104952 | | 3416704885 | 103 | HAZEL EDWARDS WELL NO 138 | LUDLOW | 22,5 | COLUMBIA GAS TRANSMI |
| 8104926 | | 3411121910 | 103 | MARY CLINE WELL NO 140 | WASHINGTON | 15,0 | COLUMBIA GAS TRANSMI |
| 8104951 | | 3416704886 | 103 | WILBUR RINARD WELL NO 136 | LUDLOW | 45,0 | COLUMBIA GAS TRANSMI |
| •JOHN C MASON | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104915 | | 3407522703 | 103 | ANDY & MARY ERB #4 | MECHANIC | 30,0 | COLUMBIA GAS TRANS C |
| 8104914 | | 3407522702 | 103 | ANDY & MARY ERB #5 | MECHANIC | 30,0 | COLUMBIA GAS TRANS C |
| •L & M PETROLEUM | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104944 | | 3416725659 | 103 | ALBERT PEPPEL #1 | LIBERTY | 12,8 | COLUMBIA GAS TRANSMI |
| •MERIT OIL & GAS CO | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104919 | | 3408322650 | 103 | KENNETH & MARJORIE SWENDAL #4 | BROWN | 6,0 | |
| 8104918 | | 3408322649 | 103 | KENNETH E & MARJORIE SWENDAL #5 | BROWN | 6,0 | |
| 8104916 | | 3408322647 | 103 | KENNETH SWENDAL #1 | BROWN | 4,0 | |
| 8104917 | | 3408322648 | 103 | STANTON & HARRIETT SAPP #1 | BROWN | 3,6 | |
| •NEWPORT OIL & GAS CO LTD | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104923 | | 3410322028 | 103 | MOURAD #1 | GRANGER | 25,0 | COLUMBIA GAS TRANSMI |
| •ONEAL PRODUCTIONS INC | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104927 | | 3411521903 | 103 | ADKINS #1 | WINDSOR | 82,0 | COLUMBIA GAS TRANSMI |
| •PARTNERS OIL COMPANY | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104911 | | 3405922740 | 103 | BROWN #1-80A | WESTLAND | 20,0 | EAST OHIO GAS CO |
| 8104904 | | 3405921831 | 103 | ENOCHS #1-80A | KNOX | 20,0 | COLUMBIA GAS TRANSMI |
| 8104921 | | 3408923862 | 103 | MCKEE #2-80A | BOWLING GREEN | 20,0 | COLUMBIA GAS TRANSMI |
| 8104938 | | 3412724783 | 103 | WINEGARDNER #2-80A | THORN | 20,0 | NATIONAL GAS & OIL C |
| •PETROLEUM ENERGY DEVELOPMENT CORP | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104903 | | 3403124064 | 103 | ALBERT R HAINES #2 | TIVERTON | 30,0 | |
| 8104930 | | 3411925380 | 103 | JOHN REVENNUAGH #1 | RICH HILL | 30,0 | |
| •POI ENERGY INC | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104900 | | 3400721401 | 103 | ROTH JEFFERSON #1 | COLEBROOK | 30,0 | EAST OHIO GAS CO |
| 8104901 | | 3400721402 | 103 | ROTH JEFFERSON #2 | COLEBROOK | 30,0 | EAST OHIO GAS CO |
| •RAY C CHUTE | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104912 | | 3407322312 | 103 | HAROLD & EDNA KNAPP #1 | GREEN | 0,3 | COLUMBIA GAS TRANSMI |
| •RICHARD C POLING | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104931 | | 3411925394 | 103 | KIRKBRIDE #1 | NEWTON | 5,0 | |
| •TEMPLE OIL & GAS CO | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104928 | | 3411522088 | 103 | WILLIAM GOUDE #3 | YORK | 10,0 | |
| •THE CARTER JONES LUMBER CO | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104937 | | 3412122394 | 103 | D PARRISH UNIT #3 | OLIVE TOWNSHIP | 15,0 | |
| •TOWNER PETROLEUM CO | | | | RECEIVED: 11/07/80 JA: OH | | | |

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| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| 8104907 | | 3405922074 | 108 | | APPERSON G-13 | | 1,5 | COLUMBIA GAS |
| 8104936 | | 3412122077 | 108 | | C HILL PPG-61 | | 3,0 | JONES & LAUGHLIN STE |
| 8104910 | | 3405922495 | 108 | | DEAN #1 PPG-42 | | 11,0 | JONES & LAUGHLIN STE |
| 8104933 | | 3412121757 | 108 | | J CROCK #1 G-6 | | 6,0 | EAST OHIO GAS CO |
| 8104909 | | 3405922226 | 108 | | JOHNSON W-35 | | 4,0 | WIERTON STEEL CO |
| 8104935 | | 3412121811 | 108 | | L BATES #1 OM-4 | | 0,4 | EAST OHIO GAS CO |
| 8104934 | | 3412121801 | 108 | | PARRY #1 B-2 | | 5,0 | EAST OHIO GAS CO |
| 8104906 | | 3405922070 | 108 | | SECREST G-12 | | 8,7 | COLUMBIA GAS |
| 8104905 | | 3405922032 | 108 | | SMITH PPG-6 | | 2,0 | PPG INDUSTRIES INC |
| 8104932 | | 3412121603 | 108 | | W PRYOR #1 | | 4,0 | EAST OHIO GAS CO |
| 8104908 | | 3405922076 | 108 | | YONTZ G-18 | | 6,5 | COLUMBIA GAS |
| -VIKING RESOURCES CORP | | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104960 | | 3415123283 | 103 | | GRIMES/ZELLER UNIT #1 | WASHINGTON | 30,0 | |
| 8104959 | | 3415123284 | 103 | | GRIMES/ZELLER UNIT #2 | WASHINGTON | 30,0 | |
| 8104963 | | 3413322336 | 103 | | SULLIVAN UNIT #1 | DEERFIELD | 30,0 | |
| 8104962 | | 3413322337 | 103 | | SULLIVAN UNIT #2 | DEERFIELD | 30,0 | |
| -WILLIAM N TIPKA | | | | | RECEIVED: 11/07/80 JA: OH | | | |
| 8104954 | | 3415723531 | 103 | | P DEBOER #1 WELL | WASHINGTON | 20,0 | EAST OHIO GAS CO |
| OKLAHOMA CORPORATION COMMISSION | | | | | | | | |
| -ANDOVER OIL COMPANY | | | | | RECEIVED: 11/06/80 JA: OK | | | |
| 8104840 | 06082 | 3501721113 | 103 | | JENSEN #2-1 | WILDCAT | 185,0 | DELHI GAS PIPELINE C |
| -APACHE CORPORATION | | | | | RECEIVED: 11/06/80 JA: OK | | | |
| 8104841 | 06082 | 3512920444 | 102 | | MERRICK #4-31 | | 730,0 | MICHIGAN-WISCONSIN P |
| -BEARD OIL COMPANY | | | | | RECEIVED: 11/06/80 JA: OK | | | |
| 8104858 | 06078 | 3511921054 | 103 | | BENTLEY #1 | SOUTHEAST PARADISE | 75,0 | CITIES SERVICE GAS C |
| -BOBBY J DARNELL | | | | | RECEIVED: 11/06/80 JA: OK | | | |
| 8104859 | 06079 | 3508321037 | 103 | | DUNSMORE #3 | SOUTH MULHALL | 13,0 | EASON OIL CO |
| -CHASE EXPLORATION CORP | | | | | RECEIVED: 11/06/80 JA: OK | | | |
| *8104842 | 06063 | 3507121281 | 103 | | BERRIE 2-8 | | 11,2 | CITIES SERVICE GAS C |
| *8104843 | 06062 | 3507121271 | 103 | | BRANDON 1-3 | | 32,8 | CITIES SERVICE GAS C |
| *8104844 | 06061 | 3507121895 | 103 | | BRAZELTON 1-29 | | 54,0 | CITIES SERVICE GAS C |
| *8104845 | 06060 | 3507121167 | 103 | | HAHN #1-14 | | 12,2 | CITIES SERVICE GAS C |
| -DALCO PETROLEUM INC | | | | | RECEIVED: 11/06/80 JA: OK | | | |
| 8104846 | 06044 | 3507322275 | 103 | | HOFFMAN #1 | SOONER TREND | 91,2 | DALCO PETROLEUM US L |
| -KAISER-FRANCIS OIL COMPANY | | | | | RECEIVED: 11/06/80 JA: OK | | | |
| 8104857 | 06074 | 3515120199 | 108 | | GASKILL #1 | TEAGARDEN | 4,0 | PANHANDLE EASTERN PI |
| -KERR-MCGEE CORPORATION | | | | | RECEIVED: 11/06/80 JA: OK | | | |
| 8104838 | 06168 | 3512120649 | 102 | | LEE SCOTT 1-31 | | 0,0 | |
| -L & T OIL & GAS INC | | | | | RECEIVED: 11/06/80 JA: OK | | | |
| 8104856 | 05694 | 3510320894 | 103 | | CAMPBELL 34 NO 1 | ORLAND | 365,0 | AMINOIL USA INC |
| 8104855 | 05693 | 3507322258 | 103 | | FOX 31 NO 1 | SOONER TREND | 36,5 | PHILLIPS PETROLEUM |
| 8104847 | 05696 | 3507322241 | 103 | | FRANK 29 NO 1 | SOONER TREND | 36,5 | PHILLIPS PETROLEUM C |
| 8104853 | 05691 | 3507322241 | 103 | | HILL 28 NO 1 | SOONER TREND | 36,5 | PHILLIPS PETROLEUM |
| 8104852 | 05690 | 3507322202 | 103 | | KING 14 NO 1 | SOONER TREND | 18,5 | PHILLIPS PETROLEUM |
| 8104848 | 05695 | 3507322415 | 103 | | VILHAUER 4 NO 1 | SOONER TREND | 182,5 | CITIES SERVICE GAS C |
| 8104854 | 05692 | 3507322240 | 103 | | YOUNG 21 | SOONER TREND | 73,0 | PHILLIPS PETROLEUM |
| -L G WILLIAMS OIL COMPANY INC | | | | | RECEIVED: 11/06/80 JA: OK | | | |
| *8104849 | 08988 | 3512920471 | 107 | | BESSIRE #29-1 | W REYDON | 0,0 | MICHIGAN WISCON PIPE |
| -NOVA ENERGY CORPORATION | | | | | RECEIVED: 11/06/80 JA: OK | | | |
| 8104839 | 06164 | 3505120869 | 102 | | S W TRUST #1-22 | S E MINCO | 0,0 | DELHI GAS PIPELINE C |
| -TEEL PRODUCTION CO | | | | | RECEIVED: 11/06/80 JA: OK | | | |

BILLING CODE 6450-85-C

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| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| 8104850 | 01355 | 3512100000 | 108 | | FEARS #4 | WIRTH | 2.8 | PUBLIC SERVICE CO |
| 8104851 | 01356 | 3512100000 | 108 | | FEARS #5 | WIRTH | 3.6 | PUBLIC SERVICE CO |

OTHER PURCHASERS VOLUME NO 1321

| | |
|---|---|
| 8104842 | CHASE GATHERING SYSTEMS, INC. |
| 8104843 | CHASE GATHERING SYSTEMS INC |
| 8104844 | CHASE GATHERING SYSTEMS INC |
| 8104845 | CHASE GATHERING SYSTEMS INC |
| 8104849 | EL PASO NATURAL GAS COMPANY |
| 8104861 | NORTHWEST P L CORP |
| 8104864 | NORTHWEST P L CORP |
| 8104873 | EL PASO NATURAL GAS CO |
| 8104874 | EL PASO NATURAL GAS CO |
| 8104883 | EL PASO NATURAL GAS CO |
| 8104884 | EL PASO NATURAL GAS CO |
| 8104885 | EL PASO NATURAL GAS CO |

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before December 11, 1980.

Please reference the FERC Control Number (JD No) in all correspondence related to those determinations.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 80-36798 Filed 11-25-80; 8:45 am]

**BILLING CODE 6450-85-M**

[Volume 322]

## Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

November 20, 1980.

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PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL RESOURCES

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| | | | | | | | |
|---|---|---|---|---|---|---|---|
| -ADOBE OIL & GAS CORPORATION | | | | RECEIVED: 11/10/80 JA: PA | | | |
| 8104986 | 5831 | 3706521992 | 103 | ALVIN E NOLPH #1 | CORSICA | 29.0 | |
| 8104992 | 5837 | 3706522005 | 103 | FORD A COUPER #1 | WARSAW | 21.0 | |
| 8104985 | 5830 | 3712921580 | 103 | FRANK R RANDOLPH #1 | SALTSBURG | 36.0 | |
| 8104970 | 3879 | 3712921440 | 103 | FREDERICK S TRUXAL #1 | UNITY | 36.0 | |
| 8104991 | 5836 | 3706521991 | 103 | HARRY J MITCHELL #1 | REYNOLDSVILLE | 36.0 | |
| 8104984 | 5829 | 3706522013 | 103 | HERMAN E FROST #1 | MCCALMONT | 36.0 | |
| 8104988 | 5833 | 3712921582 | 103 | JAMES R CUNNINGHAM #1 | SALTSBURG | 36.0 | |
| 8104989 | 5834 | 3712921453 | 103 | RONALD S YUVAN #1 | IRWIN | 36.0 | |
| 8104987 | 5832 | 3706324873 | 103 | VERA WALACH #1 | MCINTYRE | 36.0 | |
| 8104990 | 5835 | 3706521826 | 103 | WARREN R REYNOLDS #1 | REYNOLDSVILLE | 36.0 | |
| -BOYD & SHRIVER | | | | RECEIVED: 11/10/80 JA: PA | | | |
| 8105002 | 5850 | 3706500000 | 108 | 150-REITZ | ROSE | 1.0 | NATIONAL FUEL GAS SU |
| 8105001 | 5849 | 3706500000 | 108 | 153-REITZ | ROSE | 1.0 | NATIONAL FUEL GAS SU |
| 8105000 | 5848 | 3706500000 | 108 | 156-REITZ | ROSE | 1.2 | NATIONAL FUEL GAS SU |
| 8104999 | 5847 | 3706500000 | 108 | 162-REITZ | ROSE | 1.2 | NATIONAL FUEL GAS SU |
| 8104998 | 5846 | 3706500000 | 108 | 165-JOINER | ROSE | 1.0 | NATIONAL FUEL GAS SU |
| -CONSOLIDATED GAS SUPPLY CORPORATION | | | | RECEIVED: 11/10/80 JA: PA | | | |
| 8104997 | 5845 | 3706322012 | 108 | LOY R VITE WN-1263 | BIG RUN-ROCHESTER MILLS | 5.0 | GENERAL SYSTEM PURCH |
| -ENERGY PRODUCTION CO | | | | RECEIVED: 11/10/80 JA: PA | | | |
| 8104995 | 5840 | 3706325626 | 103 | EARL PIFER NO 2 | PURCHASE LINE | 86.4 | COLUMBIA GAS TRANSMI |
| -FELMONT OIL CORPORATION | | | | RECEIVED: 11/10/80 JA: PA | | | |
| 8104976 | 5817 | 3706325263 | 103 | DEE F BENNETT #1 F-257 | SOUTH PINE | 146.0 | |
| 8104977 | 5818 | 3706325210 | 103 | I R SMITH #2 F-255 | SOUTH PINE | 0.0 | |
| 8104975 | 5816 | 3706325264 | 103 | RAYMOND OFMAN #1 F-259 | SOUTH PINE | 0.0 | |
| 8104972 | 5813 | 3706325402 | 103 | RONALD M LITTLE #1 F-265 | SOUTH PINE | 118.0 | |
| 8104971 | 4183 | 3706324715 | 103 | RUSSELL E FOX #1 F-239 | SOUTH PINE | 0.0 | COLUMBIA GAS TRANSMI |
| 8104974 | 5815 | 3706325265 | 103 | WILLIAM R BENNETT #1 F-258 | SOUTH PINE | 141.0 | |
| 8104973 | 5814 | 3706325441 | 103 | WILLIS R GRIFFITH #2 F-266 | SOUTH PINE | 365.0 | |
| -FRED J RUSSELL DBA LOUDEN PROPERTIE | | | | RECEIVED: 11/10/80 JA: PA | | | |
| 8104996 | 5842 | 3712921638 | 103 | F O KEISTER 997-1 | | 30.0 | COLUMBIA GAS OF PENN |
| -MERIDIAN OIL & GAS ENT INC | | | | RECEIVED: 11/10/80 JA: PA | | | |
| 8104980 | 5825 | 3703920403 | 108 | C J LORAINE WELL #1 | | 5.0 | NATL FUEL GAS DISTRI |
| 8104981 | 5826 | 3703920427 | 108 | C J LORAINE WELL #2 | | 2.5 | NATL FUEL GAS DISTRI |
| 8104982 | 5827 | 3703920424 | 108 | EARL R NICOLLS WELL #1 | | 3.5 | NATL FUEL GAS DISTRI |
| 8104979 | 5824 | 3703920390 | 108 | F SCHWELLER WELL #1 | | 2.0 | NATL FUEL GAS DISTRI |
| 8104993 | 5838 | 3706342792 | 108 | J A ARCHIBALD WELL #1 | | 1.8 | T W PHILLIPS GAS & O |
| 8104994 | 5839 | 3706342812 | 108 | J A ARCHIBALD WELL #2 | | 11.0 | T W PHILLIPS GAS & O |
| 8104983 | 5828 | 3703920423 | 108 | M H HAEMER WELL #4 | | 2.0 | NATL FUEL GAS DISTRI |
| 8104969 | 3553 | 3703940531 | 108 | MICHAEL KOSS WELL #1 | | 4.0 | NATL FUEL GAS DISTRI |
| 8104978 | 5823 | 3703920389 | 108 | R A MCCLINTON WELL #1 | | 2.0 | NATL FUEL GAS DISTRI |

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| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| -UGI DEVELOPMENT CO | | | | | RECEIVED: 11/10/80 JA: PA | | | |
| 8104968 | 8842 | 3705322214 | 108 | | 318B-17 | DEADMAN CORNERS | 1.0 | UGI CORP |
| ******************************** | | | | | | | | |
| TEXAS RAILROAD COMMISSION | | | | | | | | |
| ******************************** | | | | | | | | |
| -AMARILLO OIL COMPANY | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105229 | 82945 | 4217900000 | 108 | | ZUEB #12 (#26633) | PANHANDLE EAST | 14.7 | PIONEER NATURAL GAS |
| -AMERADA HESS CORPORATION | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105083 | 79570 | 4216500223 | 108 | | ADAIR SAN ANDRES UNIT #2307 | ADAIR | 0.3 | PIONEER NATURAL GAS |
| 8105173 | 80923 | 4216500000 | 108 | | ADAIR SAN ANDRES UNIT #2308 | ADAIR | 0.1 | PIONEER NATURAL GAS |
| 8105172 | 80922 | 4244500000 | 108 | | ADAIR WOLFCAMP UNIT #1301 | ADAIR | 2.6 | PIONEER NATURAL GAS |
| 8105201 | 81615 | 4232900000 | 108 | | TEX-HARVEY SPRABERRY UNIT #412 | SPRABERRY TREND | 0.1 | |
| 8105200 | 81613 | 4217300000 | 108 | | TEX-HARVEY SPRABERRY UNIT #991 | SPRABERRY TREND | 0.0 | |
| -AMERICAN PETROFINA COMPANY OF TEXAS | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105278 | 83587 | 4205730978 | 103 | | D W WEEKS ET AL NO 1 | EAST SHERIFF (8500) | 548.0 | UNITED TEXAS TRANSMI |
| -AMOCO PRODUCTION CO | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105238 | 83132 | 4219500000 | 108 | | ARTHUR BERNSTEIN #3 | SHAPLEY | 3.0 | PHILLIPS PETROLEUM C |
| 8105030 | 75658 | 4236530890 | 103 | | CARTHAGE GAS UNIT 15 WELL NO 5 | CARTHAGE (TRAVIS PEAK) | 219.0 | TENNESSEE GAS PIPELI |
| *8105080 | 79337 | 4203931366 | 103 | | FANNIE DRAKE #27 | HASTINGS WEST | 37.0 | AMOCO GAS CO |
| 8105022 | 08035 | 4235531199 | 103 | | G H MCCANN NO 34 | LUBY (G) | 24.0 | VALLEY GAS TRANSMISS |
| 8105256 | 83472 | 4213533278 | 103 | | MIDLAND FARMS /AV/ #5 | FASKEN/PENN/ | 35.0 | PIONEER NATURAL GAS |
| 8105021 | 07972 | 4221530801 | 103 | | SOUTH WESLACO GAS UNIT NO 20 | WESLACO SOUTH (8400) | 10.0 | 4-T RANCHES LTD |
| -ANDERSON PETROLEUM INC | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105285 | 83614 | 4210532368 | 103 | | FRANK WHITE A #1-85 | OZONA (CANYON SAND) | 20.0 | ANDERSON PIPELINE CO |
| -ARCO OIL AND GAS COMPANY | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105304 | 83917 | 4234100000 | 108 | | W L RUSSELL #1 | WEST PANHANDLE | 18.0 | PANHANDLE EASTERN PI |
| *8105190 | 81450 | 4250131758 | 103 | | WILLARD UNIT WELL #2-8 | WASSON | 23.4 | SHELL OIL COMPANY |
| *8105192 | 81454 | 4250131769 | 103 | | WILLARD UNIT WELL #5-BX | WASSON | 30.0 | SHELL OIL COMPANY |
| *8105191 | 81452 | 4250131756 | 103 | | WILLARD UNIT WELL #7-B | WASSON | 35.4 | SHELL OIL COMPANY |
| -ARKLA EXPLORATION COMPANY | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105182 | 81224 | 4236530806 | 102 | | FENDER #1 | CARTHAGE (COTTON VALLEY) | 365.0 | ARKANSAS LOUISIANA G |
| 8105194 | 81479 | 4236531007 | 102 | | GRIFFITH #1 | CARTHAGE (COTTON VALLEY) | 180.0 | ARKANSAS LOUISIANA G |
| 8105186 | 81229 | 4236530977 | 102 | | JOE WEDGEWORTH #1 | CARTHAGE (COTTON VALLEY) | 130.0 | ARKANSAS LOUISIANA G |
| 8105181 | 81223 | 4236530932 | 102 | | M L DAVIS #1 | CARTHAGE (COTTON VALLEY) | 365.0 | ARKANSAS LOUISIANA G |
| 8105183 | 81225 | 4236530958 | 102 | | M MCJIMSEY #1 | CARTHAGE (COTTON VALLEY) | 250.0 | ARKANSAS LOUISIANA G |
| 8105184 | 81127 | 4236530883 | 102 | | PAGE #1 | CARTHAGE (COTTON VALLEY) | 275.0 | ARKANSAS LOUISIANA G |
| 8105185 | 81228 | 4236530984 | 102 | | SOAPE #1 | CARTHAGE (COTTON VALLEY) | 450.0 | ARKANSAS LOUISIANA G |
| 8105187 | 81230 | 4236530807 | 102 | | SOUTHLAND PAPER #1 | CARTHAGE (COTTON VALLEY) | 365.0 | ARKANSAS LOUISIANA G |
| -BARBER OIL EXPLORATION INC | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105212 | 82320 | 4235700000 | 108 | | BANNER GREGG NO 1 | SHARE S E (MORROW LOWER) | 21.0 | TRANSWESTERN PIPELIN |
| 8105213 | 82321 | 4235700000 | 108 | | BEATRICE CONNER NO 1 WELL | SHARE (MORROW UPPER) | 16.0 | TRANSWESTERN PIPELIN |
| -BILL FORNEY INC | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105220 | 82714 | 4229732074 | 102 | | NO 1 GUS HOUDMANN | CHARLINE (FORNEY 7) | 700.0 | TRANSCONTINENTAL GAS |
| 8105220 | 82714 | 4229732074 | 103 | | NO 1 GUS HOUDMANN | CHARLINE (FORNEY 7) | 700.0 | TRANSCONTINENTAL GAS |
| -BILL J GRAHAM | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105257 | 83482 | 4200300000 | 108 | | UNIVERSITY P #2 RRC #41971 | SHAFTER LAKE YATES | 12.0 | PIONEER NATURAL GAS |
| -BLAIR OIL COMPANY | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105039 | 76865 | 4206530699 | 103 | | GREG WELL #1 | PANHANDLE CARSON | 0.0 | PANHANDLE EASTERN PI |
| -CHAMPLIN PETROLEUM COMPANY | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105282 | 83610 | 4245130610 | 103 | | A H DUFF ESTATE NO 7 | DOVE CREEK (CANYON D) | 91.0 | NORTHERN NATURAL GAS |
| 8105249 | 83369 | 4243130850 | 103 | | R L COPE NO 1 | CONGER SW (PENN) | 60.0 | NORTHERN NATURAL GAS |
| -CHAPARROSA OIL CO | | | | | RECEIVED: 11/10/80 JA: TX | | | |

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| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| 8105024 | 11050 | 4250730914 | 102 | | B K JOHNSON #5 ID #74303 | EL BANO (SAN MIGUEL) | 153.1 | LOVACA GATHERING CO |
| 8105024 | 11050 | 4250730914 | 103 | | B K JOHNSON #5 ID #74303 | EL BANO (SAN MIGUEL) | 153.1 | LOVACA GATHERING CO |
| •CHAPMAN OIL CO | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105082 | 19448 | 4233900000 | 102 | | PLATTE NO 1 WELL | SPLENDORA (YEGUA) FIELD | 174.0 | |
| 8105082 | 19448 | 4233900000 | 103 | | PLATTE NO 1 WELL | SPLENDORA (YEGUA) FIELD | 174.0 | |
| •CHARLES L WALKER | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| *8105253 | 23439 | 4200331850 | 102 | | FISHER 3 #1 | BLOCK A-34 (SAN ANDRES) | 30.2 | PHILLIPS PETROLEUM C |
| *8105253 | 23439 | 4200331850 | 103 | | FISHER 3 #1 | BLOCK A-34 (SAN ANDRES) | 30.2 | PHILLIPS PETROLEUM C |
| •CLAYTON W WILLIAMS JR | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105026 | 13794 | 4247531850 | 103 | | BARBARA M WILLIAMS NO 1 | SCOTT (DELAWARE) | 185.0 | TRANSWESTERN PIPELIN |
| •CLOVER ENERGY CORP | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105240 | 23151 | 4228531202 | 102 | | KITTIE CLARK ESTATE #1 | CLARK (FRIO 3050) | 0.0 | TEXAS EASTERN TRANSM |
| 8105216 | 22387 | 4245730316 | 103 | | RICE INSTITUTE NO 2 (ID #85808) | HILLISTER EAST (WILCOX 8 | 180.0 | HOUSTON PIPE LINE CO |
| •COMINCO AMERICAN INC | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105163 | 20142 | 4235730796 | 103 | | CUDD #2 | MCGEE (MORROW UPPER) | 158.0 | PANHANDLE EASTERN PI |
| •CONOCO INC | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105166 | 20224 | 4217900000 | 108 | | CARRIE WRIGHT #7 | GRAY-WHEELER | 0.0 | PHILLIPS PETROLEUM C |
| 8105156 | 19786 | 4211500000 | 108 | | EAST ACKERLY DEAN UNIT #1 ID #60687 | ACKERLY | 7.4 | TEXACO |
| 8105046 | 18707 | 4210532443 | 108 | | EAST ACKERLY DEAN UNIT #47 | ACKERLY / DEAN SAND | 0.4 | TEXACO |
| 8105243 | 23293 | 4222700000 | 108 | | G O CHALK E #15 ID #02689 | HOWARD GLASSCOCK | 0.6 | PHILLIPS PETROLEUM C |
| 8105045 | 18536 | 4231700000 | 108 | | ODESSA DAVENPORT C #1 ID #16451 | ACKERLY / DEAN | 0.3 | TEXACO INC |
| 8105244 | 23294 | 4200330466 | 108 | | UNIVERSITY S #8 ID #01652 | FUHRMAN-MASCHO | 0.2 | PHILLIPS PETROLEUM C |
| •DAVID A SCHLACHTER OIL & GAS | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105003 | 03555 | 4230100000 | 108 | | WHEAT-RAMSEY TRACT A WELL #3 | WHEAT FIELD | 4.0 | PHILLIPS PETROLEUM |
| •DELHI OIL CORP & NRM | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105259 | 23484 | 4217130523 | 102 | | SOD RANCH NO 1 | PEACH CREEK (AUSTIN CHAL | 3650.0 | TIPPERARY CORP |
| 8105262 | 23487 | 4217100000 | 102 | | KELLEY UNIT NO 1 | PEACH CREEK (AUSTIN CHAL | 3650.0 | TIPPERARY CORP |
| 8105260 | 23485 | 4217130518 | 102 | | LANG NO 1 | PEACH CREEK (AUSTIN CHAL | 3650.0 | TIPPERARY CORP |
| 8105261 | 23486 | 4217130543 | 102 | | SIMPER UNIT NO 1 | PEACH CREEK (AUSTIN CHAL | 3650.0 | TIPPERARY CORP |
| 8105263 | 23488 | 4217130535 | 102 | | THORNTON UNIT NO 1 | PEACH CREEK (AUSTIN CHAL | 3650.0 | TIPPERARY CORP |
| •DELTA DRILLING CO | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105167 | 20367 | 4236500000 | 103 | | GUILL #2 ID #85694 | CARTHAGE (COTTON VALLEY) | 161.3 | UNITED GAS PIPE LINE |
| 8105202 | 21705 | 4236500000 | 102 | | J H TURNER #1 | CARTHAGE (COTTON VALLEY) | 73.0 | UNITED GAS PIPELINE |
| 8105202 | 21705 | 4236500000 | 103 | | J H TURNER #1 | CARTHAGE (COTTON VALLEY) | 73.0 | UNITED GAS PIPELINE |
| •EL PASO NATURAL GAS COMPANY | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105302 | 23816 | 4208726187 | 108 | | MC MURTRY A #1 | PANHANDLE EAST-BROWN DOL | 22.0 | EL PASO NATURAL GAS |
| •ELF AQUITAINE INC | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105252 | 23405 | 4247932151 | 102 | | CARR #1 | CARR (WILCOX) (PROPOSED) | 73.0 | UNITED TEXAS TRANSMI |
| 8105251 | 23404 | 4247932409 | 102 | | CARR #2 | CARR (LOBO)(PROPOSED) | 183.0 | UNITED TEXAS TRANSMI |
| •ENERGY DEVELOPMENT CORPORATION | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105210 | 22202 | 4205730914 | 102 | | POWDERHORN RANCH NO 2 | POWDERHORN SW (FRIO 1020 | 1100.0 | DOW CHEMICAL CO |
| 8105210 | 22202 | 4205730914 | 103 | | POWDERHORN RANCH NO 2 | POWDERHORN SW (FRIO 1020 | 1100.0 | DOW CHEMICAL CO |
| •ENSERCH EXPLORATION INC | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105169 | 20683 | 4249700000 | 108 | | CRAFT WATER BOARD UNIT 19 NO 1 | BOONSVILLE | 9.0 | LONE STAR GAS CO |
| 8105250 | 23382 | 4228531457 | 102 | | H A POHL NO 2 | WORD N | 562.0 | VALERO TRANSMISSION |
| •ESTATE OIL & GAS CORP | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105242 | 23175 | 4220330694 | 102 | | IVY WILLIAMS HEIRS GAS UNIT NO 2-T | LANSING NORTH (TRAVIS PE | 777.4 | TEJAS GAS CORP |
| •EXXETER PETROLEUM CORP | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105218 | 22508 | 4247900000 | 102 | | HAIZLIP #2 | LAREDO N (WILCOX) | 60.0 | TRANSCONTINENTAL GAS |
| •EXXON CORPORATION | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105179 | 21122 | 4226100500 | 102 | | C M ARMSTRONG 54-F (86011) | CANDELARIA (J-20) | 547.0 | NATL GAS P/L CO OF A |
| 8105284 | 23612 | 4216531707 | 103 | | EUBANKS CLFK UNIT #14 | ROBERTSON N (CLFK 7100) | 3.0 | PHILLIPS PETROLEUM C |

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| JD NO | JA DKT | API NO | SEC D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|
| 8105199 | 21565 | 4216531710 | 103 | EXXON FEE EUBANKS BA #13 | ROBERTSON N (CLFK 7100) | 2.0 | PHILLIPS PETROLEUM C |
| 8105198 | 21564 | 4200332111 | 103 | FULLERTON CLFK UNIT #1325 | FULLERTON | 9.0 | PHILLIPS PETROLEUM C |
| -8105197 | 21563 | 4200332137 | 103 | FULLERTON CLFK UNIT #1635 | FULLERTON | 1.5 | PHILLIPS PETROLEUM C |
| 8105275 | 23562 | 4208130831 | 103 | IAB UNIT #51B | IAB (MENIELLE PENN) | 50.0 | SUN GAS CO |
| 8105277 | 23564 | 4210332441 | 103 | J B TUBB A/C 1 #216U | SAND HILLS (JUDKINS) | 28.0 | EL PASO NATURAL GAS |
| 8105205 | 22004 | 4210332184 | 103 | J B TUBB C #21L | SAND HILLS (TUBB) | 93.0 | EL PASO NATURAL GAS |
| 8105206 | 22005 | 4210332184 | 103 | J B TUBB C #21U | SAND HILLS (MCKNIGHT) | 51.0 | EL PASO NATURAL GAS |
| 8105283 | 23611 | 4210332212 | 103 | J B TUBB C #22U | SAND HILLS (MCKNIGHT) | 59.0 | EL PASO NATURAL GAS |
| 8105281 | 23609 | 4210332217 | 103 | J B TUBB F #17L | SAND HILLS (TUBB) | 58.0 | EL PASO NATURAL GAS |
| 8105274 | 23560 | 4210332217 | 103 | J B TUBB F #17U | SAND HILLS (MCKNIGHT) | 36.0 | EL PASO NATURAL GAS |
| 8105161 | 20125 | 4200331709 | 108 | J E PARKER A/C 9 #88 | THREE BAR (YATES) | 11.0 | NORTHERN NATURAL GAS |
| 8105177 | 21065 | 4224730913 | 102 | MRS A M K BASS 42-0 (09474) | KELSEY DEEP (ZONE 19-A S | 6.0 | TRUNKLINE GAS CO |
| 8105273 | 23559 | 4216531734 | 103 | ROBERTSON CLFK UNIT #2502 | ROBERTSON N (CLFK 7100) | 16.0 | PHILLIPS PETROLEUM C |
| 8105272 | 23558 | 4216531773 | 103 | ROBERTSON CLFK UNIT #4902 | ROBERTSON N (CLFK 7100) | 16.0 | PHILLIPS PETROLEUM C |
| 8105178 | 21130 | 4226130411 | 102 | SOGU 138-D (09481) | SARITA (16-C W) | 730.0 | NATL GAS P/L CO OF A |
| 8105276 | 23563 | 4246131496 | 103 | VINA VANCE #1 | SPRABERRY (TRENO AREA) | 41.0 | EL PASO NATURAL GAS |
| -F WILLIAM CARR | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105034 | 16458 | 4229732013 | 102 | GEORGE WEST ESTATE NO 3-L | GEORGE WEST WEST (8500) | 120.0 | TEXAS EASTERN TRANSM |
| 8105034 | 16458 | 4229732013 | 103 | GEORGE WEST ESTATE NO 3-L | GEORGE WEST WEST (8500) | 120.0 | TEXAS EASTERN TRANSM |
| 8105035 | 16459 | 4229732013 | 102 | GEORGE WEST ESTATE NO 3-U | GEORGE WEST WEST (8300) | 700.0 | TEXAS EASTERN TRANSM |
| 8105035 | 16459 | 4229732013 | 103 | GEORGE WEST ESTATE NO 3-U | GEORGE WEST WEST (8300) | 700.0 | TEXAS EASTERN TRANSM |
| -FISHER-WERR INC | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105266 | 23500 | 4235330883 | 103 | GUEST A NO 3 | ARLEDGE (PENN SAND) | 150.0 | SUN GAS CO |
| -FORCEO GAR CO | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105171 | 20829 | 4228500000 | 108 | FOERSTER JULIUS WELL NO 1 | VIENNA (8400) | 13.0 | TEXAS EASTERN TRANSM |
| -GETTY OIL COMPANY | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105286 | 23632 | 4235300000 | 108 | BOYD 8 NO 12 | OORA NORTH | 8.4 | SID RICHARDSON CARBO |
| 8105279 | 23594 | 4237100000 | 103 | MENOEL ESTATE 36 #4 | GOMEZ (WOLFCAMP) | 264.0 | VALERO TRANSMISSION |
| 8105280 | 23598 | 4237100000 | 103 | MENOEL 24 #1 | GOMEZ (WOLFCAMP) | 18.0 | VALERO TRANSMISSION |
| 8105264 | 23498 | 4228531455 | 103 | ROBERT MELNAR WELL #1 | WORD | 380.0 | VALERO TRANSMISSION |
| 8105247 | 23335 | 4249531118 | 107 | UNIVERSITY 7-21 NO 1 | WILDCAT | 548.0 | NATURAL GAS PIPELINE |
| -GILLRING OIL CO | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105223 | 22792 | 4235500000 | 108 | ANDERSON L 3 (34184) | AGUA DULCE /5450/ FIELD | 21.0 | TENNESSEE GAS PIPELI |
| -GULF COAST MINERALS CO INC | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105028 | 14996 | 4213132937 | 102 | RUBEN SMITHWICK NO 1 | JAM (1820) | 720.0 | UNITED GAS PIPELINE |
| -GULF OIL CORPORATION | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105043 | 17118 | 4221120081 | 108 | C J COOK #1 | COOK - GEM / MORROW UPPE | 15.0 | CITIES SERVICE GAS C |
| 8105155 | 19716 | 4223300000 | 108 | C L OIAL ET AL NO 100 | PANHANDLE HUTCHINSON | 0.3 | PHILLIPS PETROLEUM C |
| 8105152 | 19712 | 4223300000 | 108 | C L OIAL ET AL NO 103 | PANHANDLE HUTCHINSON | 3.0 | PHILLIPS PETROLEUM C |
| 8105154 | 19714 | 4223300000 | 108 | C L OIAL ET AL NO 107 | PANHANDLE HUTCHINSON | 0.6 | PHILLIPS PETROLEUM C |
| 8105122 | 19672 | 4223300000 | 108 | C L OIAL ET AL NO 122 | PANHANDLE HUTCHINSON | 1.0 | PHILLIPS PETROLEUM C |
| 8105121 | 19671 | 4223300000 | 108 | C L OIAL ET AL NO 123 | PANHANDLE HUTCHINSON | 1.0 | PHILLIPS PETROLEUM C |
| 8105119 | 19669 | 4223300000 | 108 | C L OIAL ET AL NO 124 | PANHANDLE HUTCHINSON | 1.0 | PHILLIPS PETROLEUM C |
| 8105126 | 19677 | 4223300000 | 108 | C L OIAL ET AL NO 131 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105091 | 19634 | 4223300000 | 108 | C L OIAL ET AL NO 138 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105090 | 19633 | 4223300000 | 108 | C L OIAL ET AL NO 139 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105089 | 19632 | 4223300000 | 108 | C L OIAL ET AL NO 141 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105088 | 19631 | 4223300000 | 108 | C L OIAL ET AL NO 152 | PANHANDLE HUTCHINSON | 2.0 | PHILLIPS PETROLEUM C |
| 8105125 | 19676 | 4223300000 | 108 | C L DIAL ET AL NO 156 | PANHANDLE HUTCHINSON | 3.0 | PHILLIPS PETROLEUM C |
| 8105085 | 19628 | 4223300000 | 108 | C L OIAL ET AL NO 166 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105084 | 19627 | 4223300000 | 108 | C L OIAL ET AL NO 170 | PANHANDLE HUTCHINSON | 2.0 | PHILLIPS PETROLEUM C |
| 8105123 | 19673 | 4223300000 | 108 | C L OIAL ET AL NO 181 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |

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| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| 8105153 | 19713 | 4223300000 | 108 | | C L DIAL ET AL NO 183 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105142 | 19699 | 4223300000 | 108 | | C L DIAL ET AL NO 184 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105124 | 19675 | 4223300000 | 108 | | C L DIAL ET AL NO 202 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105086 | 19629 | 4223300000 | 108 | | C L DIAL ET AL NO 203 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105087 | 19630 | 4223300000 | 108 | | C L DIAL ET AL NO 204 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105145 | 19700 | 4223300000 | 108 | | C L DIAL ET AL NO 212 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105146 | 19701 | 4223300000 | 108 | | C L DIAL ET AL NO 221 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105147 | 19702 | 4223300000 | 108 | | C L DIAL ET AL NO 222 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105148 | 19703 | 4223300000 | 108 | | C L DIAL ET AL NO 223 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105149 | 19704 | 4223300000 | 108 | | C L DIAL ET AL NO 225 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105150 | 13705 | 4223300000 | 108 | | C L DIAL ET AL NO 237 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105120 | 19670 | 4223300000 | 108 | | C L DIAL ET AL NO 238 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105140 | 19694 | 4223300000 | 108 | | C L DIAL ET AL NO 239 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105141 | 19698 | 4223300000 | 108 | | C L DIAL ET AL NO 240 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105118 | 19668 | 4223300000 | 108 | | C L DIAL ET AL NO 25 | PANHANDLE HUTCHINSON | 1.5 | PHILLIPS PETROLEUM C |
| 8105143 | 19696 | 4223300000 | 108 | | C L DIAL ET AL NO 257 | PANHANDLE HUTCHINSON | 2.0 | PHILLIPS PETROLEUM C |
| 8105144 | 19697 | 4223300000 | 108 | | C L DIAL ET AL NO 263 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105102 | 19650 | 4223300000 | 108 | | C L DIAL ET AL NO 266 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105103 | 19651 | 4223300000 | 108 | | C L DIAL ET AL NO 268 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105104 | 19652 | 4223300000 | 108 | | C L DIAL ET AL NO 269 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105151 | 19711 | 4223360082 | 108 | | C L DIAL ET AL NO 272 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105117 | 19667 | 4223300000 | 108 | | C L DIAL ET AL NO 30 | PANHANDLE HUTCHINSON | 1.5 | PHILLIPS PETROLEUM C |
| 8105116 | 19666 | 4223300000 | 108 | | C L DIAL ET AL NO 36 | PANHANDLE HUTCHINSON | 1.5 | PHILLIPS PETROLEUM C |
| 8105115 | 19664 | 4223300000 | 108 | | C L DIAL ET AL NO 39 | PANHANDLE HUTCHINSON | 1.5 | PHILLIPS PETROLEUM C |
| 8105092 | 19635 | 4223300000 | 108 | | C L DIAL ET AL NO 4 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105114 | 19663 | 4223300000 | 108 | | C L DIAL ET AL NO 40 | PANHANDLE HUTCHINSON | 3.0 | PHILLIPS PETROLEUM C |
| 8105113 | 19662 | 4223300000 | 108 | | C L DIAL ET AL NO 42 | PANHANDLE HUTCHINSON | 3.0 | PHILLIPS PETROLEUM C |
| 8105112 | 19661 | 4223300000 | 108 | | C L DIAL ET AL NO 43 | PANHANDLE HUTCHINSON | 2.0 | PHILLIPS PETROLEUM C |
| 8105111 | 19660 | 4223300000 | 108 | | C L DIAL ET AL NO 44 | PANHANDLE HUTCHINSON | 0.3 | PHILLIPS PETROLEUM C |
| 8105110 | 19659 | 4223300000 | 108 | | C L DIAL ET AL NO 45 | PANHANDLE HUTCHINSON | 1.7 | PHILLIPS PETROLEUM C |
| 8105109 | 19658 | 4223300000 | 108 | | C L DIAL ET AL NO 48 | PANHANDLE HUTCHINSON | 1.0 | PHILLIPS PETROLEUM C |
| 8105108 | 19657 | 4223300000 | 108 | | C L DIAL ET AL NO 49 | PANHANDLE HUTCHINSON | 1.0 | PHILLIPS PETROLEUM C |
| 8105127 | 19678 | 4223300000 | 108 | | C L DIAL ET AL NO 50 | PANHANDLE HUTCHINSON | 1.0 | PHILLIPS PETROLEUM C |
| 8105101 | 19648 | 4223300000 | 108 | | C L DIAL ET AL NO 62 | PANHANDLE HUTCHINSON | 0.3 | PHILLIPS PETROLEUM C |
| 8105100 | 19647 | 4223300000 | 108 | | C L DIAL ET AL NO 63 | PANHANDLE HUTCHINSON | 0.3 | PHILLIPS PETROLEUM C |
| 8105099 | 19646 | 4223300000 | 108 | | C L DIAL ET AL NO 64 | PANHANDLE HUTCHINSON | 0.3 | PHILLIPS PETROLEUM C |
| 8105098 | 19644 | 4223300000 | 108 | | C L DIAL ET AL NO 67 | PANHANDLE HUTCHINSON | 0.3 | PHILLIPS PETROLEUM C |
| 8105107 | 19656 | 4223300000 | 108 | | C L DIAL ET AL NO 68 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105097 | 19643 | 4223300000 | 108 | | C L DIAL ET AL NO 70 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105096 | 19642 | 4223300000 | 108 | | C L DIAL ET AL NO 71 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105095 | 19641 | 4223300000 | 108 | | C L DIAL ET AL NO 73 | PANHANDLE HUTCHINSON | 0.3 | PHILLIPS PETROLEUM C |
| 8105094 | 19640 | 4223300000 | 108 | | C L DIAL ET AL NO 74 | PANHANDLE HUTCHINSON | 0.3 | PHILLIPS PETROLEUM C |
| 8105093 | 19639 | 4223300000 | 108 | | C L DIAL ET AL NO 75 | PANHANDLE HUTCHINSON | 0.7 | PHILLIPS PETROLEUM C |
| 8105106 | 19655 | 4223300000 | 108 | | C L DIAL ET AL NO 79 | PANHANDLE HUTCHINSON | 3.0 | PHILLIPS PETROLEUM C |
| 8105105 | 19654 | 4223300000 | 108 | | C L DIAL ET AL NO 80 | PANHANDLE HUTCHINSON | 0.3 | PHILLIPS PETROLEUM C |
| 8105139 | 19693 | 4223300000 | 108 | | C L DIAL ET AL NO 81 | PANHANDLE HUTCHINSON | 0.3 | PHILLIPS PETROLEUM C |
| 8105138 | 19691 | 4223300000 | 108 | | C L DIAL ET AL NO 82 | PANHANDLE HUTCHINSON | 0.7 | PHILLIPS PETROLEUM C |
| 8105137 | 19690 | 4223300000 | 108 | | C L DIAL ET AL NO 83 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105136 | 19688 | 4223300000 | 108 | | C L DIAL ET AL NO 85 | PANHANDLE HUTCHINSON | 0.3 | PHILLIPS PETROLEUM C |
| 8105135 | 19687 | 4223300000 | 108 | | C L DIAL ET AL NO 86 | PANHANDLE HUTCHINSON | 0.3 | PHILLIPS PETROLEUM C |
| 8105134 | 19686 | 4223300000 | 108 | | C L DIAL ET AL NO 87 | PANHANDLE HUTCHINSON | 0.3 | PHILLIPS PETROLEUM C |
| 8105133 | 19685 | 4223300000 | 108 | | C L DIAL ET AL NO 88 | PANHANDLE HUTCHINSON | 0.3 | PHILLIPS PETROLEUM C |
| 8105132 | 19684 | 4223300000 | 108 | | C L DIAL ET AL NO 89 | PANHANDLE HUTCHINSON | 0.3 | PHILLIPS PETROLEUM C |

| JD NO | JA DKT | API NO | SEC U | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|
| 8105131 | 19682 | 4223300000 | 108 | C L OIAL ET AL NO 93 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105130 | 19681 | 4223300000 | 108 | C L OIAL ET AL NO 94 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105129 | 19680 | 4223300000 | 108 | C L OIAL ET AL NO 97 | PANHANDLE HUTCHINSON | 0.1 | PHILLIPS PETROLEUM C |
| 8105128 | 19679 | 4223300000 | 108 | C L OIAL ET AL NO 98 | PANHANDLE HUTCHINSON | 1.0 | PHILLIPS PETROLEUM C |
| *8105289 | 23747 | 4248300000 | 108 | CLARK J O C #2 | PANHANDLE EAST | 10.0 | TRANSWESTERN PIPE LI |
| *8105290 | 23748 | 4248300000 | 108 | CLARK J D O #1 | PANHANDLE EAST | 8.0 | TRANSWESTERN PIPE LI |
| *8105291 | 23749 | 4248300000 | 108 | GARDNER IOA #2 | PANHANDLE EAST | 2.5 | TRANSWESTERN PIPE LI |
| 8105054 | 18828 | 4223300000 | 108 | HAILE /B/ #10 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105055 | 18829 | 4223300000 | 108 | HAILE /B/ #12 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105056 | 18830 | 4223300000 | 108 | HAILE /B/ #13 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105057 | 18834 | 4223300000 | 108 | HAILE /B/ #17 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105048 | 18822 | 4223300000 | 108 | HAILE /B/ #7 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105049 | 18823 | 4223300000 | 108 | HAILE /B/ #8 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105051 | 18825 | 4223300000 | 108 | HAILE /B/ #9 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105047 | 18821 | 4223300000 | 108 | HAILE /C/ #6 | PANHANDLE HUTCHINSON | 3.5 | GETTY OIL CO |
| 8105050 | 18824 | 4223300000 | 108 | HAILE /C/ #8 | PANHANDLE HUTCHINSON | 3.5 | GETTY OIL CO |
| 8105052 | 18826 | 4223300000 | 108 | HAILE /C/ #9 | PANHANDLE HUTCHINSON | 3.5 | GETTY OIL CO |
| 8105066 | 18870 | 4223300000 | 108 | HAILE /O/ #1 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105074 | 18878 | 4223300000 | 108 | HAILE /O/ #10 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105075 | 18879 | 4223300000 | 108 | HAILE /O/ #12 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105076 | 18880 | 4223300000 | 108 | HAILE /O/ #13 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105077 | 18881 | 4223300000 | 108 | HAILE /O/ #14 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105078 | 18882 | 4223300000 | 108 | HAILE /O/ #15 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105067 | 18871 | 4223300000 | 108 | HAILE /O/ #2 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105068 | 18872 | 4223300000 | 108 | HAILE /O/ #3 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105069 | 18873 | 4223300000 | 108 | HAILE /O/ #4 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105070 | 18874 | 4223300000 | 108 | HAILE /O/ #5 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105071 | 18875 | 4223300000 | 108 | HAILE /O/ #6 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105072 | 18876 | 4223300000 | 108 | HAILE /O/ #7 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105073 | 18877 | 4223300000 | 108 | HAILE /O/ #9 | PANHANDLE HUTCHINSON | 4.5 | GETTY OIL CO |
| 8105060 | 18860 | 4223300000 | 108 | HAILE /E/ #1 | PANHANDLE HUTCHINSON | 3.5 | GETTY OIL CO |
| 8105065 | 18869 | 4223300000 | 108 | HAILE /E/ #10 | PANHANDLE HUTCHINSON | 3.5 | GETTY OIL CO |
| 8105059 | 18859 | 4223300000 | 108 | HAILE /E/ #12 | PANHANDLE HUTCHINSON | 3.5 | GETTY OIL CO |
| 8105061 | 18861 | 4223300000 | 108 | HAILE /E/ #2 | PANHANDLE HUTCHINSON | 3.5 | GETTY OIL CO |
| 8105062 | 18862 | 4223300000 | 108 | HAILE /E/ #3 | PANHANDLE HUTCHINSON | 3.5 | GETTY OIL CO |
| 8105063 | 18863 | 4223300000 | 108 | HAILE /E/ #4 | PANHANDLE HUTCHINSON | 3.5 | GETTY OIL CO |
| 8105064 | 18864 | 4223300000 | 108 | HAILE /E/ #5 | PANHANDLE HUTCHINSON | 3.5 | GETTY OIL CO |
| 8105053 | 18827 | 4223300000 | 108 | HAILE A #10 | PANHANDLE HUTCHINSON | 3.5 | GETTY OIL CO |
| 8105058 | 18835 | 4217900000 | 108 | HARRAH #8 | PANHANDLE GRAY | 4.0 | GETTY OIL CO |
| *8105292 | 23753 | 4248300000 | 108 | KING MYRTLE #1 | PANHANDLE EAST | 11.0 | TRANSWESTERN PIPE LI |
| *8105293 | 23755 | 4248300000 | 108 | MASSAY R A O #1 | PANHANDLE EAST | 5.0 | TRANSWESTERN PIPE LI |
| *8105294 | 23756 | 4248300000 | 108 | MASSAY R A ET AL A #1 | PANHANDLE EAST | 8.0 | TRANSWESTERN PIPE LI |
| *8105295 | 23757 | 4248300000 | 108 | MASSAY R A ET AL C #1 | PANHANDLE EAST | 6.0 | TRANSWESTERN PIPE LI |
| *8105296 | 23758 | 4248300000 | 108 | MASSAY R A I & J #2 | PANHANDLE EAST | 8.0 | TRANSWESTERN PIPE LI |
| 8105040 | 16927 | 4206530605 | 103 | S B BURNETT #107 | PANHANDLE CARSON | 5.0 | PHILLIPS PETROLEUM C |
| 8105041 | 16928 | 4206530606 | 103 | S B BURNETT NO 108 | PANHANDLE CARSON | 5.0 | PHILLIPS PETROLEUM C |
| *8105297 | 23759 | 4248300000 | 108 | SITTER G W O #1 | PANHANDLE EAST | 6.0 | TRANSWESTERN PIPE LI |
| *8105298 | 23760 | 4248300000 | 108 | SITTER G W G #1 | PANHANDLE EAST | 5.0 | TRANSWESTERN PIPE LI |
| *8105299 | 23761 | 4248300000 | 108 | WINGO S #2 | PANHANDLE EAST | 9.0 | TRANSWESTERN PIPE LI |
| *8105300 | 23762 | 4248300000 | 108 | WUESTER RUBY #1 | PANHANDLE EAST | 5.0 | TRANSWESTERN PIPE LI |
| -H & L OPERATING COMPANY | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105208 | 22141 | 4219530706 | 103 | LASATER #1 RRC #86210 | HANSFORD (MURROW UPPER) | 150.0 | PANHANDLE EASTERN PI |
| -H-M OIL CO | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105217 | 22446 | 4217531324 | 103 | MARY ELIZABETH MARTIN #3 | WILDCAT (ABOVE 4000) | 100.0 | DELHI GAS PIPELINE C |
| -H E BRYAN | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105165 | 20179 | 4206530682 | 103 | GRIMES NO 1-A | PANHANDLE WEST | 180.0 | NORTHERN NATURAL GAS |
| -H L BROWN JR | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105215 | 22355 | 4231732103 | 103 | SLAUGHTER-HANCOCK NO 3 WELL | SULPHUR DRAW (DEAN 8790) | 36.5 | GETTY OIL CO |
| -HNG OIL COMPANY | | | | RECEIVED: 11/10/80 JA: TX | | | |

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| JD NO | JA DKT | API NO | SEC U | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|
| 8105033 | 16396 | 4235500000 | 103 | CHAPMAN HEIRS A #44-2 72194 | ARNOLD-DAVID N (FRIO LOW | 9.0 | HOUSTON PIPE LINE CO |
| 8105033 | 16396 | 4235500000 | 108 | CHAPMAN HEIRS A #44-2 72194 | ARNOLD-DAVID N (FRIO LOW | 9.0 | HOUSTON PIPE LINE CO |
| 8105258 | 23483 | 4245530314 | 102 | TEMPLE #3 86692 | APPLE SPRINGS (GLEN ROSE | 37.0 | COLUMBIA GAS TRANSMI |
| 8105258 | 23483 | 4245530314 | 103 | TEMPLE #3 86692 | APPLE SPRINGS (GLEN ROSE | 37.0 | COLUMBIA GAS TRANSMI |
| -HOOVER & BRACKEN ENERGIES | | | | RECEIVED: 11/10/80 JA: TX | | | |
| *8105162 | 20136 | 4221131047 | 103 | CAMPBELL #1-39 | RED DEER CREEK SOUTH (MO | 365.0 | COLORADO INTERSTATE |
| -HOUSTON OIL & MINERALS CORPORATION | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105214 | 22323 | 4238331535 | 103 | ELLEN MCDOWELL NO 2 | SPRABERRY (TREND AREA) | 0.0 | UNION TEXAS PETROLEU |
| 8105254 | 23447 | 4238331537 | 103 | MERCHANT ESTATE 16 #3 | SPRABERRY (TREND AREA) | 40.0 | UNION TEXAS PETROLEU |
| -INLAND OCEAN INC | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105038 | 16748 | 4213100000 | 102 | RODS #2 | LABBE S (WILCOX UP) FIEL | 365.0 | |
| 8105038 | 16748 | 4213100000 | 103 | RODS #2 | LABBE S (WILCOX UP) FIEL | 365.0 | |
| -JAKE L HAMON | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105231 | 23020 | 4219931299 | 102 | A R & S BRADLEY FEE #1 | BRADLEY S | 300.0 | SOUTHWEST GATHERING |
| -JAMES M FORGOTSON | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105248 | 23365 | 4245930444 | 103 | VERA ROSS ETAL GAS UNIT WELL NO 1 | ROSEWOOD (HOSSTON-COTTON | 0.3 | ADVANCE TRANSPORT IN |
| -JAY H FLOYD JR & ROBERT C FLOYD | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105025 | 13615 | 4232900000 | 103 | DAVENPORT #4 07323 | CALVIN (DEAN) | 0.0 | UNION OF TEXAS OIL C |
| -JENNINGS EXPLORATION CO | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105246 | 23333 | 4250731079 | 102 | ELAINE SAND OIL UNIT II NO 1 05844 | CEBOLLA (3660) | 0.0 | VALERO TRANSMISSION |
| -JONES-O'BRIEN INCORPORATED | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105193 | 21460 | 4207330377 | 102 | S L STOCKTON #1 | PERCY WHEELER (TRAVIS PE | 548.0 | UNITED GAS PIPE LINE |
| -KERR-MCGEE CORPORATION | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105271 | 23532 | 4223320759 | 103 | COCKRELL WELL NO 20 | PANHANDLE | 7.0 | GETTY OIL CO |
| -KILROY CO OF TEXAS INC | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105189 | 21435 | 4236130306 | 102 | TEMPLE LUMBER CO NO 1 | SHANNON (NODOSARIA) | 365.0 | UNITED TEXAS TRANSMI |
| -L E WINDHAM | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105157 | 19845 | 4213500000 | 108 | J E PARKER A (EO) NO 3 | HARPER | 1.6 | PHILLIPS PETROLEUM C |
| 8105174 | 19846 | 4213500000 | 108 | J E PARKER A (EO) NO 4 | HARPER | 1.6 | PHILLIPS PETROLEUM C |
| 8105158 | 19847 | 4213500000 | 108 | J E PARKER A (EO) NO 5 | HARPER | 1.6 | PHILLIPS PETROLEUM C |
| -LADD PETROLEUM CORPORATION | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105006 | 05547 | 4236731064 | 103 | DURHAM UNIT #2 | TOTO | 211.7 | LONE STAR GAS CO |
| -MEWBOURNE OIL COMPANY | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105235 | 23089 | 4229530749 | 103 | PEERY #7 ID #04432 | PEERY (MARMATON) | 36.0 | TRANSWESTERN PIPELIN |
| -MITCHELL ENERGY CORPORATION | | | | RECEIVED: 11/10/80 JA: TX | | | |
| *8105081 | 19417 | 4229330480 | 103 | ARTHUR CLIFTON GAS UNIT #1 ID# N/A | PERSONVILLE NORTH (COTTO | 100.0 | LONE STAR GAS CO |
| -MOBIL OIL CORP | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105032 | 16275 | 4200331568 | 108 | LETA JONES NO 4 | FUHRMAN/MASCHO | 7.1 | PHILLIPS PETROLEUM C |
| -MOBIL PROD TEXAS & NEW MEXICO INC | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105239 | 23135 | 4217900000 | 108 | BRADFORD UNIT NO 1 | PANHANDLE WEST | 16.0 | NORTHERN NATURAL GAS |
| 8105241 | 23166 | 4217900000 | 108 | E B REEVES #1 | PANHANDLE EAST | 20.4 | COLTEXO CORP |
| 8105236 | 23090 | 4221932807 | 103 | NORTH CENTRAL LEVELLAND UNIT #331 | LEVELLAND | 2.9 | AMOCO PRODUCTION CO |
| 8105270 | 23528 | 4221932805 | 103 | NORTH CENTRAL LEVELLAND UNIT NO 332 | LEVELLAND | 5.1 | AMOCO PRODUCTION CO |
| 8105245 | 23304 | 4247531981 | 103 | STATE AM NO 1 | CAPRITO (DELWARE MIDDLE) | 14.0 | LONE STAR GAS CO |
| -PARAFFINE OIL CORP | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105222 | 22757 | 4205730962 | 102 | P H WELDER D 1-U | KATIE WELDER (L-7) | 365.0 | SEAGULL PIPELINE COR |
| 8105222 | 22757 | 4205730962 | 103 | P H WELDER D 1-U | KATIE WELDER (L-7) | 365.0 | SEAGULL PIPELINE COR |
| -PENNZOIL PRODUCING COMPANY | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105195 | 21506 | 4236530976 | 103 | HULL UNIT NO 8-2 | CARTHAGE/COTTON VALLEY/ | 650.0 | UNITED GAS PIPE LINE |
| 8105265 | 23499 | 4236530874 | 103 | LILLY UNIT NO 2-C | CARTHAGE/TRAVIS PEAK | 269.0 | UNITED GAS PIPE LINE |
| -PETROLEUM TECHNICAL SERVICE CO | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105029 | 15526 | 4213533132 | 103 | E F COWDEN 33 NO 1 | COWDEN SOUTH | 67.9 | ODESSA NATURAL CORP |
| -PETRUS OPERATING CO INC | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105196 | 21527 | 4224500000 | 102 | GALLAGHER NO 2 | WILDCAT FIELD | 365.0 | |
| 8105196 | 21527 | 4224500000 | 103 | GALLAGHER NO 2 | WILDCAT FIELD | 365.0 | |
| -PHILLIPS PETROLEUM COMPANY | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105224 | 22810 | 4246103650 | 108 | (03913) N PEMBROOK SPRABERRY 79-02 | SPRABERRY (TREND AREA) | 1.0 | NORTHERN NATURAL GAS |
| 8105227 | 22813 | 4213507567 | 108 | (08461) KLOH-B NO 11 | COWDEN NORTH (DEEP) | 3.0 | AMOCO PRODUCTION CO |

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| JD NO | JA DKT | API NO | SEC | D | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| 8105225 | 22811 | 4213520224 | 108 | | (21556) N PENWELL NO 103 | PENWELL | 4.0 | EL PASO NATURAL GAS |
| 8105226 | 22812 | 4213520046 | 108 | | (21556) N PENWELL NO 89 | PENWELL | 3.0 | EL PASO NATURAL GAS |
| 8105305 | 27210 | 4219530301 | 108 | | HITCH F #3 | HITCHLAND W | 18.0 | PANHANDLE EASTERN PI |
| 8105042 | 16937 | 4219530301 | 103 | | HITCH F NO 3 | HITCHLAND W | 180.0 | PANHANDLE EASTERN PI |
| *8105288 | 23684 | 4234100000 | 108 | | MOORE 66 #2 | PANHANDLE - MOORE | 8.4 | EL PASO NATURAL GAS |
| *8105303 | 23857 | 4242100000 | 108 | | STARNES G NO 1 | TEXAS HUGOTON | 20.0 | EL PASO NATURAL GAS |
| 8105207 | 22056 | 4213533274 | 103 | | VINA BAGLEY NO 19 | FOSTER | 8.0 | ODESSA NATURAL GASOL |
| -QUINTIN LITTLE CO | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105170 | 20811 | 4214903041 | 102 | | BALD EAGLE A-#1 | GIDDINGS (AUSTIN CHALK - | 0.0 | PHILLIPS PETROLEUM C |
| 8105170 | 20811 | 4214903041 | 103 | | BALD EAGLE A-#1 | GIDDINGS (AUSTIN CHALK - | 0.0 | PHILLIPS PETROLEUM C |
| 8105079 | 19300 | 4214930357 | 102 | | VICTORY HILLS UNIT #2 | GIDDINGS (AUSTIN CHALK) | 0.0 | RESERVE GAS SYSTEMS |
| 8105079 | 19300 | 4214930357 | 103 | | VICTORY HILLS UNIT #2 | GIDDINGS (AUSTIN CHALK) | 0.0 | RESERVE GAS SYSTEMS |
| -R C SLACK | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105164 | 20162 | 4249500000 | 108 | | BROWN & ALTMAN A/C #16 | EMPEROR | 14.5 | WEST TEXAS GATHERING |
| -R E KIBBE | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105044 | 18020 | 4213133625 | 103 | | H A & H E MOOS #1-A | LA HUERTA NW (NEW YEARS) | 182.5 | VALLEY GAS TRANSMISS |
| -R H SIEGFRIED INC | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105268 | 23507 | 4249700000 | 108 | | R L MORRIS -A- (06978) NO 11 | CHICO WEST (CADDO CONGL | 0.0 | NATURAL GAS PIPELINE |
| 8105269 | 23508 | 4249700000 | 108 | | R L MORRIS -A- (06978) NO 14 | CHICO WEST (CADDO CONGL | 0.0 | NATURAL GAS PIPELINE |
| 8105267 | 23505 | 4249700000 | 108 | | R L MORRIS -A- (06978) NO 5 | CHICO WEST (CADDO CONGL | 0.0 | NATURAL GAS PIPELINE |
| -R L BURNS CORP | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105159 | 19862 | 4243530168 | 108 | | L W HICKS #1 | SAWYER (CANYON) FIELD | 6.9 | LOVACA GATHERING CO |
| -RICHARD & NEVILE SACK | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105287 | 23682 | 4217900000 | 108 | | KATE MORGAN IO #26457 #2 | EAST PANHANDLE | 15.0 | PHILLIPS PETROLEUM |
| -ROBERT L TIGRETT ET AL OIL & GAS CO | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105005 | 05539 | 4217900000 | 108 | | WEBB A WELL #13 RRC #01593 | PANHANDLE FIELD | 1.3 | PHILLIPS PETR CO |
| 8105013 | 05786 | 4217900000 | 108 | | WEBB A WELL #14 RRC #01718 | PANHANDLE FIELD | 1.3 | PHILLIPS PET CO |
| 8105015 | 05788 | 4217900000 | 108 | | WEBB A WELL #15 RRC #01718 | PANHANDLE FIELD | 1.3 | PHILLIPS PETRO CO |
| 8105014 | 05787 | 4217900000 | 108 | | WEBB A WELL #16 RRC #01718 | PANHANDLE FIELD | 1.3 | PHILLIPS PETR CO |
| 8105004 | 05538 | 4217900000 | 108 | | WEBB A WELL #17 RRC #01593 | PANHANDLE FIELD | 1.3 | PHILLIPS PETR CO |
| 8105010 | 05782 | 4217900000 | 108 | | WEBB A WELL #24 RRC #00558 | PANHANDLE FIELD | 1.3 | PHILLIPS PETROLEUM C |
| 8105011 | 05784 | 4217900000 | 108 | | WEBB A WELL #25 RRC #00558 | PANHANDLE FIELD | 1.3 | PHILLIPS PETR CO |
| 8105016 | 05799 | 4217900000 | 108 | | WEBB A WELL #26 RRC #01718 | PANHANDLE FIELD | 1.3 | PHILLIPS PETR CO |
| 8105012 | 05785 | 4217900000 | 108 | | WEBB A WELL #28 RRC #00558 | PANHANDLE FIELD | 1.3 | PHILLIPS PET CO |
| 8105009 | 05635 | 4217900000 | 108 | | WEBB A WELL #3 RRC #00558 | PANHANDLE FIELD | 1.3 | PHILLIPS PETR CO |
| 8105007 | 05633 | 4217900000 | 108 | | WEBB A WELL #5 RRC #00558 | PANHANDLE FIELD | 1.3 | PHILLIPS PETR CO |
| 8105008 | 05634 | 4217900000 | 108 | | WEBB A WELL #8 RRC #00558 | PANHANDLE FIELD | 1.3 | PHILLIPS PETR CO |
| 8105017 | 05800 | 4217900000 | 108 | | WEBB A WELL #9 RRC #00558 | PANHANDLE FIELD | 1.3 | PHILLIPS PETROLEUM C |
| -ROBERT H WYNNE | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105209 | 22197 | 4215100000 | 103 | | COX #1 | CLAYTONVILLE CANYON SAND | 0.0 | |
| -RODMAN PETROLEUM CORP | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105301 | 23773 | 4210500000 | 108 | | ADA PIERCE NO 1 | V I P (CLEARFORK) | 13.0 | NORTHERN NATURAL GAS |
| -SAMEDAN OIL CORPORATION | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105168 | 20593 | 4222530301 | 103 | | E FT TRINIDAD DEXTER C UT #5-2 | EAST FORT TRINIDAD | 110.0 | LONE STAR GAS CO |
| -SHELL OIL CO | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105232 | 23030 | 4242731364 | 103 | | JUDD ESTATE-STATE NO 8 | LACOPITA (VICKSBURG Z) | 36.5 | TENNESSEE GAS PIPELI |
| 8105233 | 23033 | 4238300000 | 108 | | RICKER 25 #2 | SPRABERRY TREND | 11.0 | EL PASO NATURAL GAS |
| -SOUTHLAND ROYALTY CO | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105188 | 21240 | 4243500000 | 108 | | SHURLEY RANCH A #1 | SHURLEY RANCH | 18.0 | EL PASO NATURAL GAS |
| 8105160 | 20000 | 4210300000 | 108 | | SOUTHLAND A #1 | ATAPCO | 0.1 | PGP GAS PRODUCTS INC |
| -SOUTHWEST EXPLORATION INC | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105180 | 21132 | 4218100000 | 103 | | KREAGER NO 1 | RIFENBURG 9400 DAVIS 910 | 80.0 | CHEVRON USA INC |
| -SUN OIL COMPANY (DELAWARE) | | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105031 | 16192 | 4218300000 | 108 | | C BROWN NO 13 | EAST TEXAS | 0.4 | MOBIL OIL CORP |
| 8105211 | 22272 | 4208130637 | 103 | | CENTRAL NATIONAL BANK A NO 9 | LYGAY | 57.0 | LONE STAR GAS CO |
| 8105237 | 23116 | 4210500000 | 108 | | NAN D GRIMMER NO 1 | OZONA (CANYON SAND) | 11.0 | NORTHERN NATURAL GAS |
| 8105203 | 21815 | 4213500000 | 108 | | PAUL MOSS UNIT WELLS NO 100 | COWDEN SOUTH | 1.5 | ODESSA NATURAL CORP |
| 8105204 | 21816 | 4213500000 | 108 | | PAUL MOSS UNIT WELLS NO 98 | COWDEN SOUTH | 1.5 | ODESSA NATURAL CORP |
| 8105219 | 22669 | 4239131331 | 103 | | THOMAS OCONNOR NO 6 | GRETA (4400) | 40.0 | UNITED TEXAS TRANSMI |

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| JD NO | JA DKT | API NO | SEC U | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|
| -TEXAS OIL & GAS CORP | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105037 | 16570 | 4210300000 | 103 | KIPP #1 | SANDHILLS (JUDKINS) | 63.0 | WARREN PETROLEUM |
| 8105176 | 20998 | 4245930437 | 102 | WALKER J #1 | SAND HILL (COTTON VALLEY | 182.0 | |
| 8105176 | 20998 | 4245930437 | 103 | WALKER J #1 | SAND HILL (COTTON VALLEY | 182.0 | |
| -TOLTEC OIL AND GAS INC | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105036 | 16466 | 4229530623 | 103 | HAWKER NO 644-1 | NORTHRUP/CLEVELAND | 282.0 | NORTHERN NATURAL GAS |
| -TRANSCONTINENTAL OIL CORPORATION | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105228 | 22839 | 4236531031 | 102 | WILLIAMS NO 1 - 85896 | CARTHAGE (COTTON VALLEY) | 146.0 | UNITED GAS PIPE LINE |
| 8105228 | 22839 | 4236531031 | 103 | WILLIAMS NO 1 - 85896 | CARTHAGE (COTTON VALLEY) | 146.0 | UNITED GAS PIPE LINE |
| -TRAVELERS OIL CO | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105018 | 06460 | 4217900000 | 108 | PERKINS #1 03979 | PANHANDLE-GRAY COUNTY | 8.4 | PHILLIPS PETROLEUM C |
| -TRAVELERS OIL CO G-V PROJECT | | | | RECEIVED: 11/10/80 JA: TX | | | |
| *8105023 | 08136 | 4217900000 | 108 | MILTON #3 | EAST PANHANDLE | 0.0 | COLTEXO CORP |
| -TUCKER DRILLING COMPANY INC | | | | RECEIVED: 11/10/80 JA: TX | | | |
| *8105255 | 23464 | 4223531509 | 103 | HEZZIE CARSON TRUSTEE #6 | CHRISTI (CANYON 6800) | 190.0 | CRA INC |
| -U E ROGERS | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105234 | 23034 | 4232700000 | 108 | U E ROGERS NO 1A | TUCKMAR (CROSS CUT) | 18.0 | SUN GAS CO |
| -U S OPERATING INC | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105221 | 22727 | 4228730482 | 103 | DARLENE NO 1 (LEASE 12518) | GIDDINGS (AUSTIN CHALK) | 784.7 | PGP GAS PRODUCTS INC |
| 8105230 | 23016 | 4228730543 | 102 | LUCY NO 1 | GIDDINGS (AUSTIN CHALK) | 100.0 | PGP GAS PRODUCTS INC |
| -W A MONCRIEF JR | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105019 | 06709 | 4236731170 | 103 | MONCRIEF RANCH NO 5 | WEATHERFORD (STRAWN) | 317.0 | SOUTHWESTERN GAS PIP |
| -WALLACE OIL & GAS INC | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105020 | 07710 | 4242173947 | 103 | WALLACE OIL & GAS INC #1 ROSS | TEXAS HUGOTON | 84.0 | TRANSWESTERN PIPELIN |
| -WARREN PETR CO A DIV OF GULF OIL CO | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105175 | 20976 | 4210332137 | 103 | P J LEA ET AL NO 106 | LEA (SAN ANDRES) | 17.0 | EL PASO NATURAL GAS |
| -WEFCO INC | | | | RECEIVED: 11/10/80 JA: TX | | | |
| 8105027 | 11695 | 4217900000 | 108 | J S BAIRD WELL #3 | PANHANDLE GRAY COUNTY | 14.0 | CITIES SERVICE OIL C |

OTHER PURCHASERS VOLUME NO 322

| | |
|---|---|
| 8105023 | TRANSWESTERN P L CO |
| 8105080 | TEXAS EASTERN TRANS CO |
| 8105081 | SOUTHWESTERN GAS P L |
| 8105162 | NORTHERN NATURAL GAS CO |
| 8105190 | COLTEXO CORP |
| 8105191 | COLTEXO CORP |
| 8105192 | COLTEXO CORP |
| 8105197 | AMOCO PRODUCTION CO |
| 8105253 | EL PASO NATURAL GAS CO |
| 8105255 | NORTHERN NAT GAS CO |
| 8105288 | PANHANDLE EASTERN P L CO |
| 8105289 | HIGH PLAINS NATURAL GAS CO |
| 8105290 | HIGH PLAINS NATURAL GAS CO |
| 8105291 | HIGH PLAINS NATURAL GAS CO |
| 8105292 | HIGH PLAINS NATURAL GAS CO |
| 8105293 | HIGH PLAINS NATURAL GAS CO |
| 8105294 | HIGH PLAINS NATURAL GAS CO |
| 8105295 | HIGH PLAINS NATURAL GAS CO |
| 8105296 | HIGH PLAINS NATURAL GAS CO |
| 8105297 | HIGH PLAINS NATURAL GAS CO |
| 8105298 | HIGH PLAINS NATURAL GAS CO |
| 8105299 | HIGH PLAINS NATURAL GAS CO |
| 8105300 | HIGH PLAINS NATURAL GAS CO |
| 8105303 | PANHANDLE EASTERN P L CO |

BILLING CODE 6450-85-C

The above notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" after the section code. Estimated annual production (PROD) is in million cubic feet (MMcf). An (*) preceding the control number indicates that other purchasers are listed at the end of the notice.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C 20426.

Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before December 11, 1980.

Please reference the FERC Control Number (JD No) n all correspondence related to these determinations.

**Kenneth F. Plumb,**
*Secretary.*

[FR Doc. 80-36799 Filed 11-25-80; 8:45 am]
BILLING CODE 6450-85-M

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**[Docket No. CP81-42-000]**

## Florida Gas Transmission Co., Application

November 19, 1980.

Take notice that on November 3, 1980, Florida Gas Transmission Company (Applicant), P.O. Box 44, Winter Park, Florida 32790, filed in Docket No. CP81-42-000 an application pursuant to Section 7 of the Natural Gas Act and paragraphs (c), (e) and (g) of Section 157.7 of the Regulations thereunder (18 CFR 157.7(c), 157.7(e) and 157.7(g)) (1) for a certificate of public convenience and necessity authorizing the construction, during the period, January 7, 1981, through December 31, 1981, and operation of facilities to make miscellaneous rearrangements on its system; (2) for permission and approval to abandon, during the period, January 7, 1981, through December 31, 1981, direct sales service and facilities no longer required for deliveries of natural gas to Applicant's customers; and, (3) for a certificate of public convenience and necessity authorizing the construction and for permission and approval to abandon for the period, January 7, 1981, through December 31, 1981, and operation of various field compression and related metering and appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

The stated purpose of this budget-type application pursuant to § 157.7(c) of the Regulations is to augment Applicant's ability to act with reasonable dispatch in making miscellaneous rearrangements which would not result in any material change in the transportation and sales service presently rendered by Applicant. Applicant stated that the total cost of the proposed miscellaneous rearrangements would not exceed $390,000 which would be financed from internally generated funds.

The states purpose of this budget-type application pursuant to § 157.7(e) of the Regulations is to augment Applicant's ability to act with reasonable dispatch in abandoning service and removing direct sales measuring, regulating, and related facilities. Applicant states that it would abandon service and facilities only when deliveries to any one direct sales customer would not have exceeded 100,000 Mcf of natural gas during the last year of service.

The application further states that Applicant would not abandon any service unless it would have received a written request or written permission from the customer to terminate service. In the event such request or permission could not be obtained, a statement certifying that the customer has no further need for service would be filed with the Commission.

The stated purpose of this budget-type application pursuant to § 157.7(g) of the Regulations is to enable Applicant to act with reasonable dispatch in constructing and abandoning facilities which would not result in changing Applicant's system salable capacity or service from that authorized prior to the filing of the instant application. Applicant states that the total cost of proposed construction and abandonment would not exceed $4,000,000 and no single project would exceed $970,000. Applicant states said cost would be financed from internally generated funds.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 10, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificates and permission and approval for the proposed abandonments are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

**Kenneth F. Plumb,**
*Secretary.*

[FR Doc. 80-36803 Filed 11-25-80; 8:45 am]
BILLING CODE 6450-85-M

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**[Project No. 3473]**

## Jack M. Fuls; Application for Preliminary Permit

November 18, 1980.

Take notice that Mr. Jack M. Fuls of Portland, Oregon (Applicant) filed on September 16, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. §§ 791(a)-825(r)] for proposed Project No. 3473 to be known as Bend Diversion Dam Power Project located on the Deschutes River in Deschutes County, Oregon. The application is on file with the Commission and is available for public inspection. Correspondence with the Applicant should be directed to: Mr. Jack M. Fuls, 4420 N.W. Malhuer Ave., Portland, Oregon 97229, or Mr. Erling T. Soli, Haner, Ross & Sporseen, Inc., 220 S.W. Alder St., Portland, Oregon, 97204. Any person who wishes to file a

response to this notice should read the entire notice and must comply with the requirements specified for the particular kind of response that person wishes to file.

*Project Description*—The proposed project would consist of: (a) the existing 35-foot high, 184-foot long concrete gravity Bend Diversion Dam across the Deschutes River; (b) an existing intake structure within the east abutment of the diversion dam; (c) an existing 300-foot long canal section; (d) a 300-foot long penstock; (e) a powerhouse containing two generating units with a rated capacity of 1,250 kW each (total capacity for the project: 2,500 kW); and (f) appurtenant facilities.

The Applicant estimates that the average annual energy output would be 6.9 million kWh.

*Purpose of Project*—Project energy would be sold to a local utility company.

*Proposed Scope and Cost of Studies Under Permit*—Applicant has requested a 36-month permit to prepare a project report including preliminary designs, results of geological, environmental, and economic feasibility studies. The cost of the above activities, along with preparation of an environmental impact report, obtaining agreements with the Federal, State, and local agencies, preparing a license application, conducting final field surveys, and preparing designs is estimated by the Applicant to be $40,000.

*Purpose of Preliminory Permit*—A preliminary permit does not authorize construction. A permit, if issued, gives the Permittee, during the term of the permit, the right of priority of application for licenses while the Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for the power, and all other information necessary for inclusion in an application for a license.

*Agency Comments*—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant.) Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If an agency does not file comments within the time set below, it will be presumed to have no comments.

*Competing Applications*—Anyone desiring to file a competing application must submit to the Commission, on or before January 23, 1981, either the competing application itself or a notice of intent to file a competing application. Submission of a timely notice of intent allows an interested person to file the competing application no later than March 24, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c) (1980). A competing application must conform with the requirements of 18 CFR 4.33 (a) and (d) (1)980).

*Comments, Protests, or Petitions To Intervene*—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Commission, in accordance with the requirements of its Rules of Practice and Procedure, 18 CFR, 1.8 or 1.10 (1980). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 1.10 for protests. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but a person who merely files a protest or comments does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any comments, protest, or petition to intervene must be filed on or before January 23, 1981.

*Filing and Service of Responsive Documents*—Any comments, notices of intent, competing applications, protests or petitions to intervene must bear in all capital letters the title "Comments", "Notice of Intent To File Competing Application", "Competing Application", "Protest", or "Petition to Intervene", as applicable. Any of these filings must also state that it is made in response to this notice of application for preliminary permit for Project No. 3473. Any comments, notices of intent, competing applications, protests, or petitions to intervene must be filed by providing the original and those copies required by the Commission's regulations to:

Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. An additional copy must be sent to Fred E. Springer, Chief, Applications Branch, Division of Hydropower Licensing, Federal Energy Regulatory Commission, Room 208, 400 First St., NW., Washington, D.C. 20426. A copy of any notice of intent, competing application, application, or petition to intervene must also be served upon each representative of the Applicant specified in the first paragraph of this notice.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 80-36795 Filed 11-25-80; 8:45 am]

**BILLING CODE 6450-85-M**

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**[Docket No. ER80-568]**

## Kanawha Valley Power Co.; Order Granting Rehearing for Further Consideration

Issued: November 19, 1980.

On July 31, 1980, Kanawha Valley Power Company (Kanawha) submitted a proposed increase in rates for the sale of power to its parent company, Appalachian Power Company (Appalachian). The proposed rates provided for increased revenues of approximately $570,498 for the twelve-month period ending December 31, 1980. Kanawha requested an effective date of October 1, 1980, for the revised rates. By order issued September 30, 1980, the Commission accepted the rates for filing and suspended them for five months to become effective March 1, 1981, subject to refund. No petitions to intervene were received in response to public notice of the filing.

On October 20, 1980, pursuant to § 1.34 of the Commission's regulations, Kanawha filed an application seeking reconsideration of the Commission's imposition of a five month suspension. Kanawha requested that the Commission Review its determination regarding the appropriate effective date in light of a settlement in principle which Kanawha expected to formalize and file with the Commission.

On October 24, 1980, Kanawha filed an offer of settlement under § 1.18(e) of the regulations. The settlement proposal has been executed by both Kanawha and its sole customer under the proposed rates. The settlement offer, which is predicated on an effective date of November 1, 1980, would reduce the proposed rate increase by approximately $106,382, for the test period.

In order to afford additional time for consideration of the application for rehearing in light of the proposed settlement, we shall grant rehearing for the limited purpose of further consideration. This also will enable the Commission to make an informed evaluation of the settlement offer and any comments which may be filed. Under § 1.34(d) of the Commission's regulations, no answers to the application for rehearing will be entertained since this order does not

grant rehearing on any substantitive issues.

*The Commission orders:*

(A) Rehearing of Kanawha's application for rehearing is hereby granted for the limited purpose of further consideration.

(B) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 80-36804 Filed 11-25-80; 8:45 am]

**BILLING CODE 6450-85-M**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPTS-51174; TSH FRL 1682-2]**

## Certain Chemicals, Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of six PMN's and provides a summary of each.

**DATES:** Written comments by December 26, 1980.

**ADDRESS:** Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW., Washington, DC 20460, (202-755-8050).

**FOR FURTHER INFORMATION CONTACT:** George Bagley, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-210, 401 M St., SW., Washington, DC 20460, (202-426-3936).

**SUPPLEMENTARY INFORMATION:** Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** of May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 505444-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register**.

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register**.

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before December 26, 1980, submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-447, 401 M St., SW, Washington, DC 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51174]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: November 18, 1980.

**Warren R. Muir,**

*Deputy Assistant Administrator for Toxic Substances.*

**PMN 80-295**

The following summary is taken from data submitted by the manufacturer in the PMN.

*Close of Review Period.*

January 25, 1981.

*Manufacturer's Identity.*

Claimed confidential business information. Generic information provided:

Annual sales—In excess of $500 million.

Manufacturing site—Northeast U.S.

*Specific Chemical Identity.*

Claimed confidential business information. Generic name provided: Disubstitutednitrobenzene. *Use.* Chemical intermediate.

*Production Estimates.*

The manufacturer estimates that 25–100 kg of the new substance will be produced during each of the first three years.

*Physical/Chemical Properties.*

Melting point—<0°C.
Density—>1.1 gm/cc.

Vapor pressure—Betwen 10 and 100 torr at 87°C.

Boiling point—>200°C.

*Taxicity Data.*

No data were submitted.

*Expasure.*

| Activity | Exposure route | Maximum number exposed | Maximum duration | | Concentration (unit: mg/m³) | |
|---|---|---|---|---|---|---|
| | | | Hours/day | Days/year | Average | Peak |
| Manufacture | Dermal, Inhalation. | [1] 18 | 16 | 250 | 1–10 | 10–100 |
| Processing | Dermal, Inhalation. | [1] 21 | 16 | 250 | 1.10 | 10–100 |

[1] Total all shifts.

*Disposal.* The manufacturer states that less than 60 kg of the substance will be released to the environment and that all liquid and solid wastes generated, apart from wastewater streams approved for discharge into the publicly owned treatment plants (POTW), will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill, or for treatment or recovery.

*PMN 80–296.*

The following summary is taken from data submitted by the manufacturer in the PMN.

*Clase of Review Periad.* January 25, 1981.

*Manufacturer's Identity.* Claimed confidential business information. Generic information provided:

Annual sales—In excess of $500 million.

Manufacturing site—Northeast U.S.

*Specific Chemical Identity.* Claimed confidential business information. Generic name provided: Ethyl, substituted, (((sulfopropyl) heteropolycyclic)methyl) alkenyl heteropolycycle.

*Use.* Claimed confidential business information. Generic information provided: The manufacturer states that the new substance will be produced and processed in a way that will release less than 50 kg of the substance to the environment per year; that the end-use will involve incorporation of the chemical into consumer article.

*Productian Estimates.* The manufacturer estimates that 25–100 kg of the new substance will be produced during each of the first three years.

*Physical/Chemical Properties.* Melting point is >100°C.

*Toxicity Data.* No data were submitted.

*Expasure.*

| Activity | Exposure route | Maximum number exposed | Maximum duration | | Concentration (unit: mg/m³) | |
|---|---|---|---|---|---|---|
| | | | Hours/day | Days/year | Average | Peak |
| Manufacture | Inhalation, Dermal. | [1] 3 | 8 | 250 | 0–1 | 0–1 |
| Processing | Inhalation, Dermal. | [1] 28 | 24 | 250 | 0–1 | 0–1 |
| Use | Inhalation, Dermal. | [1] 25 | 24 | 250 | 0–1 | 0–1 |

[1] Total all shifts.

*Environmental Release/Dispasal.*

Manufacture:

Media—Amount of chemical release (kg/yr).
Air—<10.
Land—<10–100.
Water—<10.

The manufacturer states that: Wastes generated, apart from those waste-water streams approved for discharge into the POTW, will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill, or for treatment or recovery; waste-water streams are treated in an on-site waste treatment plant before release to the POTW, including floculation and clarification.

*PMN 80–297*

The following summary is taken from data submitted by the manufacturer in the PMN.

*Clase af Review Period.* January 25, 1981.

*Manufacturer's Indentity.* Claimed confidential business information. Generic information provided:

Annual Sales—In excess $500 million.
Manufacturing site—Northeast U.S.

*Specific Chemical Indentity.* Claimed confidential business information. Generic name provided. Ethyl, substituted, methylheteropolycycle tosylate.

*Use.* Chemical intermediate.

*Productian Estimates.* The manufacturer estimates that 25–100 kg of the new substance will be produced during each of the first three years.

*Physical/Chemical Properties.* Melting point is > 100° C.

*Taxicity Data.* No data were submitted

*Exposure.*

| Activity | Exposure route | Maximum number exposed | Maximum duration | | Concentration (unit: mg/m³) | |
|---|---|---|---|---|---|---|
| | | | Hours/day | Days/year | Average | Peak |
| Manufacture | Inhalation, Dermal. | [1] 3 | 8 | 250 | 0–1 | 0–1 |
| Processing | Inhalation, Dermal. | [1] 3 | 8 | 250 | 0–1 | 0–1 |

[1] Total all shifts.

*Environmental Release/Disposal.* The manufacturer states that less than 30 kg of the new substance will be released to the environment per year and that all liquid and solid wastes generated, apart from those waste-water streams approved for discharge into the POTW, will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill, or for treatment or recovery.

**PMN 80-298.**

The following summary is taken from data submitted by the manufacturer in the PMN.

*Close of Review Period.*

January 25, 1981.

*Manufacturer's Identity.*

Claimed confidential business information. Generic name provided: Substituted, methylheteropolycycle.

*Use.*

Chemical intermediate.

*Production Estimates.*

The manufacturer estimates that 25–100 kg of the new substance will be produced during the first three years.

*Physical/Chemical Properties.*

Vapor pressure—Between 1 and 10 torr at 83°C.
Density—>1.0 gm/cc.

*Toxicity Data.*

No data were submitted.

*Exposure.*

| Activity | Exposure route | Maximum number exposed | Maximum duration | | Concentration (unit: mg/m³) | |
|---|---|---|---|---|---|---|
| | | | Hours/day | Days/year | Average | Peak |
| Manufacture | Inhalation, dermal. | [1] 3 | 8 | 250 | 0–1 | 0–1 |
| Processing | Inhalation, dermal. | [1] 3 | 8 | 250 | 0–1 | 0–1 |

[1] Total all shifts

*Environmental Release/Disposal.*

The manufacturer states that less than 30 kg of the new substance will be released to the environment per year and that all liquid and solid wastes generated, apart from those wastewater streams approved for discaharge into the POTW will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemicaly secure landfill, or for treatment or recovery.

**PMN 80-299.**

The following summary is taken from data submitted by the importer in the PMN.

*Close of Review Period.*

January 25, 1981.

*Importer's Identity.*

Claimed confidential business information. Generic information provided:

Annual sales—In excess of $500 million.

*Specific Chemical Identity.*

Claimed confidential business information. Generic name provided: Disubstituted benzene.

*Use.*

Chemical intermediate.

*Import Estimates.*

The importer estimates that 25–100 kg of the new substance will be imported during each of the first three years.

*Physical/Chemical Properties*

Density—1.1.
Melting point—<0°C.
Boiling point—Between 50°C and 100°C.

*Toxicity Data.*

No data were submitted.

*Exposure.*

| Activity | Exposure route | Maximum number exposed | Maximum duration | | Concentration (unit: mg/m³) | |
|---|---|---|---|---|---|---|
| | | | Hours/day | Days/year | Average | Peak |
| Processing | Dermal; inhalation. | [1] 18 | 16 | 250 | 1–10 | 10–100 |

[1] Total all shifts.

*Environmental Release/ Disposal.*

The manufacturer states that less than 30 kg of the new substance will be released to the environment per year and that all liquid and solid wastes generated by this processing, apart from those waste-water streams which are approved for discharge into the POTW, will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill, or for treatment or recovery.

**PMN 80-300**

The following summary is taken from data submitted by the manufacturer in the PMN.

*Close of Review Period.*

January 25, 1981. Manufacturer's Identity. Claimed confidential business information. Generic information provided:

Annual Sales—In excess of $500 million.
Manufacturing site—Northeast U.S.

*Specific Chemical Identity.*

Claimed confidential business information. Generic name provided: Bis(Nitro, substituted-phenyl) substituent.

*Use.*

Chemical intermediate.

*Production Estimates.*

The manufacturer estimates that 25–100 kg of the new substance will be produced during each of the first three years.

*Physical/Chemical Properties.*

Melting point is>100°C.

*Toxicity Data.*

No data were submitted.

*Exposure.*

| Activity | Exposure route | Maximum number exposed | Maximum duration | | Concentration (unit: mg/m³) | |
|---|---|---|---|---|---|---|
| | | | Hours/day | Days/year | Average | Peak |
| Manufacture | Inhalation, dermal. | Site | Dependent | | 1-10 | 10-100 |
| Processing | Inhalation, dermal. | Site | Dependent | | 1-10 | 10-100 |

*Environmental Release/Disposal.*

The manufacturer states that less than 30 kg of the new substance will be released to the environment per year and that all liquid and solid wastes generated, apart from those waste-water streams approved for discharge into the POTW, will be drummed for destruction in a licensed thermal oxidizer or for disposal in a licensed chemically secure landfill, or for treatment or recovery.

[FR Doc. 80-36846 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-31-M

[OPP-180524; PH-FRL 1682-3]

## Connecticut; Issuance of Specific Exemption for Fenvalerate on Cabbage and Cauliflower

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted permission to the Connecticut Department of Environmental Protection (hereafter referred to as the "Applicant") to use fenvalerate to control the cabbage looper and cabbageworm on 2,000 acres of cabbage and cauliflower in Connecticut. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

**DATE:** The specific exemption expires on November 30, 1980.

**FOR FURTHER INFORMATION CONTACT:** Donald R. Stubbs, Registration Division (TS-767), Office of Pesticide Programs, Evironmental Protection Agency, Rm: E-124, 401 M St., SW., Washington, D.C. 20460, (202-426-0223).

**SUPPLEMENTARY INFORMATION:** According to the Applicant, the cabbage looper is a serious economic pest of commercially produced cabbage. The cabbage looper is the most difficult cabbage pest to control, and occurs annually in destructive numbers. Effective control is needed throughout the season since poor control during any portion resulst in more adults to attack before the crop has matured. Connecticut grows cabbage for the fresh market only; therefore, the Applicant states, heads with damage must be destroyed. In addition, Connecticut farmers double-crop their cabbage due to the long growing season for this crop. The Applicant states that heavy infestations are already destroying the first crop. The second crop will be planted with heavy infestations of the pest already present. The Applicant estimates a loss of 14 to 85 percent of the cabbage and cauliflower crops, if an effective control program is not available this season. Use of fenvalerate is expected to cut losses from 80 to 5 percent.

The Applicant states that with the possible exception of Monitor, none of the currently registered compounds has been effective and they are not providing adequate control. While Monitor generally controls the pests., the Applicant reports, it may not be used within 35 days of harvest. This pre-harvest interval is a critical period for cabbage and cauliflower due to the unusually high infestation of the cabbage looper.

The Applicant proposed to apply fenvalerate at a rate of 0.05 to 0.1 pound per acre using the product Pydrin, manufactured by Shell Chemical Company.

EPA had determined that residues of fenvalerate from the proposed use should not exceed 2.0 parts per million (ppm) in cabbage or 1.0 ppm in cauliflower. These levels have been judged by the EPA to be adequate to protect the public health. EPA has also determined that the proposed use should not have an unreasonable adverse effect on the environment.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until November 30, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Pydrin (EPA Reg. No. 201-401) manufactured by Shell Chemical Company may be used.
2. Total acreage of cabbage and cauliflower may not exceed 2,000 acres.
3. A maximum of 1,200 pounds of active ingredient may be applied at a maximum rate of 0.05 to 0.1 pound active ingredient per acre.
4. A maximum of six applications is authorized.
5. A seven-day pre-harvest interval is imposed.
6. All applications must be made by State-certified commercial applicators or by qualified growers.
7. Root crops may not be planted in treated fields for 12 months after application. A 60-day crop rotation restriction is imposed for any other crop.
8. Fenvalerate will be applied by ground equipment in a spray volume of 20 to 100 gallons per acre.
9. Fenvalerate may be applied to cabbage or cauliflower fields when fields are to be harvested within 45-days and a State entomologist has determined that:

   a. A major infestation of cabbage loopers or cabbageworms exists.

   b. Registered pesticides are not controlling the cabbage looper or cabbageworm.

   c. Significant economic losses to cabbage or cauliflower growers will occur.

10. It is recommended that fenvalerate not be applied any closer to fish-bearing fresh waters than 100 feet (at the 0.05 lb. a.i. rate) and 200 feet (at the 0.1 lb. a.i. rate). Application closer than these may result in fish and/or other aquatic organism kills.
11. Participants are to be notified of their obligation to report any and all adverse effects on non-target organisms arising from the use of this product. The EPA shall be immediately informed of any adverse effects resulting from the proposed use.
12. Precautions must be taken to avoid or minimize spray drift to non-target areas.
13. This product is highly toxic to bees exposed to direct treatment or to residues on crops or weeds in bloom on which significant numbers of bees are actively foraging. Protective information may be obtained from the State Cooperative Agriculture Extension Service.
14. Fenvalerate is extremely toxic to fish and aquatic invertebrates. It must be kept out of lakes, streams, ponds, tidal marshes and estuaries. Care must be taken to prevent contamination of water by cleaning of equipment or disposing of waste.
15. Cabbage with residues of fenvalerate not exceeding 2 ppm and cauliflower with residues of fenvalerate not exceeding 1 ppm may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, had been advised of this action.
16. Cabbage trimmings from treated fields must not be fed to livestock.

17. All applicable directions, restrictions, and precautions on the product label must be adhered to.

18. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a final report summarizing the results of this program by February 28, 1981.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: November 19, 1980.

**Edwin L. Johnson,**

*Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc. 80-36847 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-30-M

[OPP-C30193; PH-FRL 1682-6]

## Herculite Products, Inc.; Application to Conditionally Register Pesticide Product Containing a New Active Ingredient

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Herculite Products, Inc. has submitted an application to conditionally register a pesticide product CHECKMATE, which contains the active ingredient (*Z*)-9-dodecenyl acetate at 6.72 percent and (*E*)-9-dodecenyl acetate at 1.68 percent, which has not been included in any previously registered pesticide product.

**DATE:** Comments must be received on or before December 26, 1980, and should bear a notation indicating the EPA registration number.

**ADDRESS:** Written comments to: Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, Rm. E-341, 401 M St., SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Franklin D. R. Gee (202-755-1150).

**SUPPLEMENTARY INFORMATION:** Herculite Products, Inc., 1107 Broadway, New York, NY 10010, has submitted an application to register the pesticide product CHECKMATE (EPA Registraton No. 8730-EN) containing (*Z*)-9-dodecenyl acetate and (*E*)-9-dodecenyl acetate. The application proposes that the product be conditionally registered to disrupt the mating of western pine shoot borers. The proposed classification is for general use.

This application is made pursuant to the provisions of the Federal insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162.6). Notice of receipt of this application does not indicate a decision by the agency on the application. Interested persons are invited to submit written comments on the application referred to in this notice.

Notice of approval or denial of this application will be announced in the Federal Register. Except for such material protected by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162.6), the test data and other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedure for requesting such data will be given in the Federal Register if an application is approved.

(Sec. 3(c) 86 Stat. 972 (7 U.S.C. 136a))

Dated: November 18, 1980.

**Douglas D. Campt,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 80-36849 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-50508; PH-FRL- 1682-7]

## Issuance of Experimental Use Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

**FOR FURTHER INFORMATION CONTACT:** The designated product manager at the telephone number given in each permit at the following address: Registration Division (TS-767), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

40546-EUP-1. Fisons Inc., Two Preston Court, Bedford, MA 01730. This experimental use permit allows the use of 2,300 pounds of the pesticide Norton in the following mixtures: Norton Flowable—Ethofumesate in tank mix with Betanal—Phenmedipham and/or Betanex—Desmedipham for evaluation of postemergence weed control in sugar beets. A total of 2,300 acres are involved. The program is authorized only in the States of California, Colorado, Idaho, Michigan, Minnesota, Montana, Nebraska, North Dakota, and Ohio. The experimental use permit is effective from October 9, 1980 to June 30, 1982. Permanent tolerances have been established for Ethofumesate under 40 CFR 180.345, Phenmedipham under 40 CFR 180.278, and Desmedipham under 40 CFR 180.353. (PM 23, Richard F. Mountfort, Rm. E-351, 202-755-1397).

239-EUP-93. Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804. This experiment use permit allows the use of 3,300 pounds of the insecticide, acephate on almond orchards to evaluate control of the navel orangeworm. A total of 1,000 acres are involved. The program is authorized only in the State of California. The program is effective from October 6, 1980 to October 6, 1981. A temporary tolerance has been established for residues of acephate in or on almonds. (PM 16, William H. Miller, Rm. E-343, 202-426-9458).

524-EUP-53. Monsanto Co., 1101 17th St. NW., Washington, D.C. 20036. This experimental use permit allows the use of 8,745 pounds of the herbicide glyphosate on noncrop, fallow, or State seedbeds prior to planting barley, cotton, oats, rye, and wheat to evaluate control of weeds. A total of 11,660 acres are involved. The program is authorized only in the States of California, Colorado, Idaho, Kansas, Montana, Nebraska, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Washington, and Wyoming. This experimental use permit is effective from October 9, 1980 to October 9, 1982. A permanent tolerance has been established for residues of glyphosate in or on the above raw agricultural commodities under 40 CFR 180.364. (PM 25, Robert J. Taylor, Rm. E-359, 202-755-2196).

Persons wishing to review these experimental use permits are referred to the designated product manager cited in each permit. Inquiries regarding these permits should be directed to the persons listed above. It is suggested that interested persons call before visiting the EPA Headquarters office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

(Sec. 5, 92 Stat. 819 as amended; (21 U.S.C. 136))

Dated: November 14, 1980.

**Douglas D. Campt,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 80-36850 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-32-M

[OPP-180525; PH FRL 1682-8]

## New Jersey; Issuance of Specific Exemption for Captafol on Eggplants

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted a specific exemption to the New Jersey Department of Environmental Protection (hereafter referred toas the "Applicant") for the use of captafol to control phytophthora blight and fruit rot on a maximum of 1,020 acres of eggplant in New Jersey. The specific exemption is issued under the Federal Insecticide, Fungicide, and Rodenticide Act.

**DATE:** The specific exemption expires on November 15, 1980.

**FOR FURTHER INFORMATION CONTACT:** Jack E. Housenger, Registration Division (TS-767), Office of Pesticide Programs, Enviromental Protection Agency, Room E-107, 401 M St., SW., Washington, D.C. 20460, (202-426-0223).

**SUPPLEMENTARY INFORMATION:** The fungus *Phytophthora capsici* causes serve plant loss and fruit rot to eggplants. The Applicant claims that presently registered fungicides, including C-O-C-S, copper tetra calcium oxychloride, and zineb, have been used for many years but have not been effective in control. Ridging has also been used in the past and will provide effective control, but only of the collar rot phase, not the foliage blight and fruit rot phases, according to the Applicant. The Applicant claims that without the use of captafol, direct losses could reach $4, $450,000.

The applicant proposed to use a maximum of 4,500 pounds of the active ingredient (a.i.) captafol. A maximum of 5 applications of Difolatan 4F, applied by State-certified applicators using ground or aerial equipment, was proposed.

EPA has determined that residues of captafol in or on eggplants should not exceed 10 parts per million (ppm) from the proposed use. This residue level has been judged adequate to protect the public health. This use of captafol is not expected to pose an unreasonable hazard to the environment.

After reviewing the application and other available information, EPA has determined that the criteria for an exemption have been met. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until November 15, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Difolantan 4F, EPA Reg. No. 239-2211, may be used. If an unregistered label is used, it must contain the identical applicable precautions and restrictions which appear on the registered label.
2. A maximum of 5 applications may be made at a rate of 3 pints of formulation (1.5 pounds a.i.) per acre.
3. The first application may be made when the disease is predicted to occur. Subsequent applications may be made at 10-day intervals.
4. No application will be made within 4 days of harvest.
5. A maximum of 1,020 acres of eggplant may be treated.
6. A maximum of 4,500 pounds a.i. may be used.
7. Applications will be made by State-certified applicators using either ground or aerial equipment.
8. Residue levels of captafol and its metabolites from the above application are not expected to exceed 10 ppm in or on eggplants. Eggplants with residues not in excess of this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health and Human Services, has been advised of this action.
9. All applicable precautions, directions, and restrictions on the EPA-registered product label must be adhered to.
10. The EPA must be immediately informed of any adverse effects resulting from the use of captafol in connection with this exemption.
11. The Applicant is responsible for ensuring that all of the provisions of this exemption are followed and must submit a final report summarizing the results of this program by February 28, 1981.

(Sec. 18 as amended 92 Stat. 819; (7 U.S.C. 136))

Dated: November 19, 1980.

**Edwin L. Johnson,**

*Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc. 80-36851 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-32-M

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[OPTS-59041; TSH FRL 1682-4]

## Modified Polyester Based on Carbomonocyclic Anhydride Alkenediols; Premanufacture Exemption Application

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1)(A) of the Toxic Substances Control Act (TSCA) requires any person intending to manufacture or import a new chemical substance for a commercial purpose in the United States to submit a premanufacture notice (PMN) to EPA at least 90 days before he commences such manufacture or import. Under section 5(h) the Agency may, upon application, exempt any person from any requirement of section 5 to permit such person to manufacture or process a chemical for test marketing purposes. Section 5(h)(6) requires EPA to issue a notice of receipt of any such application for publication in the **Federal Register.** This notice announces receipt of applications for an exemption from the premanufacture reporting requirements for test marketing purposes and requests comments on the appropriateness of granting the exemption.

**DATE:** The Agency must either approve or deny the application by December 12, 1980. Persons should submit written comments on the applications no later than December 11, 1980.

**ADDRESS:** Written comments to: Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E-447, 401 M St., SW, Washington, DC 20460, (202-755-8050).

**FOR FURTHER INFORMATION CONTACT:** Mary Cushmac, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room E-221, Washington, DC 20460, (202-426-3980).

**SUPPLEMENTARY INFORMATION:** Under section 5 of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], any person who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA before the manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing chemical substances compiled by EPA under Section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal** Register on May 15, 1979 (44 FR 28558-Initial) and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

Section 5(a)(1) requires each PMN to be submitted in accordance with section 5(d) and any applicable requirement of chemical substances that are subject to testing rules under section 4. Section 5(b)(2) requires additional information in PMN's for substances which EPA, by rules under section 5(b)(4), has

determined may present unreasonable risks of injury to health or the environment.

Section 5(h), "Exemptions," contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorized EPA, upon application, to exempt persons from any requirement of section 5(a) or section 5(b) to permit the persons to manufacture or process a chemical substance for test marketing purposes. To grant such an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and the Agency must publish a notice of its disposition in the **Federal Register**. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

Under section 5(h)(6), EPA must publish in the **Federal Register** a notice of receipt of an application under section 5(h)(1) immediately after the Agency receives the application. The notice identifies and briefly describes the application (subject to section 14 confidentiality restrictions) and gives interested persons an opportunity to comment on it and whether EPA should grant the exemption. Because the Agency must act on the application within 45 days, interested persons should provide comments within 15 days after the notice appears in the **Federal Register**.

EPA has proposed Premanufacture Notification Requirements and Review Procedures published in the **Federal Register** of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764) containing proposed premanufacture rules and notice forms. Proposed 40 CFR 720.15 (44 FR 2268) would implement section 5(h)(1) concerning exemptions for test marketing and includes proposed 40 CFR 720.15(c) concerning the section 5(h)(6) **Federal Register** notice. However, these requirements are not yet in effect. In the meantime EPA has published a statement of Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) which applies to PMN's submitted prior to promulgation of the rules and notice forms.

Interested persons may, on or before December 11, 1980, submit to the Document Control Officer (TS-793), Management Support Division, Office of Pesticides and Toxic Substances, Rm. E-447, 401 M St., SW, Washington, DC 20460, written comments regarding this notice. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-59041]". Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday excluding legal holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: November 18, 1980.

**Warren R. Muir,**

*Deputy Assistant Administrator for Toxic Substances.*

*TM-80-46*

The following summary is taken from data submitted by the manufacturer in the test marketing exemption application.

*Close of Review Period.* December 12, 1980.

*Manufacturer's Identity.* Claimed confidential business information. Generic information provided:

Annual sales—$500,000,000 and up.

Manufacturing site—Mid-Atlantic.

Standard Industrial Classification Code—285, "Paints, Varnishes, Lacquers, Enamels, and Allied Products".

*Specific Chemical Identity.* Claimed confidential business information. Generic name provided. Modified polyester based on carbomonocyclic anhydride alkenediols.

*Use.* Claimed confidential business information. Generic information provided: The manufacturer states that the product involved in the test market will release less than 50 kilograms to the environment and that articles fabricated from the test-market quantity would not be expected to reach consumers but would be used to evaluate the physical characteristics of the final product.

*Production Estimates.* The manufacturer estimates a production of 5,000 to 6,000 kilograms of the substance for test market pruposes to be produced in five days will be provided four customers for evaluation.

*Physical/Chemical Properties.*

Acid value (on solids)—20-30.

Viscosity (60% in 2-ethoxyethanol)—I+.

*Toxicity Data.* The manufacturer submitted data on the acute toxicity of thermal decomposition products of an article containing the new chemical substance. The amount of sample required to produce sufficient smoke resulting in 50% mortality ($LC_{50}$) under specified conditions was 32.1 g. According to the submitter, the results of the testing method show that the formulation using the new chemical substance is classified "as toxic as wood", under identical test conditions.

*Exposure.*

| Site activity | Exposure route(s) | Maximum number exposed | Maximum duration | | Concentration (unit: mg/m ³) | |
|---|---|---|---|---|---|---|
| | | | Hours/day | Days/year | Average | Peak |
| Manufacture | Skin, eye, inhalation. | 6 | 3 | 4 | 0–1 | 0–1 |
| Typical User (Major Use) | Skin, eye, inhalation. | 6 | 8 | 2 | 0–1 | 0–1 |

**Environment Release/Disposal**

[Amount/duration of chemical release (kilogram per year)]

| | |
|---|---|
| Activity/media—manufacturer media: | |
| Air | <10 |
| Water | <10 |
| Land | <10 |
| Typical user (major use): | |
| Air | [1] <10 |
| Water | <10 |
| Land | <10 |

[1] 16 hours per day; 2 days per year.

[FR Doc. 80-36848 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-01-M

[EN-FRL 1681-6]

## Motor Vehicle Recalls Under the Clean Air Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final agency actions.

**SUMMARY:** This notice announces final EPA actions taken in conjunction with its motor vehicle recall program.

**FOR FURTHER INFORMATION CONTACT:** Mary T. Smith, Manufacturers Operations Division (EN-340), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202-472-9425).

**SUPPLEMENTARY INFORMATION:** Under section 307(b)(1) of the Clean Air Act, judicial review of these actions are available *only* by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of November 26, 1980. Under section 307(b)(2) of the Clean Air 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 the recall of motor vehicles under 40 CFR Part 85 for failure to meet applicable Federal emission standards have become final:

1. In accordance with § 85.1804(a), EPA, in a letter of June 17, 1980, conditionally approved, pending the incorporation of some modifications, a plan submitted by American Motors Corporation (AMC) to remedy the oxides of nitrogen (NOx) nonconformity in its 1976 vehicles with eight cylinder engines. By letter of June 26, 1980, AMC assented to EPA's suggested modifications. Therefore, on June 26, 1980, EPA's approval of AMC's remedial plan for 1976 vehicles with eight cylinder engines became final.

2. In accordance with § 85.1804(a), EPA, in a letter of June 23, 1980, conditionally approved, pending the incorporation of some minor modifications, General Motors' (GM) remedial plan of February 15, 1978, insofar as it remedied, at GM's expense, 1975 Cadillacs of engine family 60V43 with carburetor part number 7045230 (230 carburetor) which would still be within their useful lives (defined under section 202(d) of the Clean Air Act to be 5 years or 50,000 miles, whichever occurs first) at the time of their repair. On July 11, 1980, GM assented to EPA's suggested modifications. Therefore, on July 11, 1980, EPA's approval of GM's remedial plan for 1975 Cadillacs of engine family 60V43 with the 230 carburetor which will still be within their useful lives at the time of their repair became final.

In addition, in its letter of June 23, 1980, EPA disapproved, in accordance with § 85.1804(a), that portion of GM's plan of February 15, 1978, which pertained to 1975 Cadillacs of engine family 60V43 with the 230 carburetor which would be beyond their useful lives at the time of their repair because GM has refused to remedy these vehicles at its expense. GM was also encouraged in this letter to submit a plan within 20 days to remedy, at its expense, 1975 Cadillacs of engine family 60V43 with the 230 carburetor beyond their useful lives. GM did not submit such a plan. Therefore, on July 13, 1980, EPA's disapproval of GM's remedial plan for 1975 Cadillacs of engine family 60V43 with the 230 carburetor which will be beyond their useful lives at the time of their repair became final.

3. On February 14, 1980, the Administrator of EPA ordered the recall of 1977 GM Buick vehicles of engine family 740J2 for failure to meet applicable Federal emission standards. In a letter of August 1, 1980, in accordance with § 85.1804(a), EPA approved a plan submitted by GM to remedy the nonconformities. Therefore, on August 1, 1980, EPA's approval of GM's remedial plan for 1977 GM Buick vehicles of engine family 740J2 became final.

4. On June 20, 1980, the Administrator ordered the recall of 1977 GM vehicles of engine family 730H2U and 1976 and 1977 Cadillac Sevilles for their failure to comply with the applicable Federal emission standard for NOx. Under § 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 the receipt of the Administrator's notification of nonconformity. GM has not made a request for a public hearing and, therefore, the recall orders of June 20, 1980, are now final.

5. In a letter of October 18, 1979, Ford submitted a plan to remedy the carbon monoxide (CO) nonconformity in certain 1977 Granada/Monarch vehicles with 250 cubic inch displacement (CID) engine, calibration 7-29A-R1. After subsequent changes to this plan were agreed upon by EPA and Ford, EPA approved in a letter of September 15, 1980, in accordance with § 85.1804(a), a plan to remedy the CO nonconformity in these 1977 vehicles. Therefore, on September 15, 1980, EPA's approval of Ford's remedial plan for certain 1977 Granada/Monarch vehicles with 250 CID engines, calibration 7-29A-R1 became final.

Dated: November 19, 1980.

**Jeffrey Miller,**

*Acting Assistant Administrator for Enforcement.*

[FR Doc. 80-37001 Filed 11-25-80; 8:45 am]

BILLING CODE 6560-33-M

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### EEOC Senior Executive Service Performance Review Boards

The purpose of this Notice is to establish Performance Review Boards (PRB) and appoint their membership.

The Civil Service Reform Act of 1978 requires each agency to establish one or more PRB's (Section 4314(c)(1), Chapter 43, Title 5, U.S.C.). The PRB's for the Equal Employment Opportunity Commission (EEOC) will make recommendations to the Chair, this agency's appointing authority, on performance ratings (Sec. 4314 of Chapter 43, Title 5, U.S.C.) and performance awards (Sec. 5384 of Chapter 53, Title 5, U.S.C.) in the Senior Executive Service (SES). The Chair shall issue performance appraisals only after considering PRB recommendations (Sec. 4314(c)(3), Chapter 43, Title 5, U.S.C.). Membership of the PRB must include a majority of SES career appointees when the appraisal of a career SES member is under review (Sec. 4314(c)(5), Chapter 43, Title 5, U.S.C.). Members of a PRB may be from within or outside the agency, Federal employees or not, but generally should be in positions equivalent to SES positions (Sec. II(c) of attachment 1, Federal Personnel Manual System Bulletin 920–9, March 15, 1979).

Effective with this Notice, two PRB's are established for EEOC, one to review performance appraisals of headquarters SES members and one to review field SES members' appraisals. The PRB for headquarters will have two EEOC officials as Alternate Chairpersons (one an SES member, the other not), but with membership from other Federal agencies and outside Government to ensure objectivity and avoid the appearance of any conflict of interest. The Chairperson and members of the PRB for the field will be SES members from the headquarters office of EEOC.

The members of the PRB for headquarters are: Preston David, EEOC Executive Director, and Leroy Clark, EEOC General Counsel (Atlternate Chairperson); Terry Banks, Chief, Opinions and Review, Federal Communications Commission; Charlotte Frank, Deputy Commissioner, Administration on Aging, Department of Health and Human Services; Harriett Jenkins, Director of Equal Opportunity Programs, National Aeronautics and Space Administration; and Luis Alvarez, President, National Urban Fellows, Inc., New York City.

The members of the PRB for the field, all in EEOC, are: Francesta Farmer, Director, Office of Interagency Coordination (Chairperson); Robert Amoruso, Director, Office of Administration; Nestor Cruz, Director, Office of Review and Appeals; James Finney, Associate General Counsel (Trial Division); and Constance Dupre, Associate General Counsel (Legal Counsel Division).

The Performance Review Boards established for EEOC will implement and maintain a program of performance appraisal review, system monitoring, and recommendations for action by the Chair that will ensure consistency, stability, and objectivity in performance appraisal.

Dated: November 19, 1980.

**Eleanor Holmes Norton,**

*Chair, Equal Employment Opportunity Commission.*

[FR Doc. 80-36779 Filed 11-25-80; 8:45 am]

BILLING CODE 6570-06-M

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## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. A-20]**

### TV Broadcast Applications Accepted for Filing and Notification of Cut-Off Date

Released: November 18, 1980.

Cut-Off Date: December 29, 1980.

Notice is hereby given that the applications listed in the attached appendix are accepted for filing. They will be considered to be ready and available for processing after December 29, 1980. An application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on December 29, 1980, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C. no later than the close of business on December 29, 1980.

Petitions to deny any application on this list must be on file with the Commission not later than the close of business on December 29, 1980.

Applications for new stations may not be filed against any application on the attached list which is designated by an asterisk (*).

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

*BPCT-800929KN (WATU-TV), Augusta, Georgia, WATU Television, Inc., Channel 26, Increase ERP Vis. to 1,700 kW; reduce HAAT to 1,590 feet.

BPCT-801022KE (new), Anchorage, Alaska, Totem Broadcasting Corporation, Channel 4, ERP: Vis. 42.5 kW; HAAT: −17 feet.

BPET-801023KE (new), Dickinson, North Dakota, Prairie Public Television, Inc., Channel 9, ERP: Vis. 265.5 kW; HAAT: 806 feet.

BPCT-801023KG (new), Irving, Texas, CELA, Inc., Channel 49, ERP: Vis. 1,277.6 kW; HAAT: 695 feet.

BPCT-801023KF (new), Lake Charles, Louisiana, Holt-Robinson Television of Louisiana, Inc., Channel 29, ERP: Vis. 710 kW; HAAT: 700 feet.

BPCT-801021KH (new), Arecibo, Puerto Rico, Arecibo Video Corporation, Channel 54, ERP: Vis. 1.178 kW; HAAT: −219 feet.

BPCT-801021KE (new), San Juan, Puerto Rico, JEM Communications, Inc., Channel 24, ERP: Vis. 4,384 kW; HAAT: 1,161 feet.

BPCT-801010KE (new), Orange Park, Florida, Clay Television, Inc., Channel 25, ERP: Vis. 2,060.63 kW; HAAT: 496 feet.

BPET-801029KF (new), Bellingham, Washington, The University of Washington, Channel 34, ERP: Vis. 1,230 kW; HAAT: 2,376 feet.

BPCT-801024KE (new), Bluefield, West Virginia, Channel 40, Inc., Channel 40, ERP: Vis. 1,110 kW; HAAT: 2,503.6 feet.

[FR Doc. 80-36874 Filed 11-25-80; 8:45 am]

BILLING CODE 6712-01-M

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**[FCC 80-586; CC Docket No. 80-633]**

### ITT World Communications Inc., Required Rate of Return; Memorandum Opinion and Order Instituting Investigation

Adopted: October 9, 1980.

Released: November 14, 1980.

1. The Commission has under consideration the results of our audit of the international carriers in Docket No. 20778 (75 FCC 2d 726 (1980)), and financial data for the major International Record Carriers (IRCs) filed in recent reports to the Commission.[1] On the basis of the audit and these data, and other information

[1] The International Record Carriers referred to herein are FTC Communications, Inc. (FTCC), ITT World Communications Inc. (ITTWC), RCA Global Communications, Inc. (RCAGC), TRT Telecommunications Corp. (TRT), Western Union International, Inc. (WUI) and U.S.-Liberia Radio Corp. (U.S.-Liberia).

set forth below, we are initiating a formal hearing into the required rate of return of ITT World Communications Inc. (ITTWC). We are also calling upon ITTWC to file with the Chief, Common Carrier Bureau, data as to its rate base and expenses. However, we do not propose to investigate cost of individual services at this time

I. Background

2. In the *Memorandum Opinion and Order* instituting Docket No. 20778 (59 FCC 2d 240 (1976)),[2] we noted that the issues of rates and rates of return for the IRCs had not been considered by the Commission since 1958. See, *Western Union Telegraph Company,* 25 FCC 538 (1958). We provided that the Common Carrier Bureau should first conduct an audit and study of the IRC operations, and that costs should be allocated to major service categories to determine the extent to which there might be unlawful cross-subsidization among the services or between operating areas (59 FCC 2d at 241). The results of the audit and studies were before us for decision less than one year ago. By Order released January 29, 1980 (75 FCC 2d 726), we made the staff's report therein available for public inspection, and terminated the docket without undertaking any formal ratemaking proceedings. We stated that the staff report indicated that the IRCs were earning excessive rates of return. However, we did not make any findings as to the legal implications of the experienced rates of return because of the questionable reliability of the data provided by the carriers. It appeared that contemporaneous decisions in the international arena would eliminate barriers to entry and help create a competitive market structure, and that these industry structure changes made it unnecessary to begin a formal proceeding at that time. While we emphasized that we were not eliminating our regulatory efforts in the international area, we stated that we would monitor the effects of those decisions and provide for informal conferences with and reports by the carriers to assure that they are complying with Commission rules pertaining to the reporting of financial data.[3]

3. Four methods of computation were used in the audit report to assess the rates of return of each of the IRCs under consideration, based upon 1976 carrier-provided data which, the staff noted, were possibly unreliable. Rates of return were computed overall and for the three major service categories, Telex, Public Message Service, and Leased Channel.[4]

ITTWC demonstrated the highest overall rate of return under each method of computation and for each service category except Leased Channel. The overall rate of return earned by ITTWC appears to have substantially increased since the audit was undertaken. Staff studies of data in the Annual Reports to the Commission filed by ITTWC for 1978 and 1979 show rates of return in excess of 20% after taxes, regardless of the method of computation used (see note 4, *supra*). Although we make no findings herein as to the rate of return level which ITTWC requires, we believe that these computed data compel a preliminary observation that ITTWC's earnings may be excessive. Thus, we are today instituting a hearing so that we will be able to conclusively resolve this matter. Further, to improve the reliability of rate base, expense and earnings information, we are requiring ITTWC to file updated information reflecting the improved accounting procedures deemed necessary in the staff audit. See 75 FCC 2d at 729.

4. There are other factors which lead us to start this formal ratemaking proceeding now. Most importantly, we have discerned no significant alteration or downward trend in IRC rate levels since our actions in the international area last December. We are particularly concerned with the lack of any significant downward movement in Telex rates. Further, we recently started a paper hearing to investigate the trariff revisions filed by the IRCs purporting to unbundle international Telex rates (CC Docket No. 80–339, FCC 80–386, released August 8, 1980). We stated in the Memorandum Opinion and Order therein that the data were incomplete for the purposes of determining whether transmission charges have been fully and properly reduced by the unbundling of terminal equipment, access lines and supplies. Because we found it necessary to start a hearing on those tariff filings, it appears that the carriers are not voluntarily reducing international Telex transmission charges even though that rate element appears to be generating relatively excessive return levels. The hearing that we are commencing in this Order will provide a comprehensive review of the applicable rate of return of ITTWC, which has evidenced a higher overall and Telex rate of return than its major competitors. Should we later decide as a result of this proceeding to prescribe a rate of return for ITTWC which is lower than its actual rate of return, we expect the impact of our action would be to lower the rates of all the international record carriers. In the meantime, we will continue CC Docket 80–339 in accordance with the existing schedule to develop the type of rate structure data needed for our decision on the lawfulness of the unbundling proposals.

5. Another consideration leading to our designation of a hearing herein is the recent decision by the United States Court of Appeals regarding Western Union's participation with foreign carriers in the offering of international Telex service. See *ITT World Communications Inc.* v. *F.C.C.,* Nos. 79–4220 et al. (2d Cir. August 25, 1980). In that decision, the Court vacated our authorization to Western Union to transmit Telex messages from Western Union subscribers to overseas subscribers by interconnecting with Mexican and Canadian carriers, rather than by interconnection with the United States IRCs.[5] The conclusion of the Court that Section 222 of the Communications Act bars Western Union from providing an interconnected service with foreign carriers for international communications appears to foreclose a potential source of competition in the international communications market. Given the elimination of this potential source of competition to the IRCs, the possibility that Section 222 will not be modified or repealed to allow the competition which we envisioned, and the expanded operational opportunities available to the IRCs as a result of our authorization of additional points of operation in the United States,[6] it is now appropriate to undertake further formal rate regulatory efforts.

[2] Docket No. 20778 also considered the earnings of the international voice carriers such as AT&T. That part of the investigation will not be reviewed in this order.

[3] The staff report raised serious questions as to the carriers' compliance with our accounting rules.

[4] The methods of computation used were:

(1) An earned rate of return based on operating plant in service, plant held for future use, earth station investment and their applicable reserves. These are normally the largest components of the carrier's rate base.

(2) An earned rate of return based on all components of rate base as determined in the decisions of Dockets 19129 and 16070, which excluded plant under construction.

(3) An earned rate of return based on all components of rate base determined in Docket 16258, which included plant under construction.

(4) An earned rate of return based upon the carrier's cost data as submitted without any staff adjustments.

[5] *Western Union Telegraph Co.,* 75 FCC 2d 461 (1980).

[6] *International Record Carriers,* 76 FCC 2d 115 (1980), review pending sub nom. *Western Union Telegraph Co.* v. *F.C.C.,* Case No. 79–2492 (D.C. Cir.).

**II. Selection of ITTWC**

6. As noted, we have decided to examine the rate of return of ITTWC rather than that of each IRC because ITTWC has earned the highest rate of return overall and for its major services, including Telex, in recent years, based upon staff analysis of carrier-supplied data. We stated in the International Audit Order that there were indications that the major IRCs were earning excessive rates of return based on 1976 data. These rates of return have increased since that date. Thus, the need for a formal rate of return hearing focusing upon the carrier with the highest rate of return—ITTWC—has become compelling. For this reason alone, it is important to take a closer look at ITTWC's rate of return. In addition, we note that ITTWC serves sufficient points so that we expect any action we take concerning ITTWC's rate of return to have a significant beneficial industry-wide impact. In other words, should our action here result in an order that ITTWC adjust its rates to earn a lower rate of return, we expect that each of its competitors would follow suit. Nevertheless, we remain free to initiate further proceedings as to the rates of return of other IRCs if this action appears necessary or desirable.

7. Through rate regulation of a single carrier, the Commission can regulate pricing in the entire industry by setting the maximum rates that that carrier may charge to receive a fair rate of return. This approach recognizes that there will result an essential uniformity of rates among carriers, accompanied by a constant pressure upon the other carriers to improve the efficiency of their operations. In this instance, ITTWC's rates would become, in effect, the industry-wide maximums. A carrier which exceeds these rates will lose business. A carrier matching these rates will operate at a less profitable level than ITTWC unless it improves its efficiency.

8. Despite our decision to go forward at this time with a rate of return proceeding concerning only one IRC, we are aware that this course of action may work some hardship. Other rate regulatory solutions are, however, either infeasible or not in the public interest. It would not make sense to set allowable rates of return individually. The less efficient carriers would not be able to set prices at a high enough level to achieve the allowable return. Alternatively, if the allowable rate of return were set upon an industry-wide basis, such a policy would be "a guarantee to the less competent or less efficient operator that his failure to measure up in the competitor's race will be rewarded." *The Western Union Telegraph Company,* 25 FCC 535, 580 (1958). Further, to offset any unfairness to other IRCs, we will scrutinize unusual situations involving particular points of service or facility configurations. However, these exceptions appear to be few and, therefore, in the context of our action here, will be considered only after the termination of this proceeding.

9. The *Audit Report* in Docket No. 20778, and more recent statistical compilations, indicate that ITTWC leads the industry in both efficiency of operations and rate of return. In the past we have examined the rate of return of a single carrier, rather than of the whole industry, under a bellwether approach to ratemaking. *The Western Union Telegraph Company,* 25 FCC 535 (1958). While we are not necessarily limiting our review to ITTWC, we are satisfied that at a minimum ITTWC is the appropriate carrier to undergo initial scrutiny. In the past, predominance in market share, revenues, and service points were major criteria for choosing a carrier, although efficency was also a factor. 25 FCC at 582. Under a modern-day bellwether approach for this industry, we would rely more heavily upon factors showing efficent operation, since three carriers now occupy predominant positions in the provision of international service. The following tables compare ITTWC's place in the market, efficiency of operations and overall and Telex rates of return, with its major rivals.

1. *International Points Served*[6]
   ITTWC—85
   RCAGC—92
   WUI—75
   Industry Total—118
2. *Overall Service Revenues*
   ITTWC—34% or $156 M
   RCAGC—38% or $172 M
   WUI—22% or $101 M
   Industry Total—$455 M
3. *Telex Revenues*
   ITTWC—35% or $94 M
   RCAGC—36% or $95 M
   WUI—23% or $64 M
   Industry Total—$267 M
4. *Net Income After Taxes*
   ITTWC—$36 M
   RCAGC—$26 M
   WUI—$17 M
5. *Operating Revenue Per Dollar of Expenses*[7]
   ITTWC—$1.56
   RCAGC—$1.22
   WUI—$1.35
6. *Overall Rate of Return After Taxes*[8]
   ITTWC—15%
   RCAGC—10%
   WUI—11%
7. *Rate of Return—Telex Service*
   ITTWC—36%
   RCAGC—26%
   WUI—22%

10. The efficiency and rate of return criteria set forth above are based upon financial measures—measures which relate revenues, expenses, and plant investment. We recognize that other measures, such as those based upon engineering or operational considerations, can also be employed—e.g., fill on major truck routes or switching costs per line termination. However, these efficiencies will ultimately be translated into some measure of financial performance. under each of the efficiency measures, ITTWC shows a clear margin of greater operational efficiency. Further, the tables disclose market share and scope of operations by ITTWC comparable with RCAGC and WUI. Thus, we can conclude that ITTWC is the appropriate carrier for review when assessed by the twin criteria of broadness of service coverage and operational efficiency.

**III. The Hearing**

11. As we have noted, this proceeding will determine the rate of return which we will prescribe for ITTWC to earn on its rate base. This inquiry will require an examination into ITTWC's capital structure, its cost of debt and cost of equity. At the conclusion, the presiding officer shall prepare an initial decision on the rate of return issue, and parties may take exception thereto. Should we decide to go forward with a formal proceeding on rate base and expenses, we will use the above rate of return to compute ITTWC's revenue requirement. A separated Trial Staff will participate in the rate of return proceeding in a manner similar to its participation in other rate of return cases.

12. Since ITTWC has sole access to important information necessary to this rate of return determination, ITTWC has the burden of proof in the proceeding designated herein. Preliminary calculations show that ITTWC's rate of return may significantly exceed its fair rate of return. In our last investigation of the IRC earnings, we found that a fair rate of return for the bellwether carrier was 7.5 to 8.5%, and we prescribed rates accordingly. ITTWC and the other carriers have been earning considerably above this level. Given the passage of time it is incumbent upon ITTWC to show what its present rate of return should be under current economic conditions.

13. We will not now consider rate base and expense issues in this

[6] Source: Items 1–4, *Statistics of Communicotions Common Corriers;* FCC; year ended 12/31/78.

[7] Source: Item 5, *Statistics of Communications Common Carriers;* FCC; Year ended 12/31/78.

[8] Source: Items 6–7, *Audit Report,* 75 FCC 2d 726.

proceeding. However, as a separate matter we will require ITTWC to file with the Chief, Common Carrier Bureau, by January 14, 1980, such rate base and expense data as it would offer as its direct case in a ratemaking proceeding where those elements are being considered. We expect ITTWC to provide sufficient rate base and expense information and underlying documentation for calendar year 1979 and an estimate for calendar year 1980 to allow for thorough Staff evaluation. In preparing this submission, ITTWC will be required to separately state all joint or common costs shared with affiliated companies and provide the rationale and justification for allocating any portion of such costs to ITTWC. The final results (preferably audited) for calendar year 1980, with underlying documentation, shall be filed by no later than March 31, 1981. We require ITTWC to provide in writing to the Chief, Common Carrier Bureau, by December 4, 1980, a full description of the substance and type of underlying documentation it intends to submit with its rate base and expense figures. We shall also require it to cooperate with the Bureau Chief in submitting any further information or underlying documentation that may be requested by him.

14. Accordingly, it is ordered, That pursuant to the provisions of Sections 4(i), 4(j), 201, 202, 205, 213(e), 213(f), 215(a), 218, 219, 220(c) and 403 of the Communications Act of 1934, as amended, an investigation and hearing is instituted into the authorized rate of return of ITT World Communications Inc.

15. It is further ordered, That this proceeding will include consideration of the following issues:

(a) The cost of embedded debt;

(b) The cost of equity capital;

(c) The cost of other sources of financing;[9]

(d) The appropriate capital structure to be used for ratemaking purposes and the weights to be accorded the above costs of capital; and

(e) The authorized rate of return.[10]

16. It is further ordered, that included within its Final Decision herein, consideration may be given to what action, if any, should be taken by the Commission to effect such rate adjustments as may be warranted on the basis of the record and such order or orders will issue as may be appropriate to this end.

17. It is further ordered, that the hearings in this investigation shall be held at the Commission's offices in Washington, D.C. at a time to be specified, before an Administrative Law Judge to be designated.

18. It is further ordered, that the Administrative Law Judge shall, upon closing of the record, prepare and issue an initial decision which shall be subject to the submission of exceptions and requests for oral argument, as provided in §§ 1.276 and 1.277 of the Commission's rules, 47 C.F.R. 1.276 and 1.277, after which the Commission shall issue its decision as provided in § 1.282 of these rules, 47 C.F.R. 1.282.

19. It is further ordered, that a separated Trial Staff of the Common Carrier Bureau will participate in this rate of return proceeding. The Chief, Hearing Division, and his staff will be separated in accordance with § 1.1209 of the Commission's rules, 47 C.F.R. 1.1209.[11]

20. It is further ordered, that ITT World Communications Inc. is named party Respondent and any ohter interested party wishing to actively participate in this proceeding shall file a notice of its intention to do so on or before December 26, 1980.

21. It is further ordered, that the Secretary shall send a copy of this order by certified mail, return receipt requested to ITT World Communications Inc., and shall cause a copy to be published in the Federal Register.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 80-36875 Filed 11-25-80; 8:45 am]

**BILLING CODE 6712-01-M**

[9] This issue will include consideration, as necessary, of the sources of funds and inter-company relationships described in para. 4 of our designation order in the AT&T rate of return proceeding, CC Docket 79-63 (73 FCC 2d 689 (1979)).

[10] We are not designating any issue regarding the measurements of ITTWC's rate base and expenses or the measurement or inclusion of specific elements therein.

[11] The Trial Staff has the authorization under the Communications Act and our Rules to utilize all investigatory powers in developing a full and fair record in this proceeding. See Sections 213(e)-(f), 215(a), 218, and 220(c) of Communications Act of 1934, as amended, 47 U.S.C. sections 213(e)-(f), 215(a), 218 and 220(c). Although the formal discovery provisions of our Rules are not applicable to rulemaking proceeding of this nature, information requests may be made on a continuing basis throughout the trial of this case. See *American Telephone and Telegraph Co.*, 73 FCC 2d 689, 694 (1979).

## FEDERAL COMMUNICATIONS COMMISSION

[Canadian List No. 399]

### Notification List

**October 10, 1980.**

List of new stations, proposed changes in existing stations, deletions, and correction in assignments of Canadian standard broadcast stations modifying the assignments of Canadian broadcast stations contained in the appendix to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting January 30, 1941.

| Call letters | Location | Power kW | Antenna | Schedule | Class | Antenna height (feet) | Ground system | | Proposed date of commencement of operation |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Number of radials | Length (feet) | |
| CFJC | Kamloops, British Columbia, N. 50°38'34", W. 120°27'28" (now in operation on new frequency). | 25D/5N | DA-2 | *550 kHz* U | III | ........ | ........ | ........ | |
| CFJC | Spaniard's Bay/Harbour, Grace, Newfoundland, N. 47°39' *36"* W. 53°15' *14"* (correction of georgraphical co-ordinates) | 5 | DA-1 | *550 kHz* U | II | ........ | ........ | ........ | April 11, 1981. |
| CFJC | Kamloops, British Columbia, N. 50°43' 24" W. 120°20' 26" (delete) | 10D/1N | ND-187 | *910KHz* U | III | ........ | ........ | ........ | |
| CFTJ | Cambridge, Ontario, N. 43°20' 55" W. 80°14' 45" (now in operation with DA-1 antenna system). | 1 | DA-1 | *960 kHz* U | III | ........ | ........ | ........ | |

**Notification List—Continued**

| Call letters | Location | Power kW | Antenna | Schedule | Class | Antenna height (feet) | Ground system | | Proposed date of commencement of operation |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Number of radials | Length (feet) | |
| | | | | *1010 kHz* | | | | | |
| CFYQ | Gander, Newfoundland, N. 48°58' 30" W. 54°36' 47" (PO 1350 kHz). | *5* | ND-*175* | U | II | *196* | 120 | 283 | October 10, 1081. |
| | | | | *1340 kHz* | | | | | |
| New | Ashcroft, Bristish Columbia, N. 50°45' 30" W. 121°17' 47" | 1D/0.25N | ND-180 | U | IV | 125 | 120 | 294 | October 10, 1981. |
| | | | | *1350 kHz* | | | | | |
| CFYQ | Gander, Newfoundland, N. 48°58' 30" W. 54°36' 47" (*vide 1010 kHz*). | 1 | ND-185 | U | III | 135 | 120 | 283 | |

**Richard J. Shilben,**
*Chief, Broadcast Bureau, Federal Communications Commission.*

[FR Doc. 80-36900 Filed 11-25-80; 8:45 am]
**BILLING CODE 6712-01-M**

## FEDERAL RESERVE SYSTEM

### Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than December 19, 1980.

A. *Federal Reserve Bank of New York* (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. MANUFACTURERS HANOVER CORPORATION, New York, New York (mortgage banking and servicing activities; Minnesota): to engage through its subsidiary, Manufacturers Hanover Mortgage Corporation, in making or acquiring, for its own account or for the account of others, loans and other extensions of credit such as would be made by a mortgage company; and servicing any such loans and other extensions of credit for any person. These activities would be conducted from the *de novo* office of Manufacturers Hanover Mortgage Corporation located in St. Louis Park, Minnesota and serving Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, Chisago and Wright Counties located in Minnesota.

2. MANUFACTURERS HANOVER CORPORATION, New York, New York (mortgage banking and servicing activities; Florida): to engage through its subsidiary, Manufacturers Hanover Mortgage Corporation, in making or acquiring, for its own account or for the account of others, loans and other extensions of credit such as would be made by a mortgage company; and servicing any such loans and other extensions of credit for any person. These activities would be conducted from the *de novo* office of Manufacturers Hanover Mortgage Corporation located in St. Petersbury, Florida and serving the Tampa Standard Metropolitan Statistical Area, which includes Hillsborough, Pinnellas and Pasco Counties.

3. THE CHASE MANHATTAN CORPORATION, New York, New York (mortgage banking, loan servicing, and investment advisory activities; Florida): to solicit, make, acquire and service loans and other extensions of credit, either secured or unsecured, for its own account or for the account of others; to act as an issuer, broker and/or dealer in respect of securities guaranteed by the Government National Mortgage Association; and to act as investment or financial adviser on real estate matters to the extent of furnishing general economic information and advice as well as portfolio investment advice on real estate matters. This application is for the relocation of an existing office in Jacksonville, Florida. Comments on this application must be received by December 22, 1980.

B. *Federal Reserve Bank of Dallas (Anthony J. Montelaro, Assistant Vice President) 400 South Akard Street, Dallas, Texas 75222:*

MERCANTILE TEXAS CORPORATION, Dallas, Texas, to engage, through its subsidiary John Rathmall & Company, Inc., in having supervisory responsibility over agents and brokers on behalf of insurance companies with regard to the following types of insurance: (1) all types of property, casualty and liability insurance which are needed by the present and future banking subsidiaries of Applicant, including group protection to their employees and insurance in connection with extensions of credit (excluding credit life and accident and health insurance) made by them including: (a) single interest insurance, (b) blanket bond insurance, (c) comprehensive fire, theft and extended coverage for property owned by such banking subsidiaries, and (d) personal liability insurance for such banking subsidiaries; (2) group employee benefit coverage for employees of the present and future banking subsidiaries of Applicant including hospitalization, group term life, accident and death and dismemberment. These activities will be conducted from an office in Dallas, Texas, serving the State of Texas.

C. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

FIRST HAWAIIAN, INC., Honolulu, Hawaii (industrial banking and insurance agency activities; Hawaii): to engage through its subsidiary, Hawaii Thrift & Loan, Incorporated, in operating

an industrial loan company as authorized by Hawaii law, including making loans upon individual credit, the pledge or mortgage of real or personal property, issuing and selling certificates for the payment of money at any time; and selling property, casualty, life, accident and health insurance directly related to its extensions of credit. These activities will be conducted from an office in Kailua—Kona, Hawaii, serving the Kona, Hawaii area. Comments on this application must be received by December 22, 1980.

D. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, November 20, 1980.

**Jefferson A. Walker,**

*Assistant Secretary of the Board.*

[FR Doc. 80-36840 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

## Bank Holding Companies; Proposed de Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8)) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Govenors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and, except as noted, received by the appropriate Federal Reserve Bank not later than December 18, 1980.

A. *Federal Reserve Bank of St. Louis* (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

Citizens Fidelity Corporation, Louisville, Kentucky (leasing activities; Missouri, Illinois, Western Kentucky, Kansas City area): to engage, through its subsidary, Citizens Fidelity Leasing Corporation, in the leasing of personal property and equipment and acting as agent, broker or advisor, in the leasing of such property, in a manner such that the leasing would serve as a functional equivalent of an extension of credit and subject to the limitations and restrictions specified in 12 CFR 225.4(a)(6). These activities would be conducted from an office in St. Louis, Missouri, serving the states of Missouri, including the greater Kansas City area, Western Kentucky, and Illinois. Comments on this application must be received by December 16, 1980.

B. *Federal Reserve Bank of San Francisco* (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

Security Pacific Corporation, Los Angeles, California (industrial loan, financing and credit-related insurance activities; California): to engage in financing and industrial loan corporation activities through its subsidary Security Pacific Finance Money Center Inc., including making, acquiring and servicing loans and other extensions of credit; selling and issuing investment certificates; and acting as agent for the sale of credit-related life, credit-related accident and health and credit-related property insurance, all as authorized by California law. These activities would be conducted from offices of Security Pacific Finance Money Center Inc. in the cities of Santa Barbara, San Bernardino, Modesto and Oxnard, California, serving the State of California.

C. *Other Federal Reserve Banks:* None.

Board of Govenors of the Federal Reserve System November 18, 1980.

**Jefferson A. Walker,**

*Assistant Secretary of the Board.*

[FR Doc. 80-36841 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

## Finance Ohio Company; Formation of Bank Holding Company

Finance Ohio Company, Martins Ferry, Ohio, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 90 per cent or more of the voting shares of the Peoples Savings Bank Company, Martins Ferry, Ohio. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 12, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 19, 1980.

**Jefferson A. Walker,**

*Assistant Secretary of the Board.*

[FR Doc. 80-36843 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

## First City Bancorporation, Inc.; Acquisition of Bank

First City Bancorporation, Inc., Houston, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares less directors' qualifying shares of Windsor Park Bank, San Antonio, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 19, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 20, 1980.

**Jefferson A. Walker,**

*Assistant Secretary of the Board.*

[FR Doc. 80-36837 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

## First City Bancorporation of Texas, Inc.; Acquisition of Bank

First City Bancorporation of Texas, Inc., Houston, Texas, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent of the voting shares, less directors' qualifying shares, of The Bank of South Texas, Alice, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 19, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 19, 1980.

**Jefferson A. Walker,**

*Assistant Secretary of the Board.*

[FR Doc. 80-36838 Filed 11-25-80; 8:45 am]

**BILLING CODE 6210-01-M**

## First Palm Beach International Bank; Corporation To Do Business Under Section 25(a) of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"), to be known as First Palm Beach International Bank, Miami, Florida. First Palm Beach International Bank would operate as a subsidiary of First National Bank in Palm Beach, Palm Beach, Florida. The factors that are considered in acting on the application are set forth in § 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received no later than December 18, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute and summarize the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 18, 1980.

**Jefferson A. Walker,**

*Assistant Secretary of the Board.*

[FR Doc. 80-36834 Filed 11-25-80; 8:45 am]

**BILLING CODE 6210-01-M**

## First State Holding Company of Prescott, Formation of Bank Holding Company

First State Holding Company of Prescott, Prescott, Arkansas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring at least 98.3 per cent of the voting shares of Bank of Prescott, Prescott, Arkansas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 19, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 19, 1980.

**Jefferson A. Walker,**

*Assistant Secretary of the Board.*

[FR Doc. 80-36842 Filed 11-25-80; 8:45 am]

**BILLING CODE 6210-01-M**

## Houston County Agency, Inc.; Proposed Continuation of General Insurance Agency Activities as Caledonia Insurance Agency

Houston County Agency, Inc., St. Paul Minnesota, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to continue to engage in general insurance agency activities as Caledonia Insurance Agency.

Applicant states that it would continue to engage in the activities of acting as agent for the sale of general insurance in a community having a population not exceeding 5,000 inhabitants. These activities would be performed from offices of Applicant's subsidiary bank in Caledonia, Minnesota, and the geographic area to be served is Caledonia, Minnesota. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than December 19, 1980.

Board of Governors of the Federal Reserve System, November 19, 1980.

**Jefferson A. Walker,**

*Assistant Secretary of the Board.*

[FR Doc. 80-36835 Filed 11-25-80; 8:45 am]

**BILLING CODE 6210-01-M**

## New Salem Bancorporation, Inc.; Formation of Bank Holding Company

New Salem Bancorporation, Inc., New Salem, North Dakota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 88.3 per cent or more of the voting shares of Security State Bank of New Salem, New Salem, North Dakota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or

at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than December 19, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 20, 1980.

Jefferson A. Walker,

*Assistant Secretary of the Board.*

[FR Doc. 80-36844 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

## Security National Corp.; Acquisition of Bank

Security National Corporation, Sioux City, Iowa, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 94 percent or more of the voting shares of First State Bank, Mapleton, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than December 19, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 19, 1980.

Jefferson A. Walker,

*Assistant Secretary of the Board.*

[FR Doc. 80-36838 Filed 11-24-80; 8:45 am]

BILLING CODE 6210-01-M

## Summit Bancorp.; Acquisition of Bank

The Summit Bancorporation, Summit, New Jersey, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire all the voting shares of Maplewood Bank and Trust Company, Maplewood, New Jersey. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than December 19, 1980. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 19, 1980.

Jefferson A. Walker,

*Assistant Secretary of the Board.*

[FR Doc. 80-36839 Filed 11-25-80; 8:45 am]

BILLING CODE 6210-01-M

# FEDERAL TRADE COMMISSION

## Early Termination of the Waiting Period of the Premerger Notification Rules; Diversified Industries, Inc.

**AGENCY:** Federal Trade Commission.

**ACTION:** Granting of request for early termination of the waiting period of the premerger notification rules.

**SUMMARY:** Diversified Industries, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all stock of Florida Wire & Cable Company. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Diversified. Neither agency intends to take any action with respect to this acquisition during the waiting period.

**EFFECTIVE DATE:** November 7, 1980.

**FOR FURTHER INFORMATION CONTACT:** Roberta Baruch, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

**SUPPLEMENTARY INFORMATION:** Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

*Secretary,*

[FR Doc. 80-36813 Filed 11-25-80; 8:45 am]

BILLING CODE 6750-01-M

## Early Termination of the Waiting Period of the Premerger Notification Rules; General Electric Co.

**AGENCY:** Federal Trade Commission.

**ACTION:** Granting of request for early termination of the waiting period of the premerger notification rules.

**SUMMARY:** General Electric Company is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain assets of Tucson Electric Power Company and Public Service Company of New Mexico. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by all parties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

**EFFECTIVE DATE:** November 13, 1980.

**FOR FURTHER INFORMATION CONTACT:** Roberta Baruch, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C., (202) 523-3894.

**SUPPLEMENTARY INFORMATION:** Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

By direction of the Commission.

Carol M. Thomas,

*Secretary.*

[FR Doc. 80-36810 Filed 11-25-80; 8:45 am]

BILLING CODE 6750-01-M

## Early Termination of the Waiting Period of the Premerger Notification Rules; Kentucky Investors, Inc.

**AGENCY:** Federal Trade Commission.

**ACTION:** Granting of request for early termination of the waiting period of the premerger notification rules..

**SUMMARY:** Kentucky Investors, Inc. is granted early termination of the waiting period provided by law and the premerge notification rules with respect to the proposed acquisition of all stock of Citadel Life Insurance Company from Barclays Bank International Ltd. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Kentucky Investors. Neither agency intends to take any action with respect to this acquisition during the waiting period.

**EFFECTIVE DATE:** November 4, 1980.

**FOR FURTHER INFORMATION CONTACT:** Roberta Baruch, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202) 523-3894.

**SUPPLEMENTARY INFORMATION:** Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b) (2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the Federal Register.

By direction of the Commission.

**Carol M. Thomas,**

*Secretary.*

[FR Doc. 80-36811 Filed 11-25-80; 8:45 am]

BILLING CODE 6750-01-M

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## Early Termination of the Waiting Period of the Premerger Notification Rules; MAPCO, Inc.

**AGENCY:** Federal Trade Commission.

**ACTION:** Granting of request for early termination of the waiting period of the premerger notification rules.

**SUMMARY:** MAPCO, Inc. is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of all stock of Earth Resources Company. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by MAPCO, Inc. Neither agency intends to take any action with respect to this acquisition during the waiting period.

**EFFECTIVE DATE:** November 12, 1980.

**FOR FURTHER INFORMATION CONTACT:** Roberta Baruch, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580 (202-523-3894).

**SUPPLEMENTARY INFORMATION:** Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

By direction of the Commission.

**Carol M. Thomas,**

*Secretary.*

[FR Doc. 80-36809 Filed 11-25-80; 8:45 am]

BILLING CODE 6750-01-M

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## Early Termination of the Waiting Period of the Premerger Notification Rules; Regie Nationale des Usines Renault

**AGENCY:** Federal Trade Commission.

**ACTION:** Granting of request for early termination of the waiting period of the premerger notification rules.

**SUMMARY:** Regie Nationale des Usines Renault is granted early termination of the waiting period provided by law and the premerger notification rules with respect to the proposed acquisition of certain stock of American Motors Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by American Motors. Neither agency intends to take any action with respect to this acquisition during the waiting period.

**EFFECTIVE DATE:** .

**ADDRESS:** November 10, 1980.

**FOR FURTHER INFORMATION CONTACT:** Roberta Baruch, Attorney, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, D.C. 20580, (202-523-3894).

**SUPPLEMENTARY INFORMATION:** Section 7A of the Clayton Act, 15 U.S.C. § 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

By direction of the Commission.

**Carol M. Thomas,**

*Secretary.*

[FR Doc. 80-36812 Filed 11-25-80; 8:45 am]

BILLING CODE 6750-01-M

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# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control

## Annual Report; Availability of Filing

Notice is hereby given that pursuant to Section 13 of Pub. L. 92-463 (5 U.S.C. Appendix I), the fiscal year 1980 annual report for the following Federal advisory committee utilized by the Centers for Disease Control has been filed with the Library of Congress: Safety and Occupational Health Study Section.

Copies are available to the public for inspection at the Library of Congress, Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, S.E., Washington, D.C. (telephone: 202/287-6310). Additionally, on weekdays between 9:00 a.m. and 4:30 p.m. copies will be available for inspection at the Department of Health and Human Services, Department Library, HHS North Building, Room 1436, 300 Independence Avenue, S.W., Washington, D.C. (telephone: 202/245-6791).

Dated: November 20, 1980.

**Donald R. Hopkins,**

*Acting Director, Centers for Disease Control.*

[FR Doc. 80-36879 Filed 11-25-80; 8:45 am]

BILLING CODE 4110-86-M

## ADVISORY COUNCIL ON HISTORIC PRESERVATION

### Executive Director's Procedures for Review of Proposals for Treatment of Archeological Properties; Supplementary Guidance

#### I. Introduction

Under the authority of 36 CFR 800.14, the Executive Director of the Advisory Council on Historic Preservation issues the following supplementary guidance, to interpret elements of the Council's regulations to assist Federal agencies and State Historic Preservation Officers in meeting their responsibilities. This supplementary guidance was developed with the assistance of the Council's Archeology Task Force, and endorsed by the full Council at its November 1980, quarterly meeting.

The following procedures will be used by the Executive Director of the Council in review of projects involving treatment of archeological properties. They are based on the Council's "Principles in the Treatment of Archeological Properties" (Appendix A). They do not amend or modify the duties of Federal agencies under Section 106 of the National Historic Preservation Act and the implementing regulations (36 CFR Part 800), but agency cognizance of them will make consultation under the regulations easier.

Archeological properties are those properties included in, determined eligible for, or potentially eligible for, the National Register, whose significance lies wholly or partly in the archeological data they contain. Archeological data are data embodied in material remains (artifacts, structures, refuse, etc.) utilized purposely or accidentally by human beings, in the spatial relationship among such remains, and in the environmental context of such remains. Archeological data include historic, prehistoric, and scientific data as defined by the Department of the Interior in accordance with Public Law 93–291 (cf. 36 CFR Part 1210).

An expanded version of this guidance, including the Council's "Recommendations for Archeological Data Recovery," "Principles in the Treatment of Archeological Properties," and explanatory appendices, is available from the Executive Director under the title, *Treatment of Archeological Properties.*

#### II. Identification and Evaluation of Archeological Properties

1. 36 CFR 800.4 establishes that "it is the primary responsibility of each Agency Official requesting Council comments to conduct the appropriate studies and to provide the information necessary for an adequate review of the effect a proposed undertaking may have on a National Register or eligible property, as well as the information necessary for adequate consideration of modifications or alterations to the proposed undertaking that could avoid, mitigate, or minimize any adverse effects. It is the responsibility of each Agency Official requesting consultation with a SHPO under this section to provide the information that is necessary to make an informed and reasonable evaluation of whether a property meets National Register criteria and to determine the effect of a proposed undertaking on a National Register or eligible property." Identification is the obvious first step to be taken by an Agency in defining its responsibility with respect to archeological and other historic properties.

In evaluation of proposals for treatment of archeological properties, the Executive Director may review field surveys and other identification efforts that have been conducted as part of the Agency's planning process, to determine whether:

A. The identification effort appears to be consistent with the scale and expected impacts of the proposed project;

B. The identification effort appears to be conducted at a sufficient level of intensity in relation to the numbers and types of archeological properties expected to occur in the areas; and,

C. The data recovery proposal submitted for Council consideration appears consistent with the results of the identification effort.

2. The Executive Director will use 36 CFR Part 1210, appendix B, as a general standard for reviewing identification efforts.

3. The Executive Director will encourage recognition of the difference between "testing" archeological sites for identification and evaluation and excavating them for purposes of data recovery. Testing is usually conducted in order to answer questions about an archeological site's eligibility for the National Register, or to obtain data needed to make decisions about how to mitigate project impacts on a site already determined eligible or placed on the Register. Such testing is directed toward determining the site's boundaries, the depth of its deposits, and/or its basic nature and condition. Only a very small sample of the site need be disturbed in order to make such determinations. Excavation for data recovery, on the other hand, is directed toward recovering as much of the important information in the site as possible, given time and other constraints. Unlike testing, excavation for data recovery is seldom simply directed at defining the size, depth, nature and condition of the site; it is directed at answering or contributing to research questions. Excavation for data recovery may result in very extensive—even complete—disturbance of a site. While it is impossible to define a point, applicable in all instances, at which testing ends and data recovery begins, a rule of thumb is that testing is completed when sufficient information has been gathered to make a determination of eligibility or a management decision. Since testing is done, in most cases, before the fate of the site has been determined through the consultation process, it should be kept to the absolute minimum necessary for eligibility determination and/or management purposes. "Testing" that destroys large portions of a site forecloses the Council's opportunity to comment, and circumvents the intent of Section 106. The Executive Director will discourage such "testing," and will notify the Secretary of the Interior, pursuant to P.L. 93–291 Sec. 4(a), in instances where such "testing" threatens the irrevocable loss of scientific, prehistoric, historic, or archeological data.

#### III. Consideration of In-Place Preservation

In review of projects involving archeological properties, the Executive Director will seek to ensure that all due consideration is given to practical methods of preserving such properties in place.

#### IV. Consideration of Non-archeological Interests

In review of projects involving archeological properties, the Executive Director will seek to ensure that all due consideration is given to whatever non-archeological historical and cultural values the properties may represent. For example, if an archeological property is also valuable to a local community for cultural reasons, the Executive Director will seek to ensure that this value is considered and given appropriate weight in decisionmaking.

#### V. Data Recovery Directed to Research Questions

Where it is concluded through the consultation process that preservation in place is not practical, and that data recovery is appropriate, the Executive Director will seek to ensure that the data recovery effort addresses defined and defensible research questions. Such

questions should relate to issues of importance in the sciences or humanities, or to matters of importance to local communities with historical connections to the property or properties. It is expected, however, that the specificity of research questions, and their relationship to larger issues, will vary with the character and quality of prior archeological work in the area, the state of existing knowledge of the property, the nature of local, regional, and topical research efforts pertinent to the property, and the quality of the State Historic Preservation Plan in force in the state at the time the project is undertaken.

## VI. Sacrifice of Properties Without Data Recovery

Where an archeological property cannot practically be preserved in place, and the responsible agency proposes to destroy or damage it without data recovery, the Executive Director will seek to ensure that all reasonable consideration has been and is given to the property's potential to yield information relevent to important research questions. The Executive Director will not support or sanction the recovery of data simply because they exist, nor will the Executive Director support arbitrary destruction of data.

## VII. Efficiency of Data Recovery

Where data recovery is to be undertaken, the Executive Director will seek to ensure that it is conducted in the most efficient manner possible, in the context of an appropriate data recovery plan. Data recovery programs should be organized to extract, digest, and make available the pertient data in the most efficient manner possible, taking into account local conditions, the potential for unexpected discoveries, non-archeological concerns, and other relevent factors. The kinds of techniques, tools, and expertise required in a given data recovery program are dependent on the kinds of data to be recovered and analyzed. Although all archeological projects share certain basic principles, there is no single, standard way to conduct archeological fieldwork. As a rule, the Executive Director will seek to ensure that the fastest, most economical methods are used that will achieve the desired research result.

## VIII. Consideration of Guidance

Where data recovery is to be undertaken, the Executive Director will seek to ensure that due consideration has been given to the Council's "Recommendations for Archeological Data Recovery" and 36 CFR Part 1210 ("Recovery of Scientific, Prehistoric, Historic, and Archeological Data: Methods, Standards, and Reporting Requirements").

## IX. Budgets

To the extent feasible given Council and staff priorities and agency contracting policy, the Executive Director will provide advice to agencies, seeking to ensure that budgets developed for data recovery and other archeological activities are reasonable and cost-effective.

## X. Negating Adverse Effect: Documenting "No Adverse Effect" Determinations

1. Undertakings that result directly or indirectly in the disturbance of an archeological property clearly have adverse effects on that property. In some cases, however, this adverse effect can be essentially negated through data recovery; in such cases a determination of "no adverse effect," pursuant to 36 CFR 800.4(c), may be appropriate. When an agency makes such a determination, the Executive Director's review will focus on the extent to which the adverse effect will in fact be negated by the data recovery effort. The ability to negate adverse effect depends upon (a) the nature of the affecting action, (b) the nature of the archeological property, and (c) the quality of the data recovery effort proposed.

2. To determine whether a data recovery program will negate the adverse effects of an undertaking, the agency, in consultation with the State Historic Preservation Officer (SHPO), should answer the following questions:

A(1) Does the significance of the property, as documented in the nomination to or determination of eligibility for the National Register, lie primarily in the data it contains, so that retrieval of the data in an appropriate manner may preserve this significance? If so:

A(2) Does it appear that preservation in place would be more costly, or otherwise less practical, than data recovery? If so:

B(1) Will the effects of the undertaking be minor relative to the size and nature of the property? Examples of such effects include:

(a) Marginal disturbance to an extensive archeological site by construction along one edge.

(b) Minor disruption of the surface of an archeological site whose primary valuable information lies in subsurface deposits, where this disruption is unlikely to have long-range effects on subsurface conditions (e.g., by causing erosion, etc.).

B(2) Is the property subject to destruction regardless of the undertaking, so the agency's action is only slightly hastening an inevitable process? Examples of such a condition include:

(a) Disturbance of an archeological site on a rapidly eroding cliff, where measures to halt erosion are not practical.

(b) Disturbance of an archeological site that is being vandalized or clearly will be subject to vandalism, where there is no practical way to deter the vandals;

(d) Disturbance of an archeological site on land that has great potential for non-Federal development, where no mechanisms (zoning, State or local preservation ordinances, easements) are likely to be employable for protection.

B(3) Is the property *not:*

(a) A National Historic Landmark, a National Historic Site in non-Federal ownership, or a property of national hsitorical significance so designated within the National Park System;

(b) Important enough to fulfillment of purposes set forth in the State Historic Preservation Plan to require its protection in place;

(c) In itself, or as an element of a larger property, significantly valuable as an exhibit in place for public understanding and enjoyment;

(d) Known or thought to have historic, cultural, or religious significance to a community, neighborhood, or social or ethnic group that would be impaired by its disturbance, or

(e) So complex, or containing such complicated data, that currently available technology, funding, time, or expertise are insufficient to recover the significant information contained in it.

3. If the agency and the SHPO agree that questions A(1) and A(2), and questions B(1), B(2) *or* B(3) are answered in the affirmative, and if the agency establishes a data recovery program consistent with the Council's "Recommendations for Archeological Data Recovery" and 36 CFR Part 1210, the agency has grounds for concluding that the data recovery program will negate the adverse effect, and can hence determine that the undertaking will have No Adverse Effect on the property.

4. In documenting a determination of No Adverse Effect based on this conclusion, pursuant to 36 CFR 800.4(c) and 800.13(a), the agency should:

(A) Report clearly and concisely how it has reached its conclusion;

(B) Document the concurrence of the SHPO and, if pertinent, consultation with, and the opinions of, other specialists and authorities concerned with the property, concerned social and

ethnic groups, local government, and the public;

(C) Provide a copy of the data recovery plan; and,

(D) Show that sufficient time and funds have been allocated to execute the data recovery plan.

5. The Executive Director will review the documentation provided in accordance with 36 CFR 800.6(a) to determine whether (a) the property is shown to be valuable primarily for the information it contains, or whether other public interests are involved, and whether (b) it appears that the adverse effects of the undertaking will in fact be negated, thereby justifying a determination of No Adverse Effect.

**XI. Preliminary Case Reports**

1. Where it is determined that the undertaking will have an adverse effect on historic properties, the Preliminary Case Report developed by the agency pursuant to 36 CFR 800.4(d)(1) should:

A. document consideration of alternatives that would preserve the archeological property in place, and give reasons for rejecting those alternatives not preferred;

B. Where data recovery is proposed, provide a data recovery plan consistent with the Council's "Recommendations for Archeological Data Recovery" and with 36 CFR Part 1210.

C. Where data recovery is not proposed, explain why it is not proposed. An agency may demonstrate that loss of an archeological property without data recovery is acceptable by showing that:

(1) There is no reasonable way to protect the property in place; and,

(2) Having made a good-faith effort to identify research questions of the kinds discussed in Appendices A and B of the Council's *Treatment of Archeological Properties*, to which the recovery of data from the property would contribute, the agency has been unable to identify such questions. In seeking to identify such questions, the agency should utilize available literature in archeology, anthropology, history, and other disciplines, consult with the State Historic Preservation Officer, and consult with State, regional, and local archeological and historical organizations. The Executive Director will review closely the documentation of such efforts, and may suggest additional research questions or sources of advice to be considered.

**XII. Memoranda of Agreement**

1. Ordinarily, Memoranda of Agreement executed pursuant to 36 CFR 800.6(c) that provide for data recovery from archeological properties should include or refer directly to data recovery plans consistent with the Council's "Recommendations for Archeological Data Recovery" and 36 CFR Part 1210. Exceptions to this rule may include, but are not necessarily limited to:

A. A Programmatic Memorandum of Agreement, which may provide for preparation and review of such plans in the context of an ongoing programs;

B. A Memorandum of Agreement that covers a planning process, which may provide for preparation and review of a data recovery plan at a subsequent stage in the agreed-upon process; and,

C. A memorandum of Agreement that provides for archeological monitoring or other forms of data recovery as guards against uncertain discovery possibilities (for example, where there is some possibility that archeological data will be discovered when a building is demolished). In such an instance, it may not be feasible to develop a detailed data recovery plan because the nature of the possible discovery situation is too uncertain.

2. The purpose of the data recovery plan is to ensure that the data are recovered in an effective manner using the best applicable professional standards under the circumstances. Technical assistance in developing data recovery plans is available from the State Historic Preservation Officer and Interagency Archeological Services, heritage Conservation and Recreation Service, Department of the Interior. The Executive Director will give data recovery plans the same level of professional review afforded to architectural designs, plans for adaptive reuse, development plans, etc.

3. Memoranda of Agreement may provide for phased data recovery. An example of phased data recovery is:

A. Phase 1: Testing of archeological sites and other research leading to development of a detailed date recovery work plan. The Memorandum of Agreement should set forth guidelines for the testing and other research.

B. Phase 2: Development of a data recovery plan. The Memorandum of Agreement should provide for appropriate technical review of the plan, usually by the SHPO and the Council, and where needed, through peer review by outside parties.

C. Phase 3: Selection of a contractor. The Memorandum of Agreement should ensure that the agency provides a reliable mechanism for obtaining the best qualified contractor(s) for the project at the most reasonable cost, consistent with satisfactory work performance.

D. Phase 4: Conduct of the work plan, typically including recovery of data, analysis, curation, and dissemination of results.

4. In developing Memoranda of Agreement including provisions for data recovery, the Executive Director will attempt to ensure that the data recovery plan in fact is the best feasible method of addressing the archeological value of the property in the public interest. An agency can facilitate development of such Memoranda by notifying the Council of the steps it has taken to develop its data recovery plan, by identifying the parties consulted during its preparation, by ensuring that all concerned parties have had an opportunity to contribute to its preparation, and by articulating the plan as clearly and concisely as possible.

**XIII. Programmatic Memoranda of Agreement**

Where appropriate under 36 CFR 800.8, the Executive Director will consider execution of Programmatic Memoranda of Agreement with agencies to cover archeological data recovery activities and other activities discussed in this guidance. Such a Programmatic Memorandum of Agreement should specify or stipulate a process for establishing:

1. Conditions in a given State or region, or with reference to the agency's specific types of undertakings, in which data recovery would be appropriate.

2. Guidelines for data recovery, taking into account conditions in a State or region, and/or the agency's types of undertakings and planning/development stages.

3. Methods for procuring appropriate specialists, and controlling costs, and

4. Consultation methods, establishing how the SHPO and other appropriate authorities will be involved in decisionmaking.

**XIV. Counterpart Regulations**

The Executive Director will use this guidance in reviewing and helping prepare guidelines, standards, and other measures as part of Counterpart Regulations authorized by 36 CFR 800.11.

**XV. Archeology for Research**

1. When archeological excavations are conducted on Federal land for research purposes, and the only Federal involvement in the excavations is issuance of a permit under the Archeological Resources Protection Act of 1979 (P.L. 96–95) the comments of the Council need not be sought (16 U.S.C. 470cc(i).

2. If Federal actions are involved in the research besides issuance of an ARPA permit (eg., funding, other permits

or licenses) the Council's regulations (36 CFR Part 800) apply.

A. Research projects to which the regulations apply, that involve the physical disturbance of archeological properties, should in most cases be considered to have adverse effects on the properties; the responsible agency should seek the Council's comments in accordance with 36 CFR Sec. 800.4, or programmatically in accordance with 36 CFR 800.8.

B. Projects that address management needs as well as research interests may be taken to have no adverse effect on the properties they disturb, if the facts warrant. Generally, the Executive Director will concur in a "no adverse effect" determination when the following conditions exist:

(1) The research project addresses management needs, such as:

(a) Excavation of a site that is subject to uncontrollable vandalism;

(b) Excavation of a site that is subject to serious natural erosion;

(c) Recording of a site or structure that is deteriorating;

(d) Stabilizing a deteriorating or endangered site or structure.

(2) The determination has been made following Sec. X ("Negating Adverse Effect") of this part of the Supplementary Guidance,

(3) The project will be conducted under the supervision of persons meeting, at a minimum, the qualifications set forth in 36 CFR Part 1210, Appendix C; and,

(4) The project will be conducted in accordance with a research design that takes into account the Council's "Recommendations for Archeological Data Recovery Projects."

John M. Fowler,

*Acting Executive Director.*

November 21, 1980.

**Appendix A—Principles in the Treatment of Archeological Properties**

In consulting with Federal agencies and State Historic Preservation Officers regarding archeological properties, the Executive Director will observe the following principles.

Principle I: Archeological research, addressing significant questions about the past, is in the public interest.

Principle II: Archeological properties may be sites, buildings, structures, districts and objects.

Principle III: Archeological properties are important wholly or in part because they may contribute to the study of important research problems.

Principle IV: Not all research problems are equally important; hence not all archeological properties are equally important.

Principle V: Treatment of an archeological property depends on its value for research, balanced against other public values.

Principle VI: Eligibility for the National Register suggests, but does not define, how an archeological property should be treated.

Principle VII: If an archeological property can be practically preserved in place, it should be.

Principle VIII: If an archeological property is to be preserved in place, extensive excavation of the property is seldom appropriate.

Principle IX: Both data recovery and destruction without data recovery may be appropriate treatments for archeological properties.

Principle X: Once a decision is made to undertake data recovery, the work should be done in the most thorough, efficient manner.

Principle XI: Data recovery should be based on firm background data and planning.

Principle XII: Data recovery should relate positively to the development of State Historic Preservation Plans.

Principle XIII: Completion of an approved data recovery plan consummates an agency's data recovery responsibilities.

[FR Doc. 80-36906 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-10-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Irrigation Operation and Maintenance Charges; Water Charges and Related Information on the Wapato Irrigation Project, Washington

This notice of proposed operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and redelegated by the Assistant Secretary—Indian Affairs to the Area Director in 10 BIAM 3.

This notice is given in accordance with Section 191.1(e) of Part 191, Subchapter I, Chapter I, of Title 25 of the Code of Federal Regulations, which provides for the Area Director to fix and announce the rates for annual operation and maintenance assessments and related information on the Wapato Irrigation Project for Calendar Year 1981 and subsequent years. This notice is proposed pursuant to the authority contained in the Acts of August 1, 1914 (38 Stat. 583) and March 7, 1938 (45 Stat. 210).

The purpose of this notice is to announce an increase in the assessment rates commensurate with actual operation and maintenance costs on the Wapato Irrigation Project. The proposed assessment increases for 1981 amount to $2.00 per acre on the Wapato-Satus Unit.

The public is welcome to participate in the rule making process of the Department of the Interior. Accordingly, interested persons may submit written comments, views or arguments with respect to the proposed rates and related regulations to the Area Director, Portland Area Office, Bureau of Indian Affairs, Post Office Box 3785, Portland, Oregon 97208, no later than December 26, 1980.

**Wapato Irrigation Project—General**

*Administration*

The Wapato Irrigation Project, which consists of the Ahtanum Unit, Toppenish-Simcoe Unit, and Wapato-Satus Unit within the Yakima Indian Reservation, Washington, is administered by the Bureau of Indian Affairs. The Project Engineer of the Wapato Irrigation Project is the Officer-in-Charge and is fully authorized to carry out and enforce the regulations, either directly or through employees designated by him. The general regulations are contained in Part 191, Operation and Maintenance, Title 25—Indians, Code of Federal Regulations (42 FR 30362, June 14, 1977).

*Irrigation Season*

Water will be available for irrigation purposes from April 1 to September 30 each year. These dates may be varied as much as 20 days when weather conditions and the necessity for doing maintenance work warrants doing so.

*Request for Water Delivery and Changes*

Requests for water delivery and changes will be made at least 24 hours in advance. Not more than one change will be made per day. Changes will be made only during the ditchrider's regular tour. Pump shut-down, regardless of duration, without the required notice will result in the delivery being closed and locked. Repeated violations of this rule will result in strict enforcement of rotation schedules. Water users will change their sprinkler lines without shutting off more than one-half of their lines at one time. Sudden and unexpected changes in ditch flow results in operating difficulties and waste of water.

*Time for Payment of Water Charges*

The assessments fixed by these regulations shall become due April 1 of each year and are payable on or before that date. To all charges assessed against lands in patent in fee ownership, and those paid by lessees of Indian lands direct to the project office, remaining unpaid on July 1 following the due date, there shall be added a penalty of one and one-half percent for each

month, or fraction thereof, from the due date until the charges are paid.

*Charges for Special Services*

Charges will be collected for various special services requested by the general public, water users and other organizations during the Calendar Year 1981 and subsequent years until further notice, as detailed below:

(1) Requests for Irrigation Accounts and Status Reports, Per Report, $15.00

(2) Requests for Verification of Account Delinquency Status, Per report, 10.00

(3) Requests for Splitting of Operation and Maintenance Bills (in addition to minimum billing fee), Per Bill, 10.00

(4) Requests for Billing of Operation and Maintenance to Other than Owner or Lessee of Record (in addition to minimum billing fee), Per Bill, 10.00

(5) Requests for Other Special Services Similar to the above, when appropriate, Per Report, 10.00

(6) Requests for elimination of lands from the Project. In the event that the elimination is approved, a portion of the fee will be used to pay the Yakima County Recording Fee ($10.00).

**Ahtanum Unit**

*Charges*

(a) The operation and maintenance rate on lands of the Ahtanum Irrigation Unit for the Calendar Year 1981 and subsequent years until further notice, is fixed at $6.25 per acre per annum for land to which water can be delivered from the project works.

(b) In addition to the foregoing charges there shall be collected a minimum charge of $5 for the first acre, or fraction thereof, on each tract of land for which operation and maintenance bills are prepared. The minimum bill issued for any area will, therefore, be the basic rate per acre plus $5.

**Toppenish-Simcoe Unit**

*Charges*

(a) The operation and maintenance rate for the lands under the Toppenish-Simcoe Irrigation Unit for the Calendar Year 1981 and subsequent years until further notice, is fixed at $6.25 per acre per annum for land for which an application for water is approved by the Project Engineer.

(b) In addition to the foregoing charges there shall be collected a minimum charge for $5 for the first acre, or fraction thereof, on each tract of land for which operation and maintenance bills are prepared. The minimum bill issued for any area will, therefore, be the basic rate per acre plus $5.

**Wapato-Satus Unit**

*Charges*

(a) The basic operation and maintenance rates on assessable lands under the Wapato-Satus Unit are fixed for the Calendar Year 1981 and subsequent years until further notice as follows:

(1) Minimum charge for all tracts, $20.50

(2) Basic rate upon all farm units or tracts for each assessable acre except Additional Works lands, 20.50

(3) Rate per assessable acre for all lands with a storage water rights, known as "B" lands, in addition to other charges per acre, 2.20

(4) Basic rate upon all farm units or tracts for each assessable acre of Additional Works lands, 21.60

(b) In addition to the foregoing charges there shall be collected a minimum charge for $5 for the first acre, or fraction thereof, on each tract of land for which operation and maintenance bills are prepared. The minimum bill issued for any area will, therefore, be the basic rate per acre plus $5.

*Assessable Lands*

The assessable lands of the Wapato-Satus Unit are classified under these regulations as follows:

(a) All Indian trust (A and B) land designated as assessable by the Secretary of the Interior, except land which has never been cultivated if in the opinion of the Project Engineer the cost of preparing such land for irrigation is so high as to preclude its being leased at this time for agricultural purposes.

(b) All Indian trust (A or B) land not designated as assessable by the Secretary of the Interior for which application for water is pending or on which assessments had been charged the preceding year.

(c) All patent in fee land covered by a water right contract, except on land that because of inadequate drainage is no longer productive. The adequacy of the drainage is determined by the Project Engineer.

(d) At the discretion of Project Engineer and upon the payment of charges, patent in fee land for which an application for a water right or modification of a water right contract is pending.

**W. D. Babby,**

*Acting Area Director.*

November 17, 1980.

[FR Doc. 80-36782 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-02-M

## Bureau of Land Management

**[OR 25306]**

## Oregon; Proposed Withdrawal and Reservation of Lands

The Fish and Wildlife Service, U.S. Department of the Interior, on November 3, 1980, filed application Serial No. OR 25306 for the withdrawal and reservation of the following described lands:

**Willamette Meridian, Oregon**

All of the unsurveyed rocks and islands above mean high water elevation offshore from the coast of Oregon in Federal ownership, except (1) those lands already included in the National Wildlife Regfuge System; (2) those lands included in a pending Fish and Wildlife Service application for addition to the Oregon Islands National Wildlife Refuge, Serial No. OR 11517; and (3) the following described lands which will be retained for administration by the Bureau of Land Management:

| Name | Description |
|---|---|
| Squaw Island, 1 acre | (T. 26 S., R 14 W., offshore from Sec. 4) 43°20′ N., 124°22′W. |
| Two unnamed islands, 2 acres. | (T. 26 S., R. 14 W., offshore from Sec. 8) 43°20′ N., 124°22′W. |
| Fish Rock, 0.5 acre | (T. 29 S., R. 14 W., offshore from Sec. 2) 43°05′ N., 125°25′45″W. |
| North Sisters Rocks (3 rocks), 3 acres. | (T. 34 S., R. 14 W., offshore from Sec. 30) 42°37′04″ N., 124°24′50″W. |
| Pistol River and Myers Creek Rocks (8 rocks), 4 acres. | (T. 38 S., R. 14 W., offshore from Sec. 7) 42°18′ N., 124°24′50″W. |
| Lone Ranch Beach Rocks, 3 acres. | (T. 40 S., R. 14 W., offshore from Sec. 22) 42°06′02″ N., 124°20′40″W. |
| Harris Island and unnamed rock, 2 acres. | (T. 40 S., R. 14 W., offshore from Sec. 36) 42°03′50″ N., 124°18′30″W. |
| Zwagg Island, 2.88 acres | T. 41 S., R. 13 W., Sec. 6 Lot 9; Sec. 7, Lot 2. |
| Table Rock, 0.5 acre | (T. 41 S., R. 13 W., offshore from Sec. 6) 42°02′55″ N., 124°17′25″W. |

(Legal descriptions appearing in parentheses indicate unsurveyed lands. Acreage is approximate, except Zwagg Island which has been surveyed.) The lands to be retained under Bureau of Land Management administration are further identified on maps labeled "Coastal Islands Not Within the Oregon Islands NWR," submitted by the Fish and Wildlife Service with the application and on file in this office.

The lands included in the application consist of about 1,100 rocks, small islands, and island groups aggregating approximately 100 acres, in Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, and Curry Counties, Oregon. The Fish and wildlife Service proposes that these rocks and islands, whose principal value is for marine bird and mammal habitat, be added to and made a part of the Oregon Islands National Wildlife Refuge.

On or before January 5, 1981, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the

undersigned authorized officer of the Bureau of Land Management.

Pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976, notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal. All interested persons who desire to be heard on the proposed withdrawal must submit a written request for a hearing to the undersigned before January 5, 1981. Upon determination by the State Director, Bureau of Land Management, that a public hearing will be held, a notice will be published in the Federal Register, giving the time and place of such hearing. Public hearings are scheduled and conducted in accordance with BLM Manual, Sec. 2351.16B.

The Department of the Interior's regulations provide that the authorized officer of the BLM will undertake such investigations as are necessary to determine the existing and potential demands for the lands and their resources. He will ensure that the area sought is the minimum essential to meet the desired needs while providing for the maximum concurrent utilization of the lands for other purposes.

The authorized officer will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn and reserved as requested. The determination of the Secretary on the application will be published in the Federal Register.

The lands included in the proposed withdrawal will be managed so as not to impair their suitability for preservation as wilderness, pending completion by the Fish and Wildlife Service of a wilderness review in accordance with sections 3(c) and 3(d) of the Wilderness Act. Subject to valid existing rights, the lands are temporarily segregated from the operation of the public land laws, including the mining laws, but not the mineral leasing laws, to the extent that the withdrawal applied for, if and when effected, would prevent any form of disposal or appropriation under such laws. The segregative effect of this proposed withdrawal shall continue for a period of two years from the date of publication of this notice in the Federal Register, unless sooner terminated by action of the Secretary of the Interior.

All communications in connection with this proposed withdrawal should be addressed to the undersigned officer, Bureau of Land Management, Department of the Interior, P.O. Box 2965, Portland, Oregon 97208.

Dated: November 12, 1980.

**Harold A. Berends,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 80-36783 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-84-M

## Salmon, Idaho, District Grazing Advisory Board, Meeting; Correction

The following correction is made in FR Doc. 45-213 appearing on 72297 in the issue of October 31, 1980:

On page 72297 at the bottom of column one, the date "November 2, 1980" is corrected to read "December 2, 1980".

**Harry R. Finlayson,**

*District Manager.*

[FR Doc. 80-36877 Filed 11-25-80; 8:45am]

BILLING CODE 4310-84-M

## California Wilderness Program; Correction

Correction Notice to California's Final Wilderness Inventory Notice printed November 14, 1980, on page 75583 of the Federal Register.

Due to printing delays the protest period for California's interstate inventory units identified in the above notice has been extended through December 29, 1980. Protests received after that date will not be accepted unless postmarked on or before December 29, 1980.

**Roland A. Rush,**

*Acting State Director.*

[FR Doc. 80-36899 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-84-M

## Fish and Wildlife Service

## Endangered Species Permit; Receipt of Application

Applicant: Abbey Gardens, 4620 Carpinteria Ave., Carpinteria, CA 93013.

The applicant requests a permit to sell in interstate commerce seed grown or artifically propagated specimens of endangered and threatened cacti.

Documents and other information submitted with this application are available to the public during normal business hours in Room 605, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), P.O. Box 3654, Arlington, VA 22203.

This application has been assigned file number PRT 2-7301. Interested persons may comment on this application within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address. Please refer to the file number when submitting comments.

Dated: November 21, 1980.

**Fred L. Bolwahnn,**

*Acting Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.*

[FR Doc 80-36908 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-55-M

## Intent To Prepare Environmental Impact Statement on Wildlife Grassland Habitat Restoration Program for Intensively Farmed Region of Ohio

**AGENCY:** Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that the Service intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) on an Ohio Department of Natural Resources (DNR) proposal to restore wildlife habitat in the intensively farmed region of the State. The Ohio DNR, Division of Wildlife, proposes to acquire and/or lease and manage the vegetative cover on the lands for the purpose of providing missing habitat components for eight species of grassland nesting birds. The necessary habitat is currently lacking on the intensively farmed lands. To accomplish that goal, acquiring effective habitat management control on approximately 25 acres per square mile will be needed in 202 townships where that habitat does not exist. Existing adequate habitat will also be used to reach the goal of 182,000 acres.

Federal involvement in the proposed action would be reimbursement to the Ohio DNR by the Fish and Wildlife Service (FWS), U.S. Department of the Interior, through funds appropriated under the Federal Aid in Wildlife Restoration Act.

A public meeting will be held regarding this proposal and the preparation of an EIS. This notice is being furnished as required by the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited.

**DATE:** Written comments should be received by December 30, 1980. A public meeting will be held in Columbus, Ohio, January 7, 1981, at the Ohio Department of Natural Resources headquarters, Building C, first floor conference room at 10:00 a.m.

**ADDRESS:** Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service (FA), Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, Attn.: Dale N. Martin.

**FOR FURTHER INFORMATION CONTACT:** David Urban, Assistant Administrator Wildlife Management and Research, Division of Wildlife, Fountain Square, Columbus, Ohio 43224 (614/466-3610).

**SUPPLEMENTARY INFORMATION:** Mr. David Urban is the primary author of this document. The Fish and Wildlife Service, Department of the Interior, proposes to assist the Ohio Wildlife Division through reimbursement of land acquisition and habitat development project costs.

Purpose and Need: Loss of wildlife habitat approaches two million acres annually in the United States. Aggravating this loss are land management practices which have lowered the quality of much of the remaining wildlife habitat. Intensification of agricultural production in Ohio without conservation guidelines has resulted in severe habitat losses in both quality and quantity. The loss of federally diverted acres and acres on which grass and legumes were grown for seed has been catastrophic to ground nesting birds. These acres provided the highest quality nesting habitat because they were usually undisturbed during the nesting period. Alfalfa is a preferred nesting cover for farmland wildlife; the frequency at which it is cut leads to high destruction of nests, young, and nesting adults. The acreage of unpastured and unharvested grass/legume cover decreased 90 percent in Ohio between 1964 and 1978.

The Division of Wildlife has conducted wildlife habitat programs on private lands since 1928. Technical assistance on wildlife management to private landowners has been a part of the Division of Wildlife's program since 1949.

This proposal will supplement current Ohio Division of Wildlife Programs:

In 1979, six biologists were assigned full-time to work with private landowners. During the first 10 months wildlife management plans were completed on 16,000 acres of private land. Management plans encompassing 25,000 acres can be completed yearly at current level of staffing.

Food plot seed mixtures are provided to landowners who are willing to plant them. In 1979, 2,400 packets were supplied.

To maintain undisturbed nesting cover for farmland wildlife, the Division of Wildlife began providing pheasants for stocking to those landowners willing to provide this habitat component. Pheasants are allotted on the basis of the amount of nesting cover provided. In the summer of 1980, 24,000 acres of undisturbed nesting cover were provided by cooperating landowners.

Vicinity Description: Buying, taking long-term easements, and/or leasing of land would occur in the glaciated, intensively farmed region of Ohio. This area consists of 65.4% tilled cropland, 8.1% pasture, 3.8% in hay production, 5.5% wooded and the remaining 17% urbanized.

Table 1 identifies the Ohio Counties and townships where the action is proposed.

Concerns, Issues and Opportunities: A primary concern is that increased wildlife populations may cause increased trespass on private land in the area where habitat will be developed. To circumvent this concern, the Division of Wildlife will increase enforcement patrols where problem areas develop. Landowners will also be encouraged to participate in the Cooperative Hunting Program. Under this program the hunter must obtain a permit from the landowner before hunting.

A concern among farmers is that acquisition and easement sites may offer a haven for the spread of noxious weeds. All areas will be planted with vegetation known to out compete noxious weeds. When necessary, mechanical and chemical treatment will be used to control weeds.

There is concern that prime farmland may be acquired and that its management may result in temporary removal from tillage. This would not result in an irreversible loss of potential crop production from these acres.

Management of these areas will be by existing wildlife work unit personnel and by contract with local landowners.

The number of wildlife observers are increasing each year and this activity can be enjoyed by all ages, at all seasons, in all regions. In 1975, 86,817,000 recreation days were spent in wildlife observation and 10,363,000 recreation days were spent hunting small game in Ohio.

This proposal is designed to prevent the extinction in Ohio of some grassland dependent species.

The following alternatives have been identified:

1. No action.
2. Maintain current level of activity of providing wildlife habitat on private land.
3. Provide only technical assistance to landowners for the development of wildlife habitat.
4. Mandatory regulation by law to provide minimum wildlife habitat on intensively farmed land.
5. Develop and subsidize a rest rotation system of grazing using warm-season grasses so that undisturbed wildlife nesting cover is developed.
6. Change the U.S. Department of Agriculture farm policy so that farmland wildlife is recognized as an important agricultural crop and provide econmically viable incentives for those practices that benefit wildlife and economic disincentive for those practices which are detrimental to wildlife.
7. Lease through short-term contract enough land to restore missing habitat components on intensively farmed land.
8. Develop wildlife habitat on roadside to provide nesting habitat.
9. Acquire management rights from willing sellers through fee simple acquisition and long-term easements on agricultural land in the intensively farmed region of Ohio.

The scoping process for the DEIS will be initiated by letter to interested Federal, State, and local agencies and those private organizations and affected parties who have expressed interest in the proposal. Anyone else who has an interest in participating in the scoping process and the development of the DEIS is invited to do so and should contact the Regional Director on or before December 30, 1980.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act (40 CFR, Parts 1500-1508), other appropriate Federal regulations, and FWS procedures for compliance with those regulations.

We estimate the DEIS will be made available to the public by March, 1981.

Dated: November 14, 1980.

**James C. Gritman,**

*Acting Regional Director, North Central Region, Fish and Wildlife Service.*

**Table 1.**—*Ohio Counties and Townships Proposed for Grassland Wildlife Habitat Restoration Program*

| County | Township |
|---|---|
| Allen Co. | Richland Township |
| Ashland Co. | Vermillion Township |
| Ashtabula Co. | Cherry Valley Township |
| Auglaize Co. | Washington Township |
| Champaign Co. | All Townships |
| Clark Co. | All Townships |
| Clinton Co. | Wayne Township |
| Columbiana Co. | Unity Township |
| Crawford Co. | Bucyrus Township |
| Darke Co. | Richland Township |
| Defiance Co. | Farmer Township |
| Delaware Co. | Radnor Township |
| Erie Co. | Milan Township |
| Fairfield Co. | Amanda Township |
| Fayette Co. | All Townships |
| Fulton Co. | Pike Township |
| Geauga Co. | Chardon Township |
| Greene Co. | Cedarville Township |
| Hancock Co. | All Townships |
| Hardin Co. | Washington Township |

**Table 1.**—*Ohio Counties and Townships Proposed for Grassland Wildlife Habitat Restoration Program*—Continued

| County | Townships |
|---|---|
| Henry Co. | All Townships |
| Highland Co. | Madison Township |
| Huron Co. | Clarksfield Township |
| Knox Co. | Liberty Township |
| Licking Co. | Hartford Township |
| Logan Co. | Washington Township |
| Lorain Co. | Rochester Township |
| Madison Co. | All Townships |
| Mahoning Co. | Beaver Township |
| Marion Co. | Green Camp Township |
| Medina Co. | Chatham Township |
| Mercer Co. | Union Township |
| Miami Co. | Newton Township |
| Montgomery Co. | Clay Township |
| Morrow Co. | Chester Township |
| Ottawa Co. | Bay Township |
| Paulding Co. | All Townships |
| Pickaway Co. | All Townships |
| Portage Co. | Suffield Township |
| Preble Co. | Harrison Township |
| Putnam Co. | All Townships |
| Richland Co. | Cass Township |
| Ross Co. | Buckskin, Concord, Deerfield, Union, Green Townships |
| Sandusky Co. | Woodville, Madison, Washington, Rice, Sandusky, Riley, Scott, Jackson, Ballville, Green Creek Townships |
| Seneca Co. | Jackson, Liberty, Pleasant, Loudon, Hopewell, Clinton, Big Spring, Seneca, Eden Townships |
| Shelby Co. | Loramie Township |
| Stark Co. | Marlboro Township |
| Trumbull Co. | Hartford Township |
| Union Co. | Dover Township |
| Van Wert Co. | Jackson Township |
| Warren Co. | Clear Creek Township |
| Wayne Co. | Clinton, Chippewa, Baughman Townships |
| Williams Co. | Springfield Township |
| Wood Co. | All Townships |
| Wyandot Co. | Mifflin Township |

## Geological Survey

### General Mining Order; Intention To Develop an Order for Environmental Protection and Reclamation Standards for Uranium Exploration and Mining on Federal and Indian Permits, Leases, and Contracts

**AGENCY:** Department of the Interior Geological Survey.

**ACTION:** Proposed Issuance of General Mining Order.

**SUMMARY:** In carrying out lease management responsibilities under the provisions of the Mineral Leasing Acts, as amended, the Conservation Division (CD), Geological Survey, must assure conservation of Federal and Indian solid leasable minerals, prevention of waste and damage to other minerals and resources, and reclamation of the permit and lease areas disturbed by exploration, mining, and mineral processing operations. The CD supervises exploration and mining operations to properly balance development, conservation, and environmental concerns. Environmental protection, conservation, and reclamation procedures have been required by the CD to be included in exploration and mine plans in the past. The development of general mining orders incorporating environmental and reclamation standards for specific commodities and areas by CD represents a new thrust to ensure that the Nation's resources are developed with due regard for the most up-to-date and economically efficient methods and administration. Solicitation of public comment as an integral step in reviewing existing mining reclamation and environmental protection practices is part of this initiative. Accordingly, the CD proposes to develop a General Mining Order for environmental protection and reclamation standards for uranium exploration and mining on Federal and Indian permits, leases, and contracts for New Mexico and Washington. Written comments and views are requested from interested persons on the content of the Order.

**DATES:** All concerned parties and the general public are invited and encouraged to submit comments and suggestions as to the content of the proposed General Mining Order. Written comments and suggestions must be received on or before January 30, 1981.

**ADDRESS:** Comments should be directed to: Mr. Charles L. Sours, Chief, Branch of Rules and Procedures, U.S. Geological Survey, National Center, Mail Stop 650, Reston, Virginia 22092.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Buff, Branch of Solid Minerals Management, U.S. Geological Survey, National Center, MS 650, Reston, Virginia 22092. Telephone: 703-860-7506.

**SUPPLEMENTARY INFORMATION:** Notice is given, under "Operating Regulations for Exploration, Development, and Production," published in 30 CFR Part 231 (37 FR 11041, June 1, 1972), in particular, §§ 231.3(a) and 231.3(c)(9), the Chief, CD, intends to develop a General Mining Order for specific environmental protection and reclamation standards for exploration and mining of uranium on Federal and Indian lands in specific geographic areas and solicits views of interested persons on the content of the Order.

The requirements of this Order would complement existing laws regarding pollution and environmental protection and allow the GS to assure that its regulatory responsibility was being met. It is the intention of the GS that the Order not interrupt interaction between agencies given responsibility for the various environmental and pollution laws.

The GS supervises nine uranium mining operations in New Mexico, including one pilot project for in situ mining; two in Washington; and one in Wyoming. Exploration for uranium on Federal acquired and Indian lands is also supervised by the GS.

The GS presently has regulatory responsibility for approximately 15 percent of the San Juan Basin uranium production (approximately 8 percent of the Nation's production). Demand for uranium may increase above present levels, requiring additional production from lands where the GS has responsibility for regulatory operations. By soliciting public input, the GS intends the Order to reflect interested parties' knowledge and concerns regarding evironmental protection and reclamation for present and possible higher future levels of uranium mining.

Comments on the need for public meetings regarding the Order are solicited. Public meetings will be held if a significant number of responses request them and indicate interest in participation. Probable location for the meetings, if desired, would be Albuquerque, New Mexico; and Spokane, Washington. The Bureau of Indian Affairs, tribes, and State agencies having regulatory responsibilities for mineral development would also be encouraged to participate.

Exploration for, and mining of, uranium presents unique reclamation problems. Comments and suggestions should primarily be concerned with the following:

1. Reclamation procedures that mitigate radiological contamination of water, air, and soil.
2. Procedures for drill hole plugging.
3. Procedures for shaft abandonment.
4. Erosion abatement.
5. Procedures for pit abandonment.
6. Procedures for operation of water treatment and tailings ponds and their abandonment.
7. Procedures for operation of waste dumps (ore and nonore associated overburden) and low grade and ore piles, and their abandonment.
8. Revegetation procedures.
9. Procedures for in situ site abandonment and aquifer restoration.
10. Procedures for environmental protection during in situ mining.

Many of the above items are interrelated. They can be approached in general terms or with specific engineering or scientific principles and criteria. Comments on alterate regulatory approaches to achieving the results are also solicited.

Public input in developing the content of this Order is solicited.

Dated: November 19, 1980.

**John J. Dragonetti,**

*Deputy Division Chief, Onshore Minerals Regulation.*

[FR Doc. 80-36678 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-31-M

## Office of Surface Mining Reclamation and Enforcement

### Petition to Designate Certain Federal Lands in Southern Utah Unsuitable for Surface Coal Mining Operations; Availability of Final Combined Petition Evaluaiton and Environmental Impact Statement

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

**ACTION:** Notice of availability of the final combined petition evaluation and environmental impact statement (EIS) document evaluating whether certain lands in southern Utah abutting Bryce Canyon National Park are unsuitable for surface coal mining and reclamation operations.

**SUMMARY:** The Office of Surface Mining, with the assistance of several Federal agencies and the State of Utah, has prepared a final evaluation of the petition to designate certain Federal lands in southern Utah unsuitable for all or certain types of surface coal mining and reclamation operations, together with a final environmental impact statement.

Copies of the combined final statement are being made available today. OSM has arranged for expedited delivery to assure maximum availability prior to the Secretary's scheduled decision on the petition.

Additional information on this petition may be found in Federal Register notices of January 17, 1980 (Receipt of a Complete Petition for Designation of Lands Unsuitable for Surface Coal Mining Operations, 45 FR 3398-99), and April 24, 1980 (Intent to Prepare Coal Resources, Demand, and Impact Statement and Draft Environmental Impact Statement, Scoping Meeting 45 FR 27836-37).

**DATES:** An accelerated schedule has been approved by the Council on Environmental Quality in concurrence with the Environmental Protection Agency. The Secretary of the Interior will make a decision regarding the petition on or after December 12, 1980.

**ADDRESSES:** Copies of the final document are available at the following locations: OSM Headquarters Office, 1951 Constitution Avenue, NW, Room 153. Interior South, Washington, D.C. 20240, OSM Regional Office, Division of State and Federal Programs, Region V, 2nd Floor, Brooks Towers, 1020 15th Street, Denver, CO 80202; and Bureau of Land Management, 320 North 100 East, Kanab, UT 84741. All comments received on the documents, transcripts of all hearings, and the file on the petition are available for inspection at the OSM Regional Office in Denver, CO.

**FOR FURTHER INFORMATION CONTACT:** Paul Bodenberger, Division of Technical Analysis and Research, Office of Surface Mining, Region V, Brooks Towers, 1020 15th Street, Denver, CO 80202 (telephone 303-837-5656).

**SUPPLEMENTARY INFORMATION:** The final combined petition evaluation and environmental impact statement document presents an analysis of the allegations made in the petition. The document summarizes available information on the petition area (including related NEPA reviews) as well as material from new studies. The document also contains discussions of the potential coal resources in the area, the demand for coal resources, the impact of designation on the environment, the economy and the supply of coal, and the impacts of alternatives available to the Secretary.

Controversial issues raised by the petitioners, the intervenors, the public and other agencies include air quality, visibility, visual intrusions, noise, deep ground water, reclaimability, blasting effects, and impacts on the local economy. Concern was also expressed on the relationship of the Alton coal to the Allen-Warner Valley Energy System.

Public hearings to solicit comments concerning the draft document were held at Kanab, Utah, in two sessions on September 29, 1980, and in one session on October 10, 1980; and at Panguitch, Utah, in one session on September 30, 1980. Responses to the hearings testimony and written comments on the draft document have been prepared and are published in the final document.

The Council on Environmental Quality's (CEQ's) regulations for implementing the National Environmental Policy Act require that agencies normally wait 30 days after publication of the EPA notice of availability before making a decision (40 CFR 1506.10(b)). However, these waiting periods may be reduced in consultation with CEQ, the Environmental Protection Agency (EPA) and the Assistant Secretary for Policy, Budget, and Administration, Department of the Interior. (See 40 CFR 1506.10(d) and 45 FR 27547, April 23, 1980, Section 4.24B.)

OSM has completed the required consultation and has been authorized by CEQ and EPA to reduce the waiting period on this final statement to 13 days. (See letter from Walter Heine, Director, OSM, to Nicholas Yost, General Counsel, CEQ, dated May 2, 1980, and letter from Nicholas Yost to Walter Heine, dated June 9, 1980. See also letters of November 17, 1980 from Paul Reeves, Deputy Director, OSM to Foster Knight, Acting General Counsel, CEQ, and to William Hedeman, Director, Office of Environmental Review, EPA. Copies of this correspondence are available in the Administrative Record of this proceeding in the OSM Region V Office in Denver, CO.) As noted above, OSM will distribute copies of the final statement by the fastest means possible in order to provide maximum time for public review.

Dated: November 20, 1980.

**Heather L. Ross,**

*Deputy Assistant Secretary of the Interior.*

[FR Doc. 80-36923 Filed 11-25-80; 8:45 am]

BILLING CODE 4310-05-M

## INTERSTATE COMMERCE COMMISSION

### Motor Carrier Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

#### Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each

applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before January 12, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

**Volume No. OP4–130**

Decided: November 19, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 1117 (Sub-35F) filed October 27, 1980. Applicant: M.G.M. TRANSPORT CORPORATION, 70 Maltese Drive, Totowa, NJ 07512. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. As a *broker* to arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

MC 152476F, filed October 20, 1980. Applicant: COMBINED TRANSPORTATION SERVICES, INC. 8300 Bletzer Rd., Baltimore, MD 21222. Representative: Barry Weintraub, Suite 800, 8133 Leesburg Pike, Vienna, VA 22180. Transporting (1) *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the Unites States Government, and (2) *shipments weighing* 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 147156 (Sub-1F), filed October 22, 1980. Applicant: MANUFACTURERS' MOBILE HOME TRANSPORT, INC., P.O. Box 1519, Athens, TX 75751. Representative: Thomas F. Sedberry, P.O. Box 2165, Austin, TX 78768. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

MC 152536F, filed October 30, 1980. Applicant: LARRY L. MILLER, 36 W. Eighth St., Bloomsburg, PA 17815. Representative: Larry L. Miller, 265 E. Eighth St., Bloomsburg, PA 17815. Transporting *food and other edible products (including edible-byproducts but excluding alcoholic beverages and drugs), intended for human consumption, agricultural limestone and other soil conditioners, and agricultural fertilizers*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

**Volume No. OP5–062**

Decided: Nov. 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 97699 (Sub-50F), filed November 12, 1980. Applicant: BARBER TRANSPORTATION CO., a corporation, P.O. Box 2047, Rapid City, SD 57701. Representative: Leslie R. Kehl, Suite 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 127278 (Sub-7F), filed October 20, 1980. Applicant: PACIFIC VAN & STORAGE CO., INC., 1415 West Torrance Boulevard, Torrance, CA 90501. Representative: Robert J. Gallagher, 1000 Connecticut Ave. NW., Suite 1112, Washington, DC 20036. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 151129 (Sub-1F), filed October 21, 1980. Applicant: BRONC ENTERPRISES, INC., 14315 West Hardy, Houston, TX 77088. Representative: C. W. Ferebee, 720 North Post Oak, Suite 230, Houston, TX 77024. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the U.S.

MC 152128 (Sub-2F), filed November 3, 1980. Applicant: STATE TRANSPORT SERVICE, INC., 13209 Market St., Houston, TX 77015. Representative: C. W. Ferebee, 720 North Post Oak, Suite 230, Houston, TX 77024. Transporting *general commodities* except used household goods as defined by the Commission, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the U.S.

MC 152429 (Sub-1F), filed October 20, 1980. Applicant: C R & S TANK LINES, INC., P.O. Box 871, Benicia, CA 94510. Representative: Robert J. Gallagher, 1000 Connecticut Ave. NW., Suite 1112, Washington, DC 20036. Transporting general commodities (except household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the U.S.

MC 152499F, filed October 24, 1980. Applicant: LOUVELL E. CRAWFORD, T/A, CRAWFORD TRUCK BROKERS, Maryland Wholesale Produce Market, Building A, Unit 14, Jessup, MD 20794. Representative: Bernard F. Goldberg, 3691 Park Ave., Ellicott City, MD 21043. To arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

**Volume No. OP5–057**

Decided: Nov. 13, 1980

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 25399 (Sub-17F), filed October 24, 1980. Applicant: A-P-A TRANSPORT CORP., 2100 88th St., North Bergen, NJ 07047. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *shipments* weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S.

MC 123389 (Sub-56F), filed October 16, 1980. Applicant: CROUSE CARTAGE COMPANY, P.O. Box 151, Carroll, IA 51401. Representative: William S. Rosen, 630 Osborn Bldg., St. Paul, MN 55102. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the U.S.

MC 123389 (Sub-57F), filed October 16, 1980. Applicant: CROUSE CARTAGE COMPANY, P.O. Box 151, Carroll, IA 51401. Representative: William S. Rosen, 630 Osborn Building, St. Paul, MN 55102. Transporting *general commodities,*

between Santa Rosa, Tucumcari, Logan, Maravisa, and Endee, MN; Stratford, Genrio, Adrian, Vega, Wildorado, Amarillo, Alanreed, McLean, Shamrock, St. Francis, Fritch, Sunray, Etter, Brum, Wilco, Stinnett, Pringle, Morse, Gruver, Dalhart, Irving, Dallas, Waxahachie, Corsicana, Teagur, Newby, Normangee, Tomball, Houston, Texas City, Galveston, Fort Worth, Graham, Jacksboro, Bowie, Ringgold, and Mexia, TX; Texalo, Sayre, Elk City, Clinton, Weatherford, Bridgeport, Texhoma, Hitchland, Hardesty, Guymon, Mangum, Grantie, Hobart, Carnegie, Anadarko, Apache, Chickasha, Marlow, Duncan, Comanche, Homestead, Alva, Ingersoll, Enid, Binnings, Ponca City, Augusta, Kingfisher, El Reno, Oklahoma City, Shawnee, Seminole, Wewoka, Holdenville, McAlester, Haileville, Hartshorne, Wilburton, Wister, Howe, Medford, Warren, Geary, Okenne, Fort Bill, Verden, Lawton, Walter, Temple, Waurika, and Terral, OK; Eunice, Lecompte, Alexandria, Winnfield, Jonesboro, Hodge, Ruston, Dubach, Bernice, and Junction City, LA; Eldorado, Camden, Crossett, Hermitage, Mace, Banks, Kingman, Fordyce, Carthage, Sparkman, Malvern, Hot Springs, Haskell, Benton, Little Rock, Bauxite, North Little Rock, Carlisle, Hazen, Des Arc, Mesa, DeValls Bluff, Brinkley, Wheatley, Forest City, West Memphis, Edmondson, Stuttgart, Roland, Bigelow, Perry, Cla, Bonneville, Mansfield, and Hartford, AR; Kansas City, Southlea, Pleasant Hill, Windsor, Hay, Versaille, Eldon, Meta, Gasconde, Belle, Owensville, Union, Labadie, St. Louis, Liberty, Excelsior Springs, Polo, St. Joseph, Clarksdale, Maysville, Wetherby, Altamont, Coburn, Trenton, and Princeton, MO; Caldwell, Wellington, Wichita, Peabody, Marion, Harrington, Liberal Plains, Meade, Fowler, Mineola, Bucklin, Dodge City, Greensburg, Pratt, Hutchinson, Medora, McPherson, Salina, White City, Alta Vista, Goodland, Colby, Norton, Phillipsburg, Smith Center, Mankato, Belleville, Cuba, Clyde, Clifton, Clay Center, Riley, Manhattan, McFarland, Topeka, Holton, Horton, Troy, Atchison, and Kansas City, KS; Burlington, Stratton, Flaglea, Arriba, Limon, Simla, Roman, Calhan, Colorado Springs, and Denver, CO; Thompson, Ruskin, Deshler, Hebron, Fairbury, Jansen, Witt, Lincoln, South Bend, Omaha, and Beatrice, NE; Council Bluffs, Shelby, Oakland, Avoca, Audubon, Walnut, Menlo, Stuart, Winterest, Indianola, Chariton, Corydon, Allerton, Seymore, Centerville, Eldon, Ottumwa, Evans, Pella, Monroe, Des Moines, Colfax, Newton, Grinnell, Brooklyn, Marengo, Iowa City, West Liberty, Stockton, Davenport, Clinton, Fairfield, Keosauqua, South Burlington, Buffalo Center, Burlington, Mount Zion, Keokik, Washington, Ainsworth, Columbus Junction, Nichols, Muscatine, Wilton, Elmira, Cedar Rapids, West Union, Oelwein, Vinton, Waterloo, Cedar Falls, Nevada, McCallsburg, Renwick, Iowa Falls, Hampton, Mason City, Maysfield, Manly, Dows, Belmond, Titonka, Armstrong, Northwood, Emmetsburg, Estherville, Spirit Lake, Lake Park, Gowrie, Hanson, Pocohontas, Hartley, and Sibley, IA; Elsworth, Worthington, Lismore, Albert Lea, Hollandale, Clarks Grove, Owatonna, Faribault, Northfield, Farmington, West St. Paul, and St. Paul, MN; Rock Island, Milan, Moline, East Moline, Silvis, Colona, Geneseo, Sheffield, Bureau, Tonlon, Henry, Chillicothe, Peoria, Pekin, Lasalle, Ottawa, Joliet, Elwood, and Chicago, IL, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier service for complete abandonment rail carrier service.

MC 131069F, filed October 14, 1980 Applicant: RONALD WILLIAMSON, 153 Larchmont, Bloomington, IL 60108. Representative: Ronald Williamson (same address as applicant). To arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

Agatha L. Mergenovich,
*Secretary.*

[FR Doc. 80-36863 Filed 11-25-80; 8:45 am]
BILLING CODE 7035-01-M

## Motor Carrier; Permanent Authority Decisions

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

### Findings

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before January 12, 1981 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

### Volume No. OP3-077

Decided: Nov. 14, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton, and Liberman.

MC 15975 (Sub-39F), filed October 28, 1980. Applicant: BUSKE LINES, INC., 123 W. Tyler Ave., Litchfield, IL 62056. Representative: Howard H. Buske (same address as applicant). Transporting *wire shelving and parts for wire shelving,* (1) from Farmington, MI, to Pierceton, Greenfield and Lafayette, IN, and (2) from Pierceton, Greenfield and Lafayette, IN, to Bridgeton, MO.

MC 16965 (Sub-9F), filed October 26, 1980. Applicant: FRANKLIN TRUCKING, INC., 210 E. Washington St., Hartford City, IN 47348. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Transporting *plastic products,* between points in the U.S., under continuing contract(s) with Minnesota Mining &

Manufacturing Company (3M), of St. Paul MN.

MC 29674 (Sub-1F), filed November 6, 1980. Applicant: R. F. CLEMENS & SON, INC., R.F.D. No. 1 Munyan Rd., Putnam, CT 06260. Representative: Sidney L. Goldstein, 109 Church St., New Haven, CT 06510. Transporting *househald gaads*, as defined by the Commission, between points in Windham, Tolland, and New London Counties, CT, Worcester County, MA, Burrillville, Glocester and Foster Counties, RI, on the one hand, and, on the other, points in NH, VT, ME, NJ, and PA.

MC 73165 (Sub-535F), filed October 31, 1980. Applicant: EAGLE MOTOR LINES, INC., 830 North 33rd St., Birmingham, AL 35222. Representative: R. Cameron Rollins, P.O. Box 11086, Birmingham, AL 35202. Transporting *paper and paper products*, between points in Jefferson County, AR, and Richmond County, GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 106074 (Sub-449F), filed November 3, 1980. Applicant: B AND P MOTOR LINES, INC., Shiloh Rd. and U.S. Hwy 221, S., P.O. Box 727, Forest City, NC 38043. Representative: John J. Capo, P.O. Box 720434, Altanta, GA 30328. Transporting *general cammadities* (except household goods as defined by the Commission, Classes A and B explosives, commodities in bulk, articles of unusual value, and those requiring the use of special equipment), between points in Hardemann County, TN and Houston County, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 110325 (Sub-165F), filed October 17, 1980. Applicant: TRANSCON LINES, a corporation, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Midland Bldg., 1221 Baltimore Ave., Kansas City, MO 64105. Over regular routes, transporting *general cammadities* (except household goods as defined by the Commission and classes A and B explosives), (1) between Brownsville, TX and Atlanta, GA, from Brownsville over U.S. Hwy 77 to junction U.S. Hwy 59, then over U.S. Hwy 59 to junction Interstate Hwy 10, then over Interstate Hwy 10 to junction Interstate Hwy 65, then over Interstate Hwy 65 to junction Interstate Hwy 85, then over Interstate Hwy 85 to Atlanta, and return over the same route; (2) between Brownsville, TX and Laredo, TX, over U.S. Hwy 83; (3) between Laredo, TX and Memphis, TN, from Laredo over Interstate Hwy 35 to junction TX Hwy 31, then over TX Hwy 31 to junction U.S. Hwy 259, then over U.S. Hwy 259 to junction U.S. Hwy 80, then over U.S. Hwy 80 to junction U.S. Hwy 59, then over U.S. Hwy 59 to junction Interstate Hwy 30, then over Interstate Hwy 30 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Memphis and return over the same route; (4) between Victoria, TX and Waco, TX, over U.S. Hwy 77; (5) between McAllen, TX and Denver, CO, from McAllen over U.S. Hwy 281 to junction Interstate Hwy 10, then over Interstate Hwy 10 to junction Interstate Hwy 25, then over Interstate Hwy 25 to Denver, and return over the same route; (6) between Victoria, TX and Raton, NM, over U.S. Hwy 87; (7) between San Antonio, TX and Birmingham, AL, from San Antonio over Interstate Hwy 10 to junction U.S. Hwy 59, then over 59 to junction Interstate Hwy 20, then over Interstate Hwy 20 to Birmingham, and return over the same route; (8) between junction Interstate Hwy 35 and U.S. Hwy 79 and junction U.S. Hwy 79 and Interstate Hwy 20, over U.S. Hwy 79; (9) between junction U.S. Hwy 96 and Interstate Hwy 10 and junction U.S. Hwys 96 and 59, over U.S. Hwy 96; and (10) serving all intermediate points in routes (1) through (9) above.

MC 116544 (Sub-227F), filed November 3, 1980. Applicant: ALTRUK FREIGHT SYSTEMS, 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O. Box 10061, Palo Alto, CA 94303. Transporting (1) *faadstuffs;* and (2) *materials, equipment and supplies used in the manufacture and distribution of foodstuffs,* betweeen points in FL and those in Monterey and Monrovia Counties, CA; and Spartanburg County, SC., on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 117765 (Sub-304F), filed November 3, 1980. Applicant: HAHN TRUCK LINE, INC., 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan (same address as applicant). Transporting (1) *recreational equipment,* (2) *heating and air canditioning equipment*, and (3) *materials, equipment, and supplies* used in the manufacture, installation and distribution of the commodities in (1) and (2) above, between the facilities of The Coleman Company, Inc., on the one hand, and, on the other, points in AL, AR, IA, IL, IN, KS, KY, LA, MN, MO, MS, NE, ND, OK, SD, TN, TX, and WI.

MC 133604 (Sub-11F), filed October 16, 1980. Applicant: LYNN TRANSPORTATION COMPANY, INC., 712 South 11 St., Oskaloosa, IA 52577. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Transporting (1) *foadstuffs,* from the facilities of Geo. A. Hormel & Co., at or near Davenport, IA, to points in AL, FL, GA, KY, LA, MS, NC, SC, and TN; and (2) *materials, equipment and supplies* used in the manufacture of gelatin products, in the reverse direction.

MC 134645 (Sub-38F), filed October 31, 1980. Applicant: LAKE STATE TRANSPORT, INC., P.O. Box 944, St. Cloud, MN 56301. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. Transporting (1) *meats, meat products, and meat byproducts, and articles distributed by meat packing houses,* as described in sections A and C of Appendix I to the report in *Descriptions of Mator Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between Macon, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141914 (Sub-93F), filed October 30, 1980. Applicant: FRANKS AND SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh St., NW., Washington, DC 20001. Transporting *general cammadities* (except household goods as defined by the Commission, and classes A and B explosives), between points in ME, on the one hand, and, on the other, points in the U.S., (except AK and HI). Condition: Issuance of this certificate is subject to prior or coincidental cancellation, at applicant's written request, of MC 141914 Subs 10, 13, 19, 21, 22, 25, 35, 37, 38, and 59.

**Note.**—Applicant relies on traffic studies in lieu of shipper support.

MC 145915 (Sub-5F), filed November 4, 1980. Applicant: EAGLE TRANSPORT, INC., P.O. Box 189, Montpelier, ID 83254. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. Transporting *ail drilling mud compounds*, (1) between points in Uinta County, WY, on the one hand, and, on the other, points in Lander and Nye Counties, NV, and those in Box Elder, Cache Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake Summit, Weber and Wasatch Counties, UT; and (2) from points in Lander and Nye Counties, NV, to points in Bear Lake County, ID.

MC 151275 (Sub-1F), filed October 20, 1980. Applicant: CHICAGO SURBURBAN EXPRESS, INC., 1500 W. 33rd St., Chicago, IL 60608. Representative: Philip A. Lee, 120 W. Madison St., Chicago, IL 60602. Transporting *chemicals*, between Chicago, IL, on the one hand, and, on the other, Milwaukee, Racine, and Kenosha, WI.

MC 151534 (Sub-1F), filed October 21, 1980. Applicant: R&D

TRANSPORTATION CORPORATION, P.O. Box 1908, Des Moines, IA 50306. Representative: Donald B. Strater, 1350 Financial Center, Des Moines, IA 50309. Transporting *food or kindred products* as described in Item 20 of the Standard Transportation Commodity Code Tariff, from points in IA, NE, IL, MO, KS, ND, SD, MN, and WI, to points in the U.S.

MC 152085 (Sub-1F), filed October 17, 1980. Applicant: MITCHELL TRANSPORT, INC., 6500 Pearl Rd., P.O. Box 30248, Cleveland, OH 44130. Representative: J. A. Kuntz, 1100 National City Bank Bldg., Cleveland, OH 44114. Transporting *coal, limestone, and sand,* between points in the U.S., under continuing contract(s) with Alpha Portland Cement Company, of Frederick, MD.

MC 152225 (Sub-1F), Filed October 27, 1980. Applicant: RICK PERRONE TRANSPORTATION, INC., 39 Depot St., Broad Brook, CT 06016. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Transporting *electronic cable, plastic pellets, and materials, equipment, and supplies* used in the manufacture and installation of electronic cable and wire plastic insulation, from South Hadley, MA, to Nogales, AZ, and from Nogales, AZ, to points in the U.S. (except AK and HI).

MC 152325 (Sub-1F), filed October 20, 1980. Applicant: BOWDEN TRANSFER COMPANY, INC., P.O. Box 343, Lewisburg, TN 37901. Representative: Robert E. Campbell, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, and commodities in bulk), (A) over regular routes, between Lewisburg and Nashville, TN, over Alternate U.S. Hwy 31, serving all intermediate points; and (B) over irregular routes, between Lewisburg, TN, on the one hand, and, on the other, points in the U.S.

MC 152395 (Sub-1F), filed October 22, 1980. Applicant: KRUEGER TRUCKING, INC., 1330 Bellevue St., Green Bay, WI 54305. Representative: Norman A. Cooper, 145 West Wisconsin Ave., Neenah, WI 54956. Transporting (1) *furniture and fixtures,* and (2) *materials, supplies, and equipment used in the manufacture and distribution of the commodities in (1),* between points in the U.S., under continuing contract(s) with Krueger Metal Products, Inc., and its subsidiaries. Condition: Applicant must submit a statement indicating how it proposes to satisfy the statutory criteria of contract carriage furnishing transportation services designed to meet the distinct need of the shipper. In particular applicant must describe briefly the distinct need for which transportation services have been designed. The statement will be examined by a review board prior to issuance of any permit.

Volume No. OP4-129

Decided: November 19, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 60066 (Sub-22F), filed November 3, 1980. Applicant: BEE LINE MOTOR FREIGHT, a corporation, 1804 Paul St., Omaha, NE 68106. Representative: Marshall D. Becker, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. Transporting *automobile parts and accessories,* between points in Platte County, NE and Cook County, IL.

MC 70557 (Sub-38F), filed November 7, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 W. Homer St., Chicago, IL 60639. Representative: Carl L. Steiner, 39 S. LaSalle St., Chicago, IL 60603. Transporting (1)(a) *paper and paper products* and (b) *plastic articles and containers* and (2) *materials, equipment and supplies* used in the manufacture and distribution of commodities in (1)(a) and (b), (except commodities in bulk), between points in AL, DE, FL, GA, IN, KY, MO, NC, NJ, NY, OH, OK, PA, TN, and TX, restricted to traffic originating at or destined to the facilities of Container Corporation of America.

MC 75627 (Sub-3F), filed October 20, 1980. Applicant: PERILLO MOTOR LINES, INC., 499 Central Ave., New Providence, NJ 07974. Representative: Nicholas J. Perillo (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, and DC. Condition: Issuance of a certificate in this proceeding is subject to the prior or coincidental cancellation, at applicant's written request, of authority held in MC-75627 and subs thereunder which duplicate, in full or in part, the authority herein.

MC 77016 (Sub-22F), filed October 31, 1980. Applicant: BUDIG TRUCKING CO., a corporation, 1100 Gest St., Cincinnati, OH 45203. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., St. Louis, MO 63101. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Columbia and Centralia, MO, (a) from Columbia over U.S. Hwy 63 to junction MO Hwy 22, then over MO Hwy 22 to Centralia, and return over the same route, serving no intermediate points, and (2) between Centralia and Mexico, MO, over MO Hwy 22, serving no intermediate points.

MC 99946 (Sub-3F), filed November 12, 1980. Applicant: FOOTHILLS EXPRESS, INC., 2510 Evergreen ave., West Sacramento, CA 95691. Representative: Michael S. Rubin, 256 Montgomery St., 5th Floor, San Francisco, CA 94104. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in CA and NV.

MC 107456 (Sub-25F), filed October 31, 1980. Applicant: HARRY L. YOUNG AND SONS, INC., 542 W. Sixth So., Salt Lake City, UT 84104. Representative: Lon Rodney Kump, 333 E. Fourth So., Salt Lake City, UT 84111. Transporting (1) *iron and steel articles,* and (2) *commodities* because of size or weight requires the use of special equipment, and (3) *machinery parts and contractors' materials and supplies,* in mixed loads with the commodities in (2) and (4) *general commodities* (except motor vehicles, motor vehicle cabs and bodies, and classes A and B explosives), in mixed loads with the commodities in (2) above, and (5) *self-propelled vehicles* (except motor vehicles and vehicles moving in drive-away service), and (6) *construction materials,* between points in UT.

MC 107576 (Sub-32F), filed November 4, 1980. Applicant: SILVER WHEEL FREIGHTLINES, INC., 1321 S.E. Water Ave., Portland, OR 97214. Representative: Ronald D. Browning (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in Cowlitz County, WA, on the one hand, and, on the other, points in OR, WA, and ID.

MC 113406 (Sub-17F), filed November 6, 1980. Applicant: DOT LINES, INC., 1000 Findlay Rd., Lima, OH 45802. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. Transporting (1) *auto parts,* and (2) *materials, equipment, and supplies* used in the manufacture of auto parts (except commodities in bulk), between Lima, OH, on the one hand, and, on the other, points in the Lower Peninsula of MI.

MC 114457 (Sub-580F), filed November 4, 1980. Applicant: DART TRANSIT COMPANY, a corporation, 2102 University Ave., St. Paul, MN 55114. Representative: James C. Hardman, 33 North LaSalle St., Suite 2108, Chicago, IL

60602. Transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, in tank vehicles, and those requiring special equipment), between points in the U.S.

MC 119777 (Sub-507F), filed November 6, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Hwy 85—East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Drawer "L", Madisonville, KY 42431. Transporting (1) *sealant, fireproofing, acoustical, and insulating products,* (2) *building and construction materials,* and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) between points in Sussex County, NJ, Jefferson County, AL, Orange County, CA, Huntington County, IN, and Fredericksburg, VA, on the one hand, and, on the other, points in the U.S.

MC 123407 (Sub-651F), filed November 6, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Route 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr., (same address as applicant). Transporting (1) *chemical compounds,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of chemical compounds, between St. Louis, MO, on the one hand, and, on the other, those points in the U.S. in and east of MT, WY, CO, and NM.

MC 123407 (Sub-653F), filed November 3, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Rt. 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). Transporting (1) *prefabricated metal buildings,* knocked down or in sections, and (2) *parts and accessories* used in the installation of the commodities in (1) from Madison, WI, to points in the U.S. (except AK and HI).

MC 125777 (Sub-304F), filed November 3, 1980. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Ave., Gary, IN 46403. Representative: Carl L. Steiner, 39 So. LaSalle St., Chicago, IL 60603. Transporting *such commodities* as are usually transported in dump vehicles, between points in the U.S.

MC 129166 (Sub-4F), filed November 5, 1980. Applicant: RED WING TRANSPORTATION CORPORATION, 3154 No. Service Dr., Red Wing, MN 55066. Representative: Robert L. Cope, 1730 M St., NW. Suite 501, Washington, D.C. 20036 Transporting *general commodities* except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with S. B. Foot Tanning Co., of Red Wing, MN.

MC 135007 (Sub-87F), filed November 6, 1980. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" St., Omaha, NE 68127. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. Transporting *chemicals or allied products* as described in Item 28 of Standard Transportation Commodity Code Tariff, between points in the U.S, under continuing contract(s) with Thompson, Hayward Chemicals Company, of Des Moines, IA.

MC 138157, (Sub-257F), filed October 31, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 S. Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn (same as above). Transporting *lighting fixtures and materials, equipment, and supplies* used in the manufacture, and distribution of lighting fixtures, between points in Erie and Lorain Counties, OH on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 138157 (Sub-258F), filed October 31, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 So. Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn, (same address as applicant). Transporting *fans, heaters, and stands and materials, equipment, and supplies* used in the manufacture, and distribution of fans, heaters, and stands, between points in Tarrant County, TX; Williamson County, TN; and Lancaster and Chester Counties, PA, on the one hand, and, on the other, points in the U.S. restricted to traffic originating at or destined to the facilities of Lasko Metal Products.

MC 139077 (Sub-3F), filed November 5, 1980. Applicant: LOOP FLEET SERVICE, INC., 1818 N. Commerce St., Milwaukee, WI 53212. Representative: James L. Sernovitz (same address as applicant). Transporting (1) *hides, skins and splits,* between points in NE, MN, KS, MO, KY, MI and IN; (2) *leathers and materials* used to make shoes and boots, between points in WI and El Paso, TX; and (3) *general commodities* (except used household goods), between points in WI and Chicago, IL, restricted to traffic having a prior or subsequent movement by rail or water.

MC 14126 (Sub-10F), filed October 31, 1980. Applicant: FOAM TRANSPORT, INC., 201 Ballardvale St., Wilmington, MA 01887. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 02108. Transporting (1) *rubber balls, plastic balls and sponge balls,* (2) *rubber automotive parts,* and (3) *materials and supplies* used in the manufacture of the foregoing commodities (except commodities (in bulk), between points in the U.S., under continuing contract(s) with Barr, Inc., of Sandusky, OH.

MC 142546 (Sub-2F), filed October 15, 1980. Applicant: MER–LOU TRANSPORTATION, INC., P.O. Box 247, 401 DuPont Hwy., Millsboro, DE 19966. Representative: James H. Sweeney, P.O. Box 9023, Lester, PA 19113. Transporting *foodstuffs* (except commodities in bulk), between New York, NY, and points in Camden and Cumberland Counties, NJ, Sussex County, DE, Caroline, Dorchester, Talbot, and Wicomico Counties, MD, Accomack and Northampton Counties, VA, on the one hand, and, on the other, points in the U.S.

MC 142556 (Sub-1F), filed October 27, 1980. Applicant: GIGUERE'S SUPER MARKET, a corporation, Western Ave., Box 710, Augusta, ME 04330. Representative: Robert J. Daviau, One Center St., Waterville, ME 04901. Transporting *such commodities* as are dealt in or used by chain grocery stores, between points in the U.S., under continuing contract(s) with New England Grocer Supply Co., of Northboro, MA.

MC 144416 (Sub-7F), filed November 4, 1980. Applicant: C. F. McGRAW, and individual, P.O. Box 498, Garden City, KS 67846. Representative: Herbert Alan Dubin, 818 Connecticut Ave., NW., Washington, DC 20006. Transporting *foodstuffs,* between points in Finney County, KS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 145676 (Sub-6F), filed October 31, 1980. Applicant: JOHN BREITWEISER TRUCKING, INC., P.O. Box 217, Jerseyville, IL 62022. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Transporting (1) *carbonated beverages,* and (2) *materials and supplies* used in the manufacture and distribution of carbonated beverages, between points in the U.S., under continuing contract(s) with Taylor Beverages, Inc., of Hazelwood, MO.

MC 146146 (Sub-9F), Filed October 31, 1980. Applicant: HADDAD TRANSPORTATION, INC., 5000 Wyoming Ave., Dearborn, MI 48126. Representative: Edward P. Bocko, P.O. Box 496, Mineral Ridge, OH 44440. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission), between points in the U.S., under continuing contract(s) with Lilly Metal Products, Inc., of Palm Beach Gardens, FL.

MC 146656 (Sub-59F), filed November 5, 1980. Applicant: KEY WAY TRANSPORT, INC., 820 So. Oldham St., Baltimore, MD 21224. Representative: Gerald K. Gimmel, 4 Professional Dr., Suite 145, Gaithersburg, MD 20760. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Key Warehouse Services, a division of Cowan Enterprises, Inc., of Baltimore, MD.

MC 146656 (Sub-60F), filed November 6, 1980. Applicant: KEY WAY TRANSPORT, INC., 820 S. Oldham St., Baltimore, MD 21224. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. Transporting *polyurethane foam,* between points in the U.S., under continuing contract(s) with William T. Burnett & Company, Inc., of Baltimore, MD.

MC 148886 (Sub-1F), filed October 31, 1980. Applicant: A & A TRUCKING, INC., P.O. Box 538, Stephens, AR 71764. Representative: Joe D. Woodward, P.O. Box 727, Magnolia, AR 71753. Transporting (1) *roofing and roofing products,* and (2) *materials and supplies* used in the manufacture of roofing and roofing products, between the facilities of the Elk Corporation at Stephens, AR, on the one hand, and, on the other, points in AL, KY, LA, MO, OK, TN, TX, and MS.

MC 151087 (Sub-2F), filed October 31, 1980. Applicant: AREA INTERSTATE TRUCKING, INC., 15344 Dixie Hwy., Harvey, IL 60426. Representative: Michael R. Werner, 167 Fairfield, P.O. Box 1409, Fairfield, NJ 07006. Transporting *new furniture and materials, supplies, and equipment,* used in the manufacture and distribution of new furniture, between points in the U.S., under continuing contract(s) with Harris Hub Co., Inc., of Harvey, IL 60426.

MC 151137 (Sub-1F), filed November 4, 1980. Applicant: RAPIDO FREIGHT LINES, INC., 1744 Hacienda Pl., El Cajon, CA 92020. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. Transporting *bananas,* from Wilmington, CA, to points in AR, AZ, CA, CO, ID, IL, IA, KS, LA, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY.

MC 151176 (Sub-1F), filed October 31, 1980. Applicant: EDD EUBANKS, d.b.a. EDD EUBANKS TRUCKING COMPANY, Box 204 (Hwy 25 N), Dexter, MO 63841. Representative: Edd Eubanks (same address as applicant). Transporting (1) *automotive air and oil filters,* and (2) *parts* for automotive air and oil filters, between points in the U.S., under continuing contract(s) with Campbell Filter Company, of Dexter, MO.

MC 151527 (Sub-1F), filed November 7, 1980. Applicant: STEWART ENTERPRISE, INC., Route 4, Box 231A, Duncan, OK 73533. Representative: James Stewart (same address as applicant). Transporting *chemicals,* between points in the US (except AK and HI), under continuing contract(s) with Sun Petroleum Products Company of Tulsa, OK.

MC 152067 (Sub-1F), filed October 28, 1980. Applicant: JOHN H. WINSLOW, d.b.a. JOHN WINSLOW TRUCKING, 2660 Knollwood, MO 63031. Representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. Transporting *foodstuffs and paper products,* between Granite City, IL, Memphis and Jackson, TN, Tupelo, MS, West Memphis, AR and Forest City, AR.

MC 152226 (Sub-1F), filed October 14, 1980. Applicant: C. G. TRUCKING CORP., 4200 N. Oracle Rd., Tucson, AZ 85705. Representative: Al Stamper (same address as applicant). Transporting *confectionery,* between Bloomington, IL, on the one hand, and, on the other, Los Angeles, West Covina, and San Francisco, CA.

MC 152227 (Sub-1F), filed October 15, 1980. Applicant: DAVID BENDER d.b.a. DAVE'S TOWING SERVICE, Rt. #22 & Mercer St., Somerville, NJ 08876. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. Transporting *disabled and replacement motor vehicles,* in truckaway service, between points in CT, DE, MD, MA, NC, NJ, NY, OH, PA, RI, VA, WV, and DC.

MC 152566 (Sub-F), filed November 3, 1980. Applicant: ONEDIN LINE, INC., 6021 Bapst St., Toledo, OH 43615. Representative: Keith D. Warner, 5732 W. Rowland Rd., Toledo, OH 43613. Transportating *malt beverages,* between points in the U.S., under continuing contract(s) with Seaway Beverage Company of Toledo, OH.

**Volume No. OP5-055**

Decided: November 13, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 908 (Sub-20F), filed October 27, 1980. Applicant: CONSOLIDATED CARTAGE COMPANY, INC., P.O. Box 171, Argo, IL 60501. Representative: Eugene L. Cohn, One North LaSalle St., Rm. 2255, Chicago, IL 60602. Transporting *general commodities* (except household goods as defined by the Commission, classes A and B explosives, and commodities in bulk), between Chicago, IL, on the one hand, and, on the other, points in IN, KY, MI, MO, OH, PA, TN, and WI.

MC 1459 (Sub-11F), filed October 22, 1980. Applicant: ROYAL MOTOR EXPRESS, INC., 240 Harmon Ave., Lebanon, OH 45036. Representative: Richard H. Brandon, P.O. Box 97, 220 W. Bridge St., Dublin, OH 43017. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between points in the U.S. (except AK and HI) under continuing contract(s) with the Standard Oil Company, of Cleveland, OH and its subsidiaries, BP Oil, Inc., Boron Oil Co., Montaineer Carbon Co., Sohio Petroleum Co., Old Ben Coal Co., Division of Sohio Petroleum Co., Sohio Pipeline Company and Vistron Corporation.

MC 25399 (Sub-16F), filed October 24, 1980. Applicant: A-P-A TRANSPORT CORP., 2100 88th St., North Bergen, NJ 07047. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk in tank vehicles, and those requiring special equipment), between points in PA, NJ, NY, CT, MA, RI, NH, VT, ME, DE, MD, VA, WV, and DC. Condition: Any certificate issued in this proceeding is subject to the prior or coincidental cancellation, at applicant's written request, of MC 25399 and Subs 5, 6, 7, 8, 10, 11, and 14, and dismissal of the pending modification requests of each of the above certificates.

MC 78118 (Sub-57F), filed October 21, 1980. Applicant: W. H. JOHNS, INC., 35 Witmer Rd., Lancaster, PA 17602. Representative: Christian V. Graf, 407 N. Front St., Harrisburg, PA 17101. Transporting (1) *water treating chemicals and activated carbon,* and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1), between points in the U.S. in and east of MI, IN, KY, TN, and MS (except points in NY, ME, NH, VT, MA, and RI), restricted to traffic originating at or destined to the facilities of Calgon Corporation, a subsidiary of Merck and Co., Inc.

MC 85718 (Sub-17F), filed October 28, 1980. Applicant: SEWARD MOTOR FREIGHT, INC., P.O. Box 126, Seward, NE 68434. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501. Transporting *automotive parts, accessories, and tools,* between

Portland, OR, on the one hand, and, on the other, points in WA and ID.

MC 96769 (Sub-11F), filed October 24, 1980. Applicant: LIBERTY TEX-PACK EXPRESS, INC., Suite 508, Regal Plaza Bldg., 1499 Regal Row, Dallas, TX 75249. Representative: Thomas F. Sedberry, P.O. Box 2165, Austin, TX 78768. Over regular routes transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment) between Dallas, TX, and Oklahoma City, OK, over Interstate Hwy. 35 and U.S. Hwy. 77, serving Ardmore, OK, as an intermediate point, restricted (1) against the transportation of packages or articles weighing more than 100 pounds and (2) against the transportation of packages or articles weighing in the aggregate more than 500 pounds, from one consignor at one location, to one consignee at one location in any one day.

MC 97998 (Sub-3F), filed October 22, 1980. Applicant: REFRIGERATED TRANSPORT, INC., P.O. Box 225299, Dallas, TX 75265. Representative: Bernard H. English, 6270 Firth Rd., Fort Worth, TX 76116. Transporting (1) *such commodities* as are dealt in or used by grocery stores, discount stores, retail department stores, and drug stores, (2) *foodstuffs*, other than those in (1), and (3) *equipment, materials, and supplies* used in the manufacture and distribution of commodities in (1) and (2), between points in TX, restricted to traffic having an immediately prior or subsequent movement in interstate or foreign commerce.

MC 103798 (Sub-52F), filed October 28, 1980. Applicant: MARTEN TRANSPORT, LTD., Route 3, Mondovi, WI 54755. Representative: Robert S. Lee, 1000 First National Bank Bldg., Minneapolis, MN 55402. Transporting *faodstuffs* and *materials, equipment, and supplies* used in the manufacture of foodstuffs, between points in AZ, AR, CA, CO, ID, IL, IN, IA, KS, LA, MI, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TN, TX, UT, WA, WI, and WY.

MC 106398 (Sub-1083F), filed October 23, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson (same address as applicant). Transporting *chemicals ar allied products,* As described in Item 28, *clay, cancrete, glass or stane products*, as described in Item 32, and *primary metal precut products;* including galvanized; except coating or other allied processing, as described in Item 33, of the Standard Transportation Commodity Code tariff between points in Fairfield County, CT, Henrico County, VA, Taylor County, GA, Montgomery County, OH, Lake County, IL, Smith County, TX, Denver County, CO, King County, WA, San Bernardino County, CA, Erie County, NY, and Greene County, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 107478 (Sub-78F), filed October 21, 1980. Applicant: OLD DOMINION FREIGHT LINE, INC., 1791 Westchester Drive, P.O. Box 2006, High point, NC 27261. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Transporting *electrical storage batteries,* between points in Tazewell County, VA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 107478 (Sub-79F), filed October 17, 1980. Applicant: OLD DOMINION FREIGHT LINE, INC., 1791 Westchester Drive, Post Office Box 2006, High Point, NC 27261. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Transporting *(1) fabricated metal products (except ordnance)* as described in Item 34 of Standard Transportation Commodity Code tariff and *(2) equipment, materials, and supplies* used in the manufacture and distribution of the commodities in (1) between points in Beaufort, Pitt, and Sampson Counties, NC, and Guernsey County, OH, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 109708 (Sub-102F), filed October 22, 1980. Applicant: INDIAN RIVER TRANSPORT CO., INC., P.O. Box AG, Dundee, FL 33838. Representative: John J. Harned (same address as applicant). Transporting *food ar kindred products,* as described in Item 20 of the Standard Transportation Commodity Code Tariff, (1) between points in the U.S. in and east of MN, IA, MO, AR, and TX, and (2) between points in CA, on the one hand, and, on the other, points in the U.S. in and east of MN, IA, MO, AR, and TX. Condition: Issuance of a certificate in this proceeding is subject to prior or coincidental cancellation of certificate NO. MC 109708 Subs-2, 50, 53, 55, 56, 59, 62, 65, 74, 76, 77, 79, 84, 85, 86, 87, 89, 92, and 95.

MC 112989 (Sub-131F), filed October 20, 1980. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr. (same address as applicant). Transporting *recycleable waste products,* between points in AZ, on the one hand, and, on the other, points in CA and TX.

MC 118959 (Sub-254F), filed October 17, 1980. APPLICANT: JERRY LIPPS, INC., 130 S. Frederick St., Cape Girardeau, MO 63701. REPRESENTATIVE: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. Transporting (1) *vinyl and vinyl products, chipboard and chipboard products, polyethylene and polyethylene products, labels, specialty die cutting and packaging supplies* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) between Cape Girardeau and Scott City, MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 119399 (Sub-137F), filed October 28, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Blvd., Joplin, MO 64801. Representative: Don D. Lacy (same address as applicant). Transporting (1) *paper and paper products,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) (except commodities in bulk and commodities which because of size or weight require special equipment), between the facilities of St. Regis Paper Co., Southland Division, at or near Herty and Sheldon, TX, on the one hand, and, on the other, points in AR, IL, IA, KS, KY, MO, OK, and TN.

**Volume No. OP5–056**

Decided: Nov. 13, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill

MC 65658 (Sub-6F), filed October 22, 1980. Applicant: H. E. WAMSLEY TRUCKING, INC., 16600 Jefferson Davis Hwy., Colonial Heights, VA 23834. Representative: Donald M. Schubert, 200 West Grace St., Suite 415, Richmond, VA 23220. Transporting *fabricated structural steel, paint, and iran and steel articles,* between points in the U.S., under continuing contract(s) with Mack's Iron Company, Incorporated, of Colonial Heights, VA.

MC 120378 (Sub-6F), filed October 21, 1980. Applicant: FINDLAY TRUCK LINE, INC., 420 Trenton Ave., Findlay, OH 45840. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215. Transporting *general commodities* (except household goods and classes A and B explosives), between points in Allen, Ashland, Auglaize, Crawford, Cuyahoga, Eria, Hardin, Hancock, Holmes, Huron, Lorain, Lucas, Medima. Ottawa, Putnam, Richland, Sandusky, Seneca, Summit, Wayne, Wood, and Wyandot Counties, OH; and Monroe and Lenawee Counties,

MI, on the other hand, and, on the other, points in the U.S.

MC 124078 (Sub-1035F), filed October 20, 1980. Applicant: SCHWERMAN TRUCKING CO., 611 South 28th St., Milwaukee, WI 53215. Representative: Richard H. Prevette, P.O. Box 1601, Milwaukee, WI 53201. Transporting *petroleum products*, from points in Milwaukee County, WI to points in MI, IL, IN, and MN.

MC 124489 (Sub-14F), filed October 23, 1980. Applicant: NIELSEN BROS. CARTAGE CO., INC., 4619 West Homer Street, Chicago, IL 60639. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60609. Transporting *general commodities* (except household goods as defined by the Commission, commodities in bulk, and classes A and B explosives) between points in the U.S. (except AK and HI) under continuing contract(s) with Ralston Purina Company of St. Louis, MO.

MC 125299 (Sub-12F), filed October 17, 1980. Applicant: WITTE BROTHERS EXCHANGE, INC., 690 East Cherry St., Troy, MO 63379. Representative: B. W. Tourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S. (except points in WA, OR, CA, NV, ID, MT, WY, UT, AZ, NM, and CO).

MC 125708 (Sub-207F), filed October 21, 1980. Applicant: THUNDERBIRD MOTOR FREIGHT LINES, INC., 1473 Ripley Road, P.O. Box 5216, Lake Station, IN 46405. Representative: Edward F. V. Pietrowski, 3300 Birney Avenue, Moosic PA 18507. Transporting *nonferrous metals and nonferrous metal products*, between those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 126899 (Sub-132F), filed October 20, 1980. Applicant: USHER TRANSPORT, INC., 3925 Old Benton Road, Pasucah, KY 42001. Representative: George M. Catlett, 708 McClure Building, Frankfort, KY 40601. Transporting *asphalt*, in bulk, in tank vehicles, from Kuttawa, KY, to those points in that part of IL in an area and on a line beginning at the MO–IL State line and extending along U.S. Hwy 50 to the IL–IN State line, then along the IL–IN State line to ——— junction U.S. Hwy 36, then along U.S. Hwy 36 to the IL–MO State line, then along the IL–MO State line to junction U.S. Hwy 50.

MC 142999 (Sub-27F), filed October 16, 1980. Applicant: TRANSPORT MANAGEMENT SERVICE CORPORATION, P.O. Box 39, Burlington, NJ 08016. Representative: Ronald N. Cobert, Suite 501, 1730 M Street NW., Washington, DC 20036. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives) between points in the U.S. under continuing contract(s) with National Starch and Chemical Corporation, of Bridgewater, NJ.

MC 143328 (Sub-36F), filed October 28, 1980. Applicant: EUGENE TRIPP TRUCKING, P.O. Box 2730, Missoula, MT 59806. Representative: David A. Sutherland, 1150 Connecticut Ave. NW., Suite 400, Washington, DC 20036. Transporting *mineral water*, between points in CA, on the one hand, and, on the other, points in AZ, AR, CO, LA, NM, NV, TX, and WA.

MC 143369 (Sub-4F), filed October 26, 1980. Applicant: SMITH AND SMITH, INC. P.O. Box 71355, 4361 Headquarters Road, Charleston Heights, SC 29405. Representative: Frank A. Graham, Jr., P.O. Box 11864, Columbia, SC 29211. Transporting *coal* between points in SC, restricted to traffic having a prior or subsequent movement in interstate or foreign commerce.

MC 144029 (Sub-7F), filed October 31, 1980. Applicant: CUMBERLAND TRANSPORTATION CORP., 5950 Fisher Rd., East Syracuse, NY 13057. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. Transporting (1) *containers and container closures, paper and paper products*, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) between points in the U.S. under continuing contract(s) with International Paper Company, of New York, NY. Condition:Applicant must submit a statement indicating how it proposes to satisfy the statutory criteria of contract carriage, i.e., either by (1) furnishing transportation service through the assingment of motor vehicles for a continuing period of time to the exclusive use of each person served, or (2) furnishing transportation services designed to meet the distinct need of each individual customer, and if the latter, applicant must describe briefly the distinct need for which transportation services have been designed. The statement will be examined by a review board prior to issuance of any permit.

MC 144188 (Sub-24F), filed October 20, 1980. Applicant: P. L. LAWTON, INC. P.O. Box 325, Berwick, PA 1603. REPRESENTATIVE: J. Bruce Walter, P.O. Box 1146, 410 North Third St., Harrisburg, PA 17108. Transporting (1) *building sections, panels, curtain wall units, doors, and frames*, (2) *parts and accessories* for the commodities in (1), (3) *moldings and architectural shapes*, (4) *scrap aluminum* produced in the manufacture of the commodities in (1), (2), and (3) and (5) *materials, equipment, and supplies* used in the manufacture, storage, and distribution of the commodities in (1), (2), and (3), between points in the U.S. (except AK, AZ, CA, HI, ID, NV, OR, UT, and WA).

MC 150088 (Sub-4F), filed October 27, 1980. Applicant: STERLING TRANSPORT DIVISION, INC., 801 Heinz Way, Grand Prairie TX 75071. Representative: Robert K. Frisch, 2711 Valley View Lane, Suite 101, Dallas, TX 75234. Transporting (1) *canned and preserved foodstuffs*, between the facilities of Heinz U.S.A. at points in Dallas and Tarrant Counties, TX, on the one hand, and, on the other, points in LA, AR, OK, and NM, and (2) *carpet*, from points in Hempstead County, AR, to points in Dallas and Tarrant Counties, TX.

**Volume No. 0P5–058**

Decided: Nov. 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 2428 (Sub-32F), filed November 4, 1980. Applicant: H. PRANG TRUCKING CO., INC., 112 New Brunswick Ave., Hopelawn (Perth Amboy), NJ 08861. Representative: Morton E. Kiel, Suite 1832, 2 World Trade Center, New York, NY 10048. Transporting *such commodities* as are dealt in or used by manufacturers of building materials (except commodities in bulk), between points in the U.S., under continuing contract(s) with Bird & Son, Inc., of East Walpole, MA.

MC 5888 (Sub-54F), filed October 21, 1980. Applicant: MID-AMERICAN LINES, INC., 127 West Tenth Street, Kansas City, MO 64105. Representative: Tom Zaun (same address as applicant). Transporting *expanded metal products* between Hopkins, MN on the one hand, and, on the other, points in the U.S. (except AK and HI)

MC 31389 (Sub-312F), filed October 31, 1980. Applicant: MCLEAN TRUCKING COMPANY, a corporation, 1920 West First Street, Winston-Salem, NC 27104. Representative: Daniel R. Simons, PO Box 213, Winston-Salem, NC 27102. Transporting *pipe and pipe fittings*, from Hoboken and Harrison, NJ, to Manchester (Adams County), OH.

MC 42828(Sub-22F), filed October 28, 1980. Applicant: THEODORE ROSSI TRUCKING CO., INC., 9 South Vine St., Barre, VT 05641. Representative:

William L. Rossi, P.O. Box 332, Barre, VT 05641. Transporting *stone, stone products, and materials, equipment, and supplies* used by manufacturers of stone products, between points in ME, MA, NH, VT, CT, RI, NY, NJ, and PA, on the one hand, and, on the other, points in and east of TX, OK, KS, NE, SD, and ND.

MC 48958 (Sub-215F), filed November 4, 1980. Applicant: ILLINOIS-CALIFORNIA EXPRESS, INC., 510 East 51st Ave., Denver, CO 80216. Representative: Morris G. Cobb, P.O. Box 950, Amarillo, TX 79189. Transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S. (except AL and HI). Condition: Any certificate issued in this proceeding to the extent it authorizes transportation of classes A and B explosives shall be limited in point of time to a period expiring 5 years from the date of issuance of this certificate.

MC 55778 (Sub-21F), filed November 6, 1980. Applicant: MOTORFRATE DISPATCH, INC., 16360 Broadway Ave., Maple Hts, OH 44137. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215. Transporting (1) *such commodities* as are dealt in by grocery, hardware and drug stores, (2) *cleaning and building materials and supplies,* (3) *chemicals*, and (4) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1), (2), and (3) between points in the U.S. (except AK and HI), under continuing contract(s) with Purex Corporation, of St. Louis, MO.

MC 61788 (Sub-41F), filed November 3, 1980. Applicant: GEORGIA-FLORIDA-ALABAMA TRANSPORTATION COMPANY, P.O. Box 2268, Dothan, AL 36302. Representative: Maurice F. Bishop, 601–09 Frank Nelson Bldg., Birmingham, AL 35203. Regular routes, transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between Atlanta, GA and Phenix City, AL; from Atlanta over Interstate Hwy 85 and/or U.S. Hwy 29 to LaGrange, GA, thence over U.S. Hwy 27 to Columbus, GA, thence over U.S. Hwy 80 to Phenix City, and return over the same route, serving all intermediate points and points in Russell County, AL, and Muscogee, Fulton, DeKalb, Clayton, Douglas, Gwinnett, Fayette, Henry and Cobb Counties, GA, as off-route points in connection with applicant's authorized regular route authority.

MC 108859 (Sub-85F), filed October 31, 1980. Applicant: CLAIRMONT TRANSFER CO., 1803 Seventh Ave., North Escanaba, MI 49829. Representative: Elmer J. Wery, P.O. Box 3548, Green Bay, WI 54303. Over regular transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives) (1) between Green Bay, WI, and Milwaukee, WI, over U.S. Hwy 41, (2) between St. Paul, MN and Forest Junction, WI, over U.S. Hwy 10, (3) between Minneapolis, MN and Milwaukee, WI, over Interstate Hwy 94, (4) between Chicago, IL and Junction Interstate Hwy 90 and Interstate 94, over Interstate Hwy 94, (5) serving points in Fond du Lac, Outagamie, St. Croix and Winnebago Counties, WI as intermediate or off-route points in connection with carrier's authorized regular route operations.

Note.—Applicant intends to tack this authority with its existing authorities in NO. MC–108859.

MC 112989 (Sub-135F), filed November 7, 1980. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr. (same address as applicant). Transporting *iron and steel articles,* from points in CA to points in TX, AZ, NM, and NV.

MC 151768 (Sub-5F), filed October 21, 1980. Applicant: ARM TRANSPORTATION CORPORATION, P.O. Drawer 9480, Amarillo, TX 79105. Representative: A. J. Swanson, P.O. Box 1103, Sioux Falls, SD 57101. Transporting *foodstuffs* (except in bulk, in tank vehicles), from points in Shelby County, TN, to points in the U.S.

MC 151959 (Sub-1F), filed October 31, 1980. Applicant: TRANS-COPPER EXPRESS, CO., 512–514 State Fair Blvd., Syracuse, NY 13204. Representative: Donald G. Hichman, R.D. No. 1, Box 7, Union Springs, NY 13160. Transporting (1)*candles and decorative hardware items*, and (2) *materials and supplies* used in the manufacture and distribution of candles (except commodities in bulk) between points in Onondaga County, NY, on the one hand, and, on the other, points in CT, IL, IN, KS, MA, MI, MO, OH, PA, RI, and WI.

MC 152308 (Sub-1F), filed October 28, 1980. Applicant: KENNETH WOODWARD, d.b.a. KEN WOODWARD TRUCKING, 4239 N.E. Simpson, Portland, OR 97218. Representative: Louis A. Santiago, 1200 SW Main Bldg., Portland, OR 97205. Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in OR and WA.

MC 152409 (Sub-1F), filed October 17, 1980. Applicant: COASTAL TOURS, INC., 14809 El Vista Avenue, Oak Forest, IL 60452. Representative: Douglas J. Watson (same address as applicant). To engage in operations in interstate or foreign commerce as a *broker* at Oak Forest, IL, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* in special and charter operations, beginning and ending at points in IL, IN, WI, and IA, and extending to points in the U.S. (except AK and HI).

MC 152509F, filed October 24, 1980. Applicant: CONTRACT TRANSPORTATION SYSTEMS CO., a corporation, 1370 Ontario St., Cleveland, OH 44101. Representative: Leonard A. Jaskiewicz, 1730 M St., NW., Washington, DC 20036. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with (a) The Sherwin-Williams Company, of Cleveland, OH, and (b) United Freight, Inc., of Morrow, Ga.

**Volume No. OP5–059**

Decided: November 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 56679 (Sub-175F), filed October 22 1980. Applicant: BROWN TRANSPORT CORP., 352 University Ave. SW., Atlanta, GA 30310. Representative: Leonard S. Cassell (same address as applicant). General commodities (except Classes A and B explosives and household goods, as defined by the Commission), over the following regular routes: 1) Between Houston, TX and Des Moines, IA, from Houston over Interstate Hwy 45 (also over US Hwy 75) to Dallas, then over Interstate Hwy 35 to Des Moines, and return over the same route. 2) Between Baton Rouge, LA and Galveston, TX, from Baton Rouge, over Interstate Hwy 10 to Houston, TX, then over US Hwy 75 to Galveston, and return over the same route; 3) Between Jackson, MS and Ft. Worth, TX over Interstate Hwy 20; 4) Between Dallas, TX and Knoxville, TN, from Dallas, over Interstate Hwy 30 to Little Rock, AR, then over Interstate Hwy 40 to Knoxville, and return over the same route; 5) Between Little Rock, AR and Oklahoma City, OK over Interstate Hwy 40; 6) Between Oklahoma City, OK and Chicago, IL, from Oklahoma City over Interstate Hwy 44 (also over US Hwy 66) to St. Louis, MO, then over Interstate Hwy 55 (also over US Hwy 66) to

Chicago, and return over the same route; 7) Between Kansas City, MO and Omaha, NE over Interstate Hwy 29; 8) Between Baton Route, LA and Kansas City, MO, from Baton Rouge over US Hwy 190 to jct US Hwy 71, then over US Hwy 71 to Kansas City, and return over the same route; 9) Between Kansas City, KS and Chattanooga, TN, From Kansas City, over Interstate Hwy 70 to St. Louis, MO, then over Interstate Hwy 64 to jct US Hwy 41, then over US Hwy 41 (also over Interstate Hwy 24) to Chattanooga, TN and return over the same route; 10) Between Decatur, AL and Indianapolis, IN over Interstate Hwy 65; 11) Between Memphis, TN and St. Louis, MO over Interstate Hwy 55; 12) Between St. Louis, MO and Davenport, IA over US Hwy 61; 13) Between jct US Hwy 65 and Interstate Hwy 70 and jct US Hwy 65 and Interstate Hwy 20 over US Hwy 65; 14) Between Houston, TX and Texarkana, AR over US Hwy 59; 15) Between Indianapolis, IN and St. Louis, MO over Interstate Hwy 70; 16) Between Cincinnati, OH and Evansville, IN, from Cincinnati over Interstate Hwy 71 to Louisville, KY and then over Interstate Hwy 64 to Evansville, and return over the same route; 17) Between Louisville, KY and Knoxville, TN, from Louisville over Interstate Hwy 64 to Lexington, KY, then over Interstate Hwy 75 to Knoxville, and return over the same route; 18) Between Bridgeport, and Pittsburgh, PA over Interstate Hwy 70; 19) Between Norfolk, and Salem, VA, from Norfolk over Interstate Hwy 64 to jct US Hwy 360, then over US Hwy 360 to junction US Hwy 460, then over US Hwy 460 to Salem, and return over the same route, (20) between Baltimore, MD, and Pittsburgh, PA, from Baltimore over Interstate Hwy 70, (21) between Chicago, IL, and Toledo, OH, over US Hwy 20, (22) between Toledo, OH, and Detroit, MI, over Interstate Hwy 75, (23) between Chicago, IL, and Newark, NJ, from Chicago over US Hwy 6 to Cleveland, OH, then over Interstate Hwy 90 to Albany, NY, then over Interstate Hwy 87 to Sufferen, NY, then over NY Hwy 17 to the NY–NJ State line, then over NJ Hwy 17 to Newark, and return over the same route, (24) between Syracuse, NY, and Harrisburg, PA, over Interstate Hwy 81, (25) between Scranton, PA, and Newark, NJ, from Scranton over Interstate Hwy 380 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction PA Hwy 33 to junction Interstate Hwy 78, then over Interstate Hwy 78 to junction Interstate Hwy 287, then over Interstate Hwy 287 to junction Interstate Hwy 95, then over Interstate Hwy 95 to Newark, and return over the same route, (26) between Scranton, PA, and Knoxville, TN, from Scranton over Interstate Hwy 81 to junction Interstate Hwy 40, then over Interstate Hwy 40 to Knoxville, and return over the same route, serving all intermediate points in routes (1) through (26) and serving (a) Port Arthur, TX, Peoria, IL, Topeka, KS, Beaver Falls, PA, Boston, MA, Hot Springs, AR, Mobile, and Phenix City, AL, and (b) points within 20 miles of the points named in (a), as off route points in routes (1) through (26) above.

Note.—Applicant intends to tack with its otherwise authorized authority.

MC 129609 (Sub-4TA), filed October 22, 1980. Applicant: KENWOOD'S MOVING & STORAGE, INC., Sharron Ave., P.O. Box 429, Plattsburgh, NY 12901. Representative: Alvin Altman, 888 Seventh Ave., New York, NY 10106. Transporting *used household goods,* between Plattsburgh, NY, on the one hand, and, on the other, points in VT.

MC 143059 (Sub-140TA), filed October 24, 1980. Applicant: MERCER TRANSPORTATION CO., a corporation, P.O. Box 35610, Louisville, KY 40232. Representative: James L. Stone (same address as applicant). Transporting *iron and steel articles,* between points in the U.S. Condition: Any certificate issued in this proceeding is subject to the prior or coincidental cancellation, at applicant's written request, of certificates in MC 143059 Subs 3, 20, 21, 25, 27, 34, 40, 44, 49, 60, 65, 71, 75, 77, 111 and 114, and certificates that may be issued in the following pending applications, MC 143059 Subs 95, 106, 107 and 108.

Note.—Applicant relies on traffic studies rather than shipper support for the authority sought.

MC 143059 (Sub-141TA), filed October 31, 1980. Applicant: MERCER TRANSPORTATION CO., a corporation, P.O. Box 35610, Louisville, KY 40232. Representative: Kenneth W. Kilgore (same address as applicant). Transporting (1) *iron and steel articles,* and (2) *materials, equipment and supplies* used in the manufacture of iron and steel articles, between points in Mahoning, Belmont and Jefferson Counties, OH, Washington and Westmoreland Counties, PA, and Ohio, Marshall and Brooke Counties, WV, on the one hand, and, on the other, points in the U.S.

MC 144428 (Sub-13TA), filed October 31, 1980. Applicant: TRUCKADYNE, INC., Rt. 16, P.O. Box 308, Mendon, MA 01756. Representative: Joseph A. Reed (same address as applicant). Transporting (1) *foodstuffs* and (2) *materials and supplies* used in the manufacture, processing, and distribution of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Nabisco, Inc., of Cambridge, MA.

MC 144969 (Sub-23TA), filed October 28, 1980. Applicant: WHEATON CARTAGE CO., a corporation, 3rd and "G" Streets, Millville, NJ 08332. Representative: Laurance J. DiStefano, Jr., 1101 Wheaton Ave., Millville, NJ 08332. Transporting (1) *aluminum and aluminum products,* and (2) *materials, equipment, and supplies* used in the manufacture of aluminum and aluminum products (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Alcan Aluminum Corporation.

MC 147038 (Sub-3F), filed November 6, 1980. Applicant: CLAYTON STRANGE, d.b.a. STRANGE TRUCKING CO., Route 2, Box 38, Wallace, MI 49893. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. Transporting (1) *foundry products,* and (2) *materials, equipment and supplies* used in the manufacture of foundry products, between points in the U.S., under continuing contract(s) with Waupaca Foundry, Inc., of Waupaca, WI.

MC 151009 (Sub-1F), filed October 26, 1980. Applicant: ATLANTA CARRIERS, INC., 1260 Southern Road, Morrow, GA 30206. Representative: Bruce E. Mitchell, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, NE., Atlanta, GA 30326. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in the U.S.

MC 151419 (Sub-1F), filed October 22, 1980. Applicant: GORDON JOHNSON, Box 252, Fredericktown, OH 43019. Representative: L. S. Witherspoon, 88 E. Broad St., Columbus, OH 43215. Transporting (1) *lawn and garden tools and farm implements,* between points in Franklin County, OH, and points in NY; (2) *household appliances* and *household appliance parts,* between points in Marion County, OH, and points in NJ and NY; and (3) *such commodities* as are dealt in or used by manufacturers of packaging products (except commodities in bulk, in tank vehicles, and those which because of size or weight require the use of special equipment), between points in Holmes County, OH, and points in CT, MA, NJ, NY, and RI.

MC 151438 (Sub-1F), filed October 18, 1980. Applicant: MID AMERICA TRANSPORT CO., a corporation, 6041 Benore Rd., Toledo, OH 43612. Representative: Michael M. Briley, P.O.

Box 2088, Toledo, OH 43613. Transporting (1) *steel and aluminum articles*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of steel and aluminum articles, between points in the U.S., under continuing contract(s) with (a) Heidtman Steel Products, Inc., of Toledo, OH, (b) Enterprise Metal Services, Inc., of Toledo, OH, (c) Stateline Steel Corporation, of Erie, MI, and (d) Bedford Steel Processing, Inc., of Erie, MI.

MC 152138 (Sub-1F), filed November 5, 1980. Applicant: D & J TRANSPORTATION SPECIALISTS, INC., Truckstop 7, 107 7th North Street, Liverpool, NY 13088. Representative: Michael R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Transporting *waste* and *hazardous waste* for destruction or disposal only, between points in the U.S.

MC 152238 (Sub-1F), filed October 21, 1980. Applicant: CALIFORNIA-AMERICAN TRUCKING, INC., P.O. Box 288, Grenada, CA 96038. Representative: Guy D. Dodge (same address as applicant). Transporting (1) *paper bags and wrapping paper*, and (2) *materials and supplies* used in their manufacture between points in Multnomah County, OR, and Kings County, CA, on the one hand, and, on the other, points in AZ, CA, CO, ID, MT, NM, NV, OR, UT, WA, and WY.

MC 152318 (Sub-1F), filed November 4, 1980. Applicant: ATLANTIC TRUCK LINES, INC., 168 Town Line Rd., Kings Park, NY 11745. Representative: Morton E. Kiel, Two World Trade Center, Suite 1832, New York, NY 10048. Transporting (1) *such commodities* as are dealt in or used by food business houses and drug and variety stores, and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1), between points in Suffolk, Nassau, Queens, and Kings County, NY, Chatham County, GA, Los Angeles County, CA, and Dallas, TX, on the one hand, and, on the other, points in the U.S., restricted in (1) and (2) against the transportation of commodities in bulk.

**Volume No. OP5-060**

Decided: November 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 77129 (Sub-12F), filed November 4, 1980. Applicant: RAYMOND H. PUFFER, INC., Box 15, RD 1, Vernon, VT 05354. Representative: Morton E. Kiel, Suite 1832, Two World Trade Center, New York, NY 10048. Transporting *malt beverages*, between points in Onondaga County, NY, on the one hand, and, on the other, points in VT.

MC 78228 (Sub-183F), filed October 26, 1980. Applicant: J MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. Transporting *iron and steel articles*, and *materials, equipment, and supplies* used in the manufacture of iron and steel articles, between Beaver Falls, Ambridge, and Koppel, PA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 106398 (Sub-1085F), filed October 23, 1980. Applicant: NATIONAL TRAILER CONVOY, INC., 705 South Elgin, Tulsa, OK 74120. Representative: Gayle Gibson (same address as applicant). Transporting *machinery* (except electrical) as described in Item 35 of the Standard Transportation Code Tariff, between points in Crittenden County, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 110988 (Sub-434F), filed October 22, 1980. Applicant: SCHNEIDER TANK LINES, INC., 4321 W. College Ave., Appleton, WI 54911. Representative: Patrick M. Byrne, P.O. Box 2298, Green Bay, WI 54306. Transporting *such commodities* as are dealt in or used by manufacturers or distributors of emulsifiers, between points in the U.S.

MC 112989 (Sub-132F), filed October 21, 1980. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr. (same address as applicant). Transporting *lumber and lumber mill products*, from points in AZ and UT to points in the U.S.

MC 143419 (Sub-1F), filed October 15, 1980. Applicant: SUMMIT FOODS TRANSPORTATION COMPANY, a corporation, P.O. Box 1937, Breckenridge, CO 80424. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202. Transporting *foodstuffs, and materials, equipment, and supplies* used in the manufacture, and distribution of foodstuffs between points in the U.S. under continuing contract(s) with Summit Foods Company of Breckenridge, CO (hearing site: Denver, CO or Breckenridge, CO.

MC 146078 (Sub-33F), filed October 22, 1980. Applicant: CAL-ARK, INC., 854 Moline, P.O. Box 610, Malvern, AR 72104. Representative: John C. Everett, 140 E. Buchanan, P.O. Box A, Prairie Grove, AR 72753. Transporting (1) *metal shelving*, and (2) *parts and accessories* for metal shelving, from points in OH to points in TX.

MC 146829 (Sub-3F), filed November 3, 1980. Applicant: MURRAY TRUCK LINE, INC., P.O. Box 172, Pleasanton, KS 66075. Representative: William A. Murray (same address as applicant). Transporting *steel pipe* from points in TX and OK, to the facilities of Northwestern Pump & Supply Co., Inc., at Hill City, Plainville, and Hays, KS, Trenton, and Indianola, NE.

MC 148328 (Sub-2F), filed November 6, 1980. Applicant: LEONARD ALLEN and GARY ARIOTI, d./b./a., ALLEN TRUCKING, 112 Manzanita Dr., West Covina, CA 91791. Representative: Leonard Allen (same address as applicant). Transporting *such commodities* as are dealt in or used by manufactureres of cosmetics and cleaning compounds (except commodities in bulk), between points in the U.S., under continuing contract(s) with (a) Avon Products, Inc., of Pasadena, CA, and (b) Amway Corporation, of Santa Ana, CA.

MC 148598 (Sub-6F), filed November 3, 1980. Applicant: BATROCK, INC., U.S. Hwy 127 North, P.O. Box 220, Lawrenceburg, KY 40342. Representative: Robert H. Kinker, 314 West Main St., P.O. Box 464, Frankfort, KY 40602. Transporting *footwear and accessories*, and *materials and supplies* used in the distribution of footwear and accessories, between Danville, KY, on the one hand, and, on the other, points, in AL, AR, GA, IL, IN, MO, NC, OH, SC, and TN. NOTE: The person or persons which appear to be in common control of applicant and another regulated carrier must either file an application for approval of common control under 49 U.S.C. § 11343, or submit an affidavit indicating why such approval is unnecessary.

MC 148608 (Sub-2F), filed October 20, 1980. Applicant: WAREHOUSE TRANSPORTATION COMPANY, INC., P.O. Box 84, Urbana, OH 43078. Representative: Michael Spurlock, 275 E. State St., Columbus, OH 43215. Transporting (1) *toilet preparations*, (2) *hair spray*, and (3)(a) *such commodities* as are dealt in or used by retail and wholesale department, hardware, drug and food stores, and (b) *materials, equipment, and supplies* used in the conduct of the business described in (3)(a), between points in the U.S., under continuing contract(s) with Redken Laboratories, of Florence, KY.

MC 149118 (Sub-3F), filed November 4, 1980. Applicant: BEST WAY TRANSPORT, INC., d./b./a., BEST TRANSPORT, INC., 3841 North Columbia Blvd., Portland, OR 97217. Representative: Michael D. Crew, 1700 Standard Plaza, Portland, OR 97204.

Transporting *commodities,* the transportation of which because of size or weight, require the use of special equipment, between points in OR and WA.

MC 150088 (Sub-5F), filed October 27, 1980. Applicant: STERLING TRANSPORT DIVISION, INC., 801 Heinz Way, Grand Prairie, TX 75071. Representative: Robert K. Frisch, 2711 Valley View Lane, Suite 101, Dallas, TX 75234. Transporting *such commodities* as are dealt in or used by retail variety and department stores, (1) between the facilities used by Target Stores, Division of Dayton Hudson Corp., in Dallas and Tarrant Counties, TX, on the one hand, and, on the other, the facilities used by Target Stores, Division of Dayton Hudson Corp., in TX, restricted to traffic having an immediately prior or subsequent movement by rail or motor carrier in interstate commerce, and (2) between Oklahoma City, OK, points in Pulaski County, AR, and points in LA and TX, restricted to traffic originating at or destined to facilities used by Target Stores, Division of Dayton Hudson Corp.

MC 151209 (Sub-1F), filed October 16, 1980. Applicant: GULF WESTERN EXPRESS, INC., P.O. Box 2653, Natchitoches, LA 71457. Representative: John Williams (same address as applicant). Transporting *floor tile,* between points in the U.S., under continuing contract(s) with Uvalde Rock Asphalt Company, of San Antonio, TX.

MC 151768 (Sub-4F), filed October 21, 1980. Applicant: ARM TRANSPORTATION CORPORATION, P.O. Drawer 9480, Amarillo, TX 79105. Representative: A. J. SWANSON, P.O. Box 1103, Sioux Falls, SD 57101. Transporting (1) *household and recreational equipment,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) (except commodities in bulk), between points in OH, OK, and CA, on the one hand, and, on the other, points in the U.S.

**Volume No. OP5-061**

Decided: Nov. 17, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 113459 (Sub-141F), filed November 4, 1980. Applicant: H. J. JEFFRIES TRUCK LINE, INC., P.O. Box 94850, Oklahoma City, OK 73143. Representative: J. MICHAEL ALEXANDER, First Continental Bank Bldg., Suite 301, 5801 Marvin D. Love Freeway, Dallas, TX 75237. Transporting *lumber or wood products* (except furniture), as described in Item 24 in the Standard Transportation Commodity Code, from points in WY, to points in OK, AR, TX, IL, IA, MI, OH, and IN.

MC 113908 (Sub-516F), filed November 3, 1980. Applicant: ERICKSON TRANSPORT CORP., 2255 North Packer Rd., P.O. Box 10068 G.S., Springfield, MO 65804. Representative: B. B. Whitehead (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission and class A and B explosives), between points in Vernon County, WI, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 118838 (Sub-70F), filed October 31, 1980. Applicant: GABOR TRUCKING, INC., RR #4, Detroit Lakes, MN 56501. Representative: Stephen F. Grinnell, 1000 First National Bank Bldg, Minneapolis, MN 55402. Transporting (1) *gypsum, gypsum wallboard, and joint systems,* and (2) *materials and supplies* used in the installation of the commodities in (1), between points in Big Horn County, WY, on the one hand, and, on the other, points in OR and WA.

MC 119019 (Sub-6F), filed October 31, 1980. Applicant: B.N.M. FERTILIZER TRANSPORT, INC., 6414 E Houston Road, Houston, TX 77028. Representative: Joe G. Fender, 9601 Katy Freeway, Suite 320, Houston, TX 77024. Transporting *potash,* in bulk, from points in Lea and Eddy Counties, NM, to points in TX.

MC 119399 (Sub-138F), filed October 26, 1980. Applicant: CONTRACT FREIGHTERS, INC., P.O. Box 1375, 2900 Davis Boulevard, Joplin, MO 64801. Representative: Don D. Lacy (same address as applicant). Transporting (1) *glass, glassware, and containers,* (2) *closures,* for containers, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) (except commodities in bulk), between points in the U.S. (except AK and HI). Condition: Prior or coincidental cancellation, at applicant's written request, of its certificates in MC-119399 subs 7, 18, 36, 45, 46, 56, 65, 66, 81, 83, 101, and 128

MC 120758 (Sub-2F), filed October 23, 1980. Applicant: SAV-MOR TRANSPORTATION, INC.,37 Mystic St., Everett, MA 02149. Representative: Anthony J. Zarrella (same address as applicant.). Transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Wilmington, MA, on the one hand, and, on the other, points in NY and NJ .

MC 121309 (Sub-2F), filed October 23, 1980. Applicant: P. A. JOHNSON & CO., a corporation, P.O. Box 152, Summit, IL 60501. Representative: Joseph T. Bambrick, Jr., P.O. Box 216, Douglassville, PA 19518. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, those of unusual value, and household goods as defined by the Commission), between points in Boone, Bureau, Cass, Champaign, Cook, Dewitt, Dekalb, DuPage, Ford, Fulton, Grundy, Henry, Iroquois, Kane, Kankakee, Kendall, Knox, Lake, LaSalle, Lee, Livingston, Logan, Macon, Marshall, McHenry, McLean, Menard, Ogle, Peoria, Piatt, Putman, Rock Island, Sangamon, Stark, Stephenson, Tazewell, Vermilion, Whiteside, Will, Winnebago, and Woodford Counties, IL, Lake, La Porte, Marshall, Porter, St. Joseph, and Starke Counties, IN, and Dane, Green, Jefferson, Kenosha, Milwaukee, Ozaukee, Racine, Rock, Walworth, Washington, and Waukesha Counties, WI.

MC 121568 (Sub-61F), filed October 21, 1980. Applicant: HUMBOLDT EXPRESS, INC., 345 Hill Ave., Nashville, TN 37210. Representative: James G. Caldwell (same address as applicant). Over regular routes, transporting *general commodities* (except classes A and B explosives), and household goods as defined by the Commission, (1) between Little Rock, AR, and Tyler, TX, (a) from Little Rock over Interstate Hwy 30 to junction U.S. Hwy 259, then over U.S. Hwy 259 to junction TX Hwy 155, then over TX Hwy 155 to junction U.S. Hwy 271, then over U.S. Hwy 271 to Tyler, and return over the same route, serving no intermediate points, (b) from Little Rock over Interstate Hwy 30 to junction U.S. Hwy 271, then over U.S. Hwy 271 to Tyler, and return over the same route, serving no intermediate points, (2) between Little Rock, AR, and Sherman, TX, from Little Rock over Interstate Hwy 40 to junction U.S. Hwy 69, then over U.S. Hwy 69 to Sherman, and return over the same route, serving no intermediate points, (3) between Fort Smith, AR, and Tyler, TX, over U.S. Hwy 271, serving no intermediate points, (4) between Fort Smith, AR, and Sherman, TX, (a) from Fort Smith over Interstate Hwy 40 to junction U.S. Hwy 69, then over U.S. Hwy 69 to junction U.S. Hwy 75, then over U.S. Hwy 75 to Sherman, and return over the same route, serving no intermediate points, (b) from Fort Smith over Interstate Hwy 40 to juntion Interstate Hwy 35, then over Interstate Hwy 35 to junction U.S. Hwy 82, then over U.S. Hwy 82 to Sherman, and return over the same route, serving

no intermediate points, and (5) serving points in Grayson and Smith Counties, TX, as off-route points in connection with applicant's otherwise authorized routes.

Note.—Applicant intends to track with its existing authority.

MC 128738 (Sub-3F), filed October 20, 1980. Applicant: JOE N. QUNICE, d.b.a., QUINCE UNLOADING & FREIGHT HANDLING, P.O. Box 595, Beloit, WI 53511. Applicant: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. Transporting (1) *food and kindred products* as described in Item 20 of the Standard Transportation Code Tariff, from the facilities used by Geo. A. Hormel & Co. at Beloit, WI to points in MI, OH, IN, and IL, and (2) *materials, equipment and supplies* used in the production of foodstuffs in the reverse direction.

MC 138469 (Sub-253F), filed November 5, 1980. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. Transporting *printed matter*, between Oklahoma City, OK, on the one hand, and, on the other, points in NE and TX.

MC 140458 (Sub-1), filed November 5, 1980. Applicant: V. F. WARNER & SON, INC., 706 Anthony Dr., Champaign, IL 61820. Representative: Keith D. Warner, 5732 West Rowland Rd., Toledo, OH 43613. Transporting *such commodities* as are dealt in or used by a manufacturer of scientific equipment, between points in the U.S., under continuing contract(s) with Kewaunee Scientific Equipment Corporation of Statesville, NC.

MC 142288 (Sub-9F), filed October 20, 1980. Applicant: HAMILTON TRUCKING COMPANY OF OKLAHOMA, INC., 12612 E. Admiral Place, Tulsa, OK 74115. Representative: Virginia Hamilton (same address as applicant). Transporting *iron ore*, between points in OK and TX.

MC 143059 (Sub-143F), filed November 5, 1980. Applicant: MERCER TRANSPORTATION CO., a corporation, P.O. Box 35610, Louisville, KY 40232. Representative: Janice K. Taylor (same address as applicant). Transporting (1) *forest products*, (2) *clay, concrete, glass or stone products*, and (3) *fabricated metal products* as described in Items 8, 32, and 34 of the Standard Transportation Code Tariff, respectively, between points in Elbert County, GA and points in ND, SD, MT, WY, CO, ID, UT, WA, OR, and NV.

MC 144069 (Sub-24F), filed November 4, 1980. Applicant: FREIGHTWAYS, INC., P.O. Box 5204, Charlotte, NC 28225. Representative: W. T. Trowbridge (same address as applicant). Transporting *iron and steel articles*, between points in Guilford County, NC, on the one hand, and, on the other, points in the U.S. in and east of MS, TN, KY, IL and WI.

MC 144168 (Sub-6F), filed November 3, 1980. Applicant: R. E. GARRISON TRUCKING, INC., P.O. Box 186, Cullman, AL 35055. Representative: Michael M. Knight (same address as applicant). Transporting (1) *such commodities* as are dealt in by grocery and drugstores (except foodstuffs), and (2) *foodstuffs* between points in AL, GA, FL, TN, CA, AZ, TX, LA, MS, NC, SC, IA, IN IL, KY, MI, OH, WI, MA, PA, CT, NY, NJ, OR, WA and NV.

**Volume No. OP5–063**

Decided: November 13, 1980.

By the Commission, Review Board Number 2, Member Chandler, Eaton, and Liberman.

MC 96769 (Sub-10F), filed October 9, 1980. Applicant: LIBERTY TEX-PACK EXPRESS, INC., Suite 508, Regal Plaza, 1499 Regal Row, Dallas, TX 75247. Representative: Austin L. Hatchell, P.O. Box 2165, Austin, TX 78768. Over regular routes, transporting *general commodities* (except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), (1) between Dallas and Celina, TX, over TX Hwy. 289, (2) between Celina and Pilot Point, TX, over F. M. Road 455, (3) between Pilot Point and Whitesboro, TX, over U.S. Hwy. 377, (4) between Whitesboro and Honey Grove, TX, over U.S. Hwy. 82, (5) between Dallas and Denison, TX, over U.S. Hwy. 75, (6) between Dallas and Mt. Pleasant, TX, over U.S. Hwy 67, (7) between Greenville and Paris, TX, over TX Hwy. 24, (8) between Greenville and Bonham, TX, from Greenville over U.S. Hwy. 69 to junction TX Hwy. 78, then over TX Hwy. 78 to Bonham, and return over the same route, (9) between Dallas and Marshall, TX, from Dallas over Interstate Hwy. 20 to junction U.S. Hwy. 80, then over U.S. Hwy. 80 to Marshall, and return over the same route, (10) between Longview and Gilmer, TX, over F. M. Road 1403, (11) between Gilmer and Atlanta, TX, over TX Hwy. 155, (12) between Daingerfield and Ore City, TX, over U.S. Hwy. 259, (13) between Daingerfield and Linden, TX, over TX Hwy. 11, (14) between (a) Linden and Marshall, TX, and (b) Carthage and Garrison, TX, over U.S. Hwy. 59, (15) between Longview and Carthage, TX, over TX Hwy. 149, (16) between Carthage and Henderson, TX, over U.S. Hwy. 79, (17) between Beckville, TX, and junction F. M. Road 124 and U.S. Hwy. 79, over F. M. Road 124, (18) between Wills Point and Henderson, TX, over TX Hwy. 64, (19) between Mineola and Tyler, TX, over U.S. Hwy. 69, (20) between Tyler and Kilgore, TX, over TX Hwy. 31, (21) between Troup and Gladewater, TX, from Troup over TX Hwy. 135 to junction U.S. Hwy. 271, then over U.S. Hwy. 271 to Gladewater, and return over the same route, (22) between (a) Kilgore and Longview, TX, and (b) Henderson and Mt. Pleasant, TX, (a) over U.S. Hwy. 259, and (b) from Henderson over U.S. Hwy. 259 to junction U.S. Hwy. 67, then over U.S. Hwy. 67 to Mt. Pleasant, and return over the same route, (23) between Mt. Enterprise and Garrison, TX, from Mt. Enterprise over U.S. Hwy. 84 to junction F. M. Road 95, then over F. M. Road 95 to Garrison, and return over the same route, (24) between Timpson and Center, TX, over TX Hwy. 87, (25) between (a) Tenaha and San Augustine, TX, (b) Bronson and Jasper, TX, and (c) Kirbyville and Silsbee, TX, over U.S. Hwy. 96, (26) between San Augustine and Miam, TX, over TX Hwy. 21, (27) between Milam and Bronson, TX, from Milam over TX Hwy. 87 to junction F. M. Road 184, then over F. M. Road 184 to Bronson, and return over the same route, (28) between Jasper and Newton, TX, from Jasper over U.S. Hwy. 96 to junction U.S. Hwy. 190, then over U.S. Hwy. 190 to Newton, and return over the same route, (29) between Newton and Kirbyville, TX, from Newton over TX Hwy. 87 to junction TX Hwy. 363, then over TX Hwy. 363 to Kirbyville, and return over the same route, (30) between Kountze and Nome, TX, over TX Hwy. 326, (31) between Silsbee and Kountze, TX, from Silsbee over TX Hwy. 327 to junction U.S. Hwy. 69, then over U.S. Hwy. 69 to Kountze, and return over same route, (32) between Paris and Texarkana, TX, over U.S. Hwy. 82, (33) between Pittsburg and Paris, TX, over U.S. Hwy. 271, (34) between Clarksville and Bogata, TX, over TX Hwy. 37, (35) between Pittsburg and Commerce, TX, over TX Hwy. 11, (36) between Honey Grove and Greenville, TX, from Honey Grove over TX Hwy. 34 to junction TX Hwy. 50, then over TX Hwy. 50 to Greenville, and return over the same route, serving the intermediate point of Wolfe City, (37) between Mt. Pleasant and Texarkana, TX, over U.S. Hwy. 67, (38) between (a) Wolfe City and Honey Grove, TX, and (b) between Greenville and Terrell, TX, over TX Hwy. 34, (39) between Quinlan and Point, TX, over F. M. Road 35, (40) between Greenville and Mineola, TX, over U.S. Hwy. 69, (41) between Ladonia and Cooper, TX, over

F. M. Road 64, (42) between Petty and Paris, TX, over F. M. Road 137, (43) between Honey Grove and Petty, TX, over U.S. Hwy. 82, (44) between Mineola and Winnsboro, TX, over TX Hwy. 37, (45) between Emory and Sulphur Springs, TX, over TX Hwy. 19, (46) between Quitman and Sulphur Springs, TX, over TX Hwy. 154, (47) between Alba and Quitman, TX, over TX Hwy. 182, (48) between (a) Van and Tyler, TX, and (b) Tyler and Troup, TX, over TX Hwy. 110, (49) between Tyler and Chandler, TX, over TX Hwy. 31, (50) between Kilgore and Price, TX, over TX Hwy. 42, (51) between Henderson and Overton, TX, over TX Hwy. 323, (52) between junction U.S. Hwy. 271 and TX Hwy. 155 and Big Sandy, TX, over TX Hwy. 155, (53) between junction TX Hwy. 149 and TX Hwy. 322 and Lakeport, TX, over TX Hwy. 149, (54) between Carthage and Panola, TX, over U.S. Hwy. 79, (55) between Marshall and DeBerry, TX, over F.M. Road 31, (56) between Marshall, TX, and junction F.M. Road 134 and TX Hwy. 43, over TX Hwy. 43, (57) between Karnack and Jonesville, TX, over F.M. Road 134, (58) between Karnack and Uncertain, TX, over an unnumbered county road, (59) between Marshall and Waskom, TX, over U.S. Hwy. 80, (60) between Marshall and Waskom TX, over Interstate Hwy. 20, (61) between Waskom and Panola, TX, over F.M. Road 9, (62) between Marshall, TX, and junction F.M. Roads 1998 and 134, over F.M. Road 1998, (63) between Marshall and Gilmer, TX, over TX Hwy. 154, (64) between Gladewater and Pittsburg, TX, over U.S. Hwy. 271, (65) between Longview and Lone Star, TX, over U.S. Hwy. 259, (66) between Pittsburg and Daingerfield, TX, over TX Hwy. 11, (67) between Queen City and Bloomburg, TX, over F.M. Road 74, (68) between Atlanta and Bivins, TX, over TX Hwy. 43, (69) between Linden and Bivins, TX, over F.M. Road 1841, (70) between Center and Shelbyville, TX, over TX Hwy. 87, (71) between Center and Haslam, TX, over TX Hwy. 7, (72) between Tenaha and Haslam, TX, over U.S. Hwy. 84, (73) between Paxton and Center, TX, over F.M. Road 699, (74) between (a) Texarkana and Corley, TX, and (b) Omaha and Mt. Pleasant, TX, over U.S. Hwy. 67, (75) between Como and Dike, TX, over F.M. Road 69, (76) between junction F.M. Road 1537 and TX Hwy. 19 and junction F.M. Roads 1537 and 69, over F.M. Road 1537, (77) between New Boston and Corley, TX, over TX Hwy. 8, (78) between Paris and Arthur City, TX, over U.S. Hwy. 271, (79) between Arthur City and Chicota, TX, over F.M. Road 197, (80) between Bonham and Ivanhoe, TX, over F.M. Road 273, (81) between Bonham, TX, and junction F.M. Road 1396 and TX Hwy. 78, over TX Hwy. 78, (82) between junction F.M. Road 1396 and TX Hwy. 78, and junction F.M. Road 1396 and F.M. Road 273, over F.M. Road 1396, (83) between junction TX Hwy. 78 and F.M. Road 1753 and Ravena, TX, over F.M. Road 1753, (84) between Denison and Pottsboro, TX, over F.M. Road 120, (85) between Leonard and Bells, TX, over U.S. Hwy. 69, (86) between Whitewright and Ector, TX, from Whitewright over F.M. Road 898 to junction F.M. Road 3297, then over F.M. Road 3297 to Ector, and return over the same route, (87) between Savory, TX, and junction F.M. Roads 898 and 1752, over F.M. Road 1752, (88) between Greenville and McKinney, TX, over U.S. Hwy. 380, (89) between Rockwall, TX, and junction TX Hwy. 205 and TX Hwy. 78, over TX Hwy. 205, (90) between Lavon and Caddo Mills, TX, over F.M. Road 6, (91) between Royse City and Josephine, TX, over F.M. Road 1717, and (92) between Alba and Yantis, TX, from Alba over F.M. Road 17 to junction F.M. Road 514, then over F.M. Road 514 to Yantis, and return over the same route; serving all intermediate points the routes above, the routes above, except route (36), restricted to the transportation of packages or articles not exceeding 100 pounds per package, and not exceeding 500 pounds per shipment.

MC 145108 (Sub-24F), filed September 15, 1980, previously noticed in Federal Register issued of October 15, 1980. Applicant: BULLET EXPRESS, INC., PO Box 289, Bay Ridge Station, Brooklyn, NY 11220. Representative: Terrence D. Jones, 2033 K Street, NW., Washington, DC 20006. Transporting (1) *electric motors electric controls, electric components, electric appliance, and electric fixtures*, and (2) *Materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1), between points in the U.S., under continuing contract(s) with Fasco Industries, Inc., of Ozark, MO.

Note.—This republication clarifies the commodity description.

**Agatha L. Mergenovich,**
*Secretary.*

[FR Doc. 80-36867 Filed 11-25-80; 8:45 am]
BILLING CODE 7035-01-M

## Motor Carriers; Permanent Authority Decisions

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the **Federal Register**. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected.* A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to

timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after November 26, 1980.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

*Findings*

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions or 49 U.S.C. 10930(a) (formerly section 210 of the Interstate Commerce Act.)

In the absence of legally sufficient petitions for intervention, filed on or before December 26, 1980 (or, if the applicant later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices within 30 days after publication, or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

**Volume No. 378**

Decided: October 23, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce and Jones.

MC 150640 (Sub-1F), (republication), filed April 23, 1980, and previously noticed in the **Federal Register** issues of July 15, 1980, and August 26, 1980. Applicant: EMERSON EXPRESS CO., INC., 545 Lyell Ave., Rochester, NY 14606. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. *Contract carrier*, transporting *scrap materials, metals, stainless steel, batteries,* and *reconditioned steel containers,* including *tubs*, between points in Monroe County, NY, on the one hand, and, on the other, New York, NY, points in Nassau and Suffolk Counties, NY, and points in AL, CT, IL, IN, KY, MA, MI, MO, NJ, OH, PA, and TN, under continuing contact(s) with (1) Krieger Waste Paper Co., (2) Genesee Scrap & Tin Bailing Corp. (3) Atkin's Waster Materials, Inc., and (4) L. Atkin's Sons, all of Rochester, NY.

Note.—The purpose of this republication is to add the contracting shippers listed in (2)–(4) above.

**Volume No. 379**

Decided: November 18, 1980.

By the Commission, Review Board Number 2, Members Chandler, Eaton and Liberman. Member Chandler not participating in part.

MC 143790 (Sub-10F), filed June 2, 1980, and previously noticed in Federal Register issue of August 5, 1980. Applicant: FEDERAL FREIGHT SYSTEMS, INC., 3830 Kelley Ave., Cleveland, OH 44114. Representative: John P. McMahon, 100 E. Broad St., Columbus, OH 43212. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of plastic articles and rubber products (except commodities in bulk), between the facilities used by Goldsmith & Eggleton, Inc. at points in the U.S. (except AK and HI), on the one hand, and, on the other, points in the U.S. (except AK and HI).

Note.—This republication clarifies the territorial description.

MC 145651 (Sub-4F), filed February 4, 1980, and previously noticed in Federal **Register** issue of April 15, 1980. Applicant: DUNCAN & SONS, INC., P.O. Box 775, Lewis, CO 81327. Representative: James F. Crosby, P.O. Box 37205, Omaha, NE 68137. Transporting *petroleum products* (except in bulk, in tank vehicles), from Los Angeles, CA, to points in AZ, CO, NM, and UT.

Note.—This republication shows NM as a destination state, in lieu of MN.

MC 151221 (Sub-1F), filed May 28, 1980. Applicant: HUDSON VALLEY BULK SERVICE, INC., Twinbrook Farm Rd., East Chatham, NY 12060. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528. Transporting *precast cellular concrete,* between Philmont, NY, on the one hand, and, on the other, points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VA, and VT, under continuing contract(s) with Nicolon Corporation of Norcross, GA.

**Volume No. 380**

Decided: November 19, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier and Hill.

MC 59570 (Sub-46F), filed June 10, 1980, and noticed in **Federal Register** issue of August 21, 1980. Applicant: HECHT BROTHERS, INC., 2075 Lakewood Road, Toms River, NJ 08753. Representative: Jean R. Hecht (same address as applicant). Transporting *salt, salt products, salt with additives, pepper and mineral mixtures,* (1) from the facilities of Morton Salt, at Perth Amboy, NJ, to points in ME, MI, NC, NH, OH, VA, WV, and VT, and (2) from the facilities of Morton Salt, at Silver Spring, NY, to points in CT, DE, ME, MD, MA, NC, NH, NJ, NY PA, RI, VA, VT, WV, and DC.

Note.—This republication adds *salt* as a commodity, and, in part (1) shows MI as a destination State in lieu of MA.

MC 107460 (Sub-80F), filed March 31, 1980. Applicant: WILLIAM D. GETZ, INC., 3055 Yellow Goose Road, P.O. Box 566, Lancaster, PA 17604. Representative: Christian V. Graf, 407 North Front Street, Harrisburg, PA 17101. Transporting (1) *metal roofing and siding and fabricated metal products,* and (2) *materials and supplies* used in the manufacture and distribution

of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Fabral-Alcan Building Products, Division of Alcan Aluminum Corporation, of Lancaster, PA.

Note.—This is modified to reflect the Motor Carrier Act of 1980.

MC 148751 (Sub-6F), (partial republication), filed February 2, 1980, and previously noticed in **Federal Register** issue of September 16, 1980. Applicant: LINCOLN FREIGHT LINES, INC., P.O. Box 427, Lapel, IN 46051. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. Transporting (A)(1) *glass containers* (b) from the facilities of Universal Glass-National Bottling Corp., at Joliet, IL, to points in OH and PA, (M) *paper and paper products,* from the facialities of Willamette Industries, Inc., Western Craft Paper Group, at or near Hawesville, KY, to points in AL, CT, DE, FL, GA, IA, IL, IN, MA, MD, ME, MI, MN, MO, MS, NC, NJ, NY, OH, PA, RI, SC, TN, VA, WI, WV, and DC, (P)(1)(a) *iron articles, steel articles, zinc articles, and lead articles,* (b) *springs,* and (c) *construction equipment, materials, and supplies* (except commodities in bulk), from the facilities used by Penn-Dixie Industries, Inc., Pen-Dixie Steel Corp., and Stevens Spring, Inc., at or near (i) Blue Island and Joliet, IL, (ii) Cicero, Elkhart, Fort Wayne, and Kokomo, IN, (iii) Centerville, IA, (iv) Grand Rapids and Lansing, MI, (v) Jackson, MS, and (vi) Columbus and Toledo, OH, to points in AL, AR, GA, IA, IL, IN, KY, MD, MI, MO, MS, NC, OH, PA, TN, VA, WI, and WV, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), in the reverse direction, (Q)(1)(a) *non-carbonated, fruit-flavored beverages,* in cans, (b) *dry beverage preparations,* and (c) *juices,* in cans, from the facilities of Penny Products, Inc., at or near Trafalgar, IN, to points in IL, KY, MI, MN, MO, OH, TN, VA, WI, and WV, and (2) *materials, equipment, and supplies,* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction, (R)(1)(a) *moulded wood pulp articles,* from Gary and Hammond, IN, to points in AL, AR, CT, DE, FL, GA, IA, IL, KS, KY, LA, MA, MI, MN, MO, MS, NC, NE, NJ, NY, OH, OK, PA, RI, SC, TN, TX, VA, WI, WV, and DC, and (b) *plastic articles,* from Troy, OH and Memphis, TN, to points in AL, AR, CT, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MI, MN, MO, MS, NC, NE, NJ, NY, OH, PA, RI, SC, TX, VA, WI, WV, and DC, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction, restricted in (R) to traffic originating at or destined to the facilities of Keyes Fibre Company, and (S)(1) *transmissions and transmission parts,* from the facilities of or used by Warner Gear Division, Borg-Warner Corp., at or near Muncie, IN, to Chicago, IL, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), in the reverse direction.

Note.—This republicaton shows PA as a destination state in (A)(1)(b), shows WI as a destination point in (M), shows springs as the commodity in (P)(1)(b), shows MD as a destination state in (P)(1)(c)(vi), shows MN as an origin state in (Q)(1)(c), shows NY as a destination state in (R)(1)(a), shows MI as a destination state in (R)(1)(b), and shows Muncie, IN as an origin point and Chicago, IL, as a destination point in (S)(1).

### Passenger

MC 150771F, filed May 6, 1980, and previously noticed in **Federal Register** issue of August 13, 1980. Applicant: ARIZONA BUS TOURS, DIVISION OF WILLETT CORPORATION, 4646 East University Dr., Phoenix, AZ 85034. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., N.W., Washington, DC 20004. Transporting *passengers and their baggage,* in special and charter operations, beginning and ending at Sun City, Sun City West, Phoenix, Scottsdale, Tempe, Peoria, Glendale, Mesa, Apache Junction, Chandler, Goodyear, Carefree and Fountain Hills, AZ, and extending to points in the U.S. (except AK and HI).

Note.—This republication shows that applicant will be performing special as well as charter operations.

Agatha L. Mergenovich,
*Secretary.*

[FR Doc. 80-36864 Filed 11-25-80; 8:45 am]
BILLING CODE 7035-01-M

## Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the appication is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.— All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

### Motor Carriers of Property

Notice No. F-75

The following applications were filed in region 1. Send Protests to: Interstate Commerce Commission, Regional Authority Center, 150 Causeway Street, Room 501, Boston, MA 02114.

MC 152278 (Sub-1-1TA), filed November 14, 1980. Applicant: REALI BUS SERVICE, 4 Daisy Street, W. Warwick, RI 02893. Representative: Victor E. Reali, 4 Daisy Street, W. Warwick, RI 02893. *Common carrier:* regular route: *Passengers and their baggage,* between E. Natick, RI and Plainfield, CT, via Routes 2, 115, 33, 117 and 14 in RI and Routes 14 and 52 in CT serving intermediate points thereon. Supporting shipper(s): There are 29 individuals as supporting shippers whose statements may be examined at the I.C.C. Regional Office in Boston, MA.

MC 142114 (Sub-1-3TA), filed November 6, 1980. Applicant: RETAIL EXPRESS, INC., 9 Stuart Road, Chelmsford, MA 01824. Representative: Frank M. Cushman, 36 South Main Street, Sharon, MA 02067. *Contract carrier:* irregular: *Alcoholic beverages bottled for retail distribution* between points in KY, NJ, NY, OH, and TN. Supporting shipper: Reitman Industries, Inc., 10 Patton Drive, West Caldwell, NJ 07006.

MC 138950 (Sub-1-1TA), filed November 10, 1980. Applicant: FOR-TRUCKS, INC., P.O. Box 297, Henniker, NH 03243. Representative: John F. O'Donnell, Barrett and O'Donnell, 60

Adams St., P.O. Box 238, Milton, MA 02187. *Controct corrier:* irregular routes: *Pressure treoted wooden transmission pales* between points in Orange County, NY, under contract(s) with George McQueston Co., Inc. For-Tek Division, Iron Horse Park, Billerica, MA 01862. Supporting shipper: George McQuestion Co., Inc., For-Tek Division, Iron Horse Park, Billerica, MA 01862.

MC 61942 (Sub-1-1TA), filed November 3, 1980. Applicant: JAMES J. McCABE, JR., d.b.a., J. McCABE & SON, 38 Greenhalge Avenue, Everett, MA 02149. Representative: James L. Sullivan or Edward D. Rapacki, 23 Bow Street, Somerville, MA 02143. *Household goods, new ond used, as defined by the Cammission* between points in the US. Supporting shipper: Jordan Marsh Company, 500 Commander Shea Blvd, North Quincy, MA 02171.

MC 147 (Sub-1-2TA), filed November 7, 1980. Applicant: CENTENNIAL TRUCK LINES, INC., 301 Broadway, Jersey City, NJ 07306. Representative: Thomas F. X. Foley, P.O. Box F, Colts Neck, NJ 07722. *Plastic sheets, rods ond tubes,* between Cornwall Heights, PA and New York, NY, on the one hand, and, on the other, Baltimore, MD, Birmingham, AL, Bloomfield, CT, Chicago, IL, Clearwater, FL, Cleveland, OH, Columbia, SC, Dallas, TX, Farmingdale, NY, Ft. Worth, TX, Gardena, CA, Gastonia, NC, Houston, TX, Hyattsville, MD, Indianapolis, IN, Jacksonville, FL, Knoxville, TN, Las Vegas, NV, Miami, FL, Newark, NJ, New York, NY, Orange, CT, Orlando, FL, Philadelphia, PA, Pittsburgh, PA, Pleasantville, NJ, Providence, RI, Raleigh, NC, Richmond, VA, Salt Lake City, UT, Santa Clara, CA, Somerville, MA, Syracuse, NY, Trenton, NJ, Warren, MI. Supporting shipper: Commercial Plastics Supply Corporation, 1642 Woodhaven Drive, Cornwall Heights, PA 19020.

MC 98542 (Sub-1-2TA), filed November 3, 1980. Applicant: COLLINS & SIMMONS, INC., P.O. Box 134, Wolcott, NY 14590. Representative: Raymond A. Richards, 35 Curtice Park, Webster, NY 14580. *Such commodities os are deolt in ond distributed by retoil ond wholesole gracery outlets; also, moterials, equipment ond supplies used in the monufocture, sole ond distribution of above commodities,* between points in CT, DE, ME, MD, MA, NH, NJ, NY, NC, PA, RI, VT, VA, and DC. Supporting shipper(s): Gerber Products Co., 445 State St., Fremont, MI 49412; Purex Corp., 1445 N. Radcliffe St., Bristol, PA 19007.

MC 150698 (Sub-1-1TA), filed November 3, 1980. Applicant: WEST-CONN TRANSPORTATION SERVICE, INC., Anarock Drive, Somers, NY 10589. Representative: Sidney J. Leshin, Esq., 575 Madison Avenue, New York, NY 10022. *Contract carrier:* irregular routes: *Passengers ond their boggage,* between points and places in the counties of Westchester, Putnam and Dutchess, NY and Fairfield County, CT, on the one hand, and the office and plant facilities of American Telephone & Telegraph Co., located in the City of White Plains, NY, on the other hand, under continuing contract with AT&T Employees Group, Patterson, NY. Supporting shipper: American Telephone and Telegraph Employees Group, Patterson, NY.

MC 128343 (Sub-1-17TA), filed November 4, 1980. Applicant: C-LINE, INC., 340 Jefferson Blvd., Warwick, RI 02888. Representative: Ronald N. Cobert, 1730 M Street, NW., Washington, DC 20036. *Contract corrier:* irregular routes: *General cammodities (except household goods os defined by the Commission, and Closses A ond B explosives),* between all points in the U.S., under continuing contract with the Okonite Company of Ramsey, NJ. Supporting shipper: The Okonite Company 100 Hilltop Road, Ramsey, NJ 07446.

MC 152459 (Sub-1-1TA), filed November 4, 1980. Applicant: SUNSHINE TRANSPORTATION, INC., 112 Lehigh Drive, Fairfield, NJ 07007. Representative: Frank M. Cushman, 36 South Main Street, Sharon, MA 02067. *Controct corrier:* irregular routes: *Such commodities os ore dealt in by retoil deportment stores (except cammodities in bulk and frozen foodstuffs)* from, to or between points in AL, AR, DE, FL, GA, IL, IN, IA, KY, LA, MD, MI, MT, NE, NH, NJ, NY, NC, ND, OH, PA, SC, SD, TN, VT, VA, WV, and WI. Supporting shipper: Jefferson Stores, Inc., 15800 N.W. 13th St., Miami, FL 33169.

MC 145914 (Sub-1-7TA), filed November 12, 1980. Applicant: COASTAL TRUCKLINE, INC., How Lane, P.O. Box 600, New Brunswick, NJ 08903. Rrepresentative: Zoe Ann Pace, Esq., Zelby, Burstein, Hartman & Burstein, One World Trade Center, Suite 2373, New York, NY 10048. *Contract corrier:* irregular routes: *General commodities (except hausehold goods os defined by the Commission) and Closs A & B explosives* from the facilities of Econocraibe Consolidators, Inc. at or near Dade County, FL to points and places in the States of NJ and NY, under continuing contract with Econocaribe Consolidtors, Inc. Supporting Shipper: Econocaribe Consolidators, Inc., 2929 NW 73rd St., Miami, FL 33147.

No. MC 142114 (Sub-1-4TA), filed November 12, 1980. Applicant: RETAIL EXPRESS, INC., 9 Stuart Road, Chelmsford, MA 01824. Representative: Frank M. Cushman, 36 South Main Street, Sharon, MA 02067. *Contract corrier:* Irregular: *such commodities os are dealt in by retoil department stores (except commodities in bulk ond frozen foodstuffs)* from, or to between points in CT, DE, FL, IN, KY, LA, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, TN, TX, VA. Supporting shipper: King's Department Stores, Inc., 150 California Street, Newton, MA 02158.

MC 151639 (Sub-1-4TA), filed November 12, 1980. Applicant: COMMAND TRANSPORTATION, INC., 280 Eastern Avenue, Chelsea, MA 02150. Representative: Wesley S. Chused, 15 Court Square, Boston, MA 01208. *Beer,* from Baltimore, MD to Norwood, Lawrence, Marlboro, Fairhaven and West Roxbury, MA. Supporting shipper: United Liquors, Ltd. 99 Rivermmor Street, West Roxbury, MA 02132.

MC 146046 (Sub-1-3TA), filed November 12, 1980. Applicant: INTERCOASTAL LINES, LTD., 200 Foxhunt Crescent, Syosset, NY 11791. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048. *Contract carrier:* irregular routes: *Such commodities os ore deolt in or used by a monufocturer ond distributor of store fixtures ond stare furnishings,* between Maspeth, NY. and points in CA and TX, under contract(s) with Richter & Ratner Corporation of Maspeth, NY Supporting shipper(s): Richter & Ratner Contracting Corporation, 55-05 Flushing Avenue, Maspeth, NY 11378.

MC 140986 (Sub-1-1TA), filed November 12, 1980. Applicant: GREAT NORTHERN TRUCK LINES, Bank Street, Netcong, NJ 07857. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Controct corrier:* irregular routes: *Medicol devices, pharmaceuticals, drugs, chemicols ond phormoceuticols occessories (except in bulk),* between Parsippany, NJ on the one hand, and, on the other, points in the US. Supporting shipper: Isomedix, Inc., 80 South Jefferson Road, Whippany, NJ 07981.

MC 143127 (Sub-1-27TA), filed November 12, 1980. Applicant: K. J. TRANSPORTATION, INC., 6070 Collett Road, Victor, NY 14564. Representative: Linda A. Calvo, 6070 Collett Road, Victor, NY 14564. *(1) Such commodities as ore dealt in by grocery ond food business houses (except in bulk) ond (2) materiols, supplies and equipment used in the monufocture ond distribution of commodities in (1) (except in bulk),*

between points in the U.S. Supporting shipper: Victory Wholesale Grocers, d.b.a. Brothers Trading Co., Inc., Suite 170, 333 West First St., Dayton, OH 45402.

MC 150295 (Sub-1-2TA), filed November 12, 1980. Applicant: K & M DIESEL SERVICE, INC., 10-12 East Maple Avenue, Cedarville, NJ 08311. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Contract carrier, irregular routes *Electric Wire and Cable and Steel Wire Rope* between NJ, on the one hand, and, on the other, points in CT, DE, FL, GA, IL, ME, MD, MA, NJ, NJ, NY, NC, OH, PA, SC, TX, VT, and VA for 270 days. Supporting shipper(s): Bridgeton Transfer Point, Inscon Cable Co., Manhattan Electric Corp., and Petro Cable Corp., P.O. Box 440, Bridgeton, NJ 08303.

MC 121342 (Sub-1-1TA), filed November 3, 1980. Applicant: GALLO CONSTRUCTION CO., 845 Sandwich Rd., Sagamore, MA 02561. Representative: Gerald K. Gimmel, Suite 145, 4 Professional Dr., Gaithersburg, MD 20760. *Salt, in bulk,* from Boston and Taunton MA, to points in ME, NJ, VT, MA, CT, and RI. Supporting shipper: Cargill, Inc., P.O. Box 150, Watkins Glen, NY 14891.

MC 143143 (Sub-1-2TA), filed November 7, 1980. Applicant: RICHARD L. HODGES, INC., P.O. Box 141, Unity, ME 04988. Representative: John C. Lightbody, Esq., Murray, Plumb & Murray, 30 Exchange Street, Portland, ME 04101. *Contract carrier:* irregular routes: *General commodities (except household goods as defined by the Commission and commodities of unusual value),* between points in CT, DC, DL, GA, MA, ME, NH, NJ, NY, NC, PA, RI, SC, VT, VA, and WV under continuing contracts with Conwed Corporation and Campbells Soup Company. Supporting shippers: Conwed Corporation, P.O. Box 190, Riverside, NJ 08075, and Campbells Soup Company, 100 Market Street, Camden, NJ 08101.

MC 127524 (Sub-1-6TA), filed November 3, 1980. Applicant: QUADREL BROS. TRUCKING CO., INC., 1603 Hart Street, Rahway, NJ 70765. Representative: David L. Middleton, 1603 Hart Street, Rahway, NJ 07065. *Acetonitrile in bulk marineized tank trailers* from the facility of Upjohn Manufacturing Company, Lima, OH to Baltimore, MD. Supporting shipper: Upjohn Manufacturing Company, P.O. Box 445, Barceloneta, Puerto Rico 00617.

MC 151783 (Sub-1-1TA), filed November 3, 1980. Applicant: S. GOSKI & SONS, INC., 318 Massachusetts Street, Westfield, NJ 07090. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract carrier:* irregular routes: *Nonexempt food and kindred products* between points in the States of NJ, PA on and east of Interstate 81, and NY on and east of Interstate 209 and Interstate 87. Supporting shipper: Heinz USA, Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230.

MC 152516 (Sub-1-1TA), filed November 7, 1980. Applicant: PETER J. DiGIOVANNI, d.b.a. GUARANTEED MOTOR TOWING SERVICE, P.O. Box 1, New Brunswick, NJ 08873. Representative: James F. Flint, Suite 406, 918 16th Street, NW., Washington, DC 20006. *Motor vehicles and trailers transported by wrecker or towing equipment* between North Brunswick, NJ on the one hand, and, on the other, points in VA, WV, MD, DC, DE, PA, NY, CT, RI, MA, NH, VT, and ME, restricted to traffic originating at or destined to the facilities of Frito-Lay, Inc. Supporting shipper: Frito-Lay, Inc., 1846 US HWY 1, North Brunswick, NJ 08902.

MC 101219 (Sub-1-1TA), filed November 3, 1980. Applicant: MERIT DRESS DELIVERY, INC., 292 Eleventh Avenue, New York, NY 10001. Representative: Norman Weiss, P.O. Box 1409, 167 Fairfield Road, Fairfield, NJ 07006. *Department store merchandise, when moving in the same vehicle and at the same time with shipments of wearing apparel on hangers,* between points in New York, NY Commercial Zone, CT (except Middletown, CT), ME, MA, NH and RI. Supporting shipper: Associated Dry Goods Corp., 417 Fifth Avenue, New York, NY 10016.

MC 119552 (Sub-1-8TA), filed November 7, 1980. Applicant: J.T.L., INC., 49 Rosedale Street, Providence, RI 02903. Representative: Ronald N. Cobert, Suite 501, 1730 M Street, NW., Washington, DC 20036. *Contract carrier:* irregular routes: *General commodities (except household goods as defined by the Commission and Classes A and B explosives)* between the commercial zone of Dallas, TX, on the one hand, and, on the other, CA, OH, MO, IL, NM, OK, AR, LA, NV, UT, CO, KS, NE, IA, IN, KY, TN, AL, MS, under continuing contract(s) with Thompson Can Company. Supporting shipper: Thompson Can Company, Box 340259, Dallas, TX.

MC 145085 (Sub-1-1TA), filed November 7, 1980. Applicant: SID'S, INC., P.O. Box D, Jonesport, ME 04649. Representative: James E. Mahoney, 148 State Street, Boston, MA 02109. *Foodstuffs and materials, supplies and equipment used in the manufacture, sale and distribution of foodstuffs (except commodities in bulk, in tank vehicles),* between points in ME, NH, VT, MA, RI, CT, NY, FL and CA, on the one hand, and, on the other, all points in the US; tires, batteries and accessories between points in ME, on the one hand, and, on the other, points in the US in and east of MN, IA, MO, OK and TX. Supporting shipper(s): There are 7 statements in support attached to this application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 143668 (Sub-1-2TA), filed November 7, 1980. Applicant: LONG ISLAND AIRPORTS LIMOUSINE SERVICE CORP., 25 Newton Place, Hauppauge, NY 11787. Representative: Eugene M. Malkin, Suite 1832, Two World Trade Center, New York, NY 10048. *Passengers and their baggage, in round-trip charter and special operations,* beginning and ending at points in Nassau and Suffolk Counties, NY and extending to points in Atlantic County, NJ. Supporting shipper(s): There are 27 statements in support attached to this application which may be examined at the I.C.C. Regional Office in Boston, MA.

MC 2860 (Sub-1-21TA), filed November 7, 1980. Applicant: NATIONAL FREIGHT, INC., 71 West Park Avenue, Vineland, NJ 08360. Representative: Gerald S. Duzinski, 71 West Park Avenue, Vineland, NJ 08360. *Plastic articles, and equipment and supplies used in the manufacture and distribution of plastic articles,* between points in the US. Restricted to traffic originating at or destined to the facilities of Mobil Chemical Company. Supporting shipper: Mobil Chemical Company, Macedon, NY 14502.

MC 152449 (Sub-1-1TA), filed November 3, 1980. Applicant: OMNI EXPRESS, INC., 70 West Elder Avenue, Floral Park, NY 11001. Representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. *Contract Carrier:* irregular routes: *Laboratory and hospital equipment and parts* between South Plainfield, NJ, and Tarrytown and Orangeburg, NY, on the one hand, and, on the other, points in NJ, and New York, NY, and Dutchess, Nassau, Orange, Putnam, Rockland, Suffolk and Westchester Counties, NY, and points in Bucks, Delaware, Lebanon, Lehigh and Montgomery Counties, PA, and Philadelphia, PA Commercial Zone. Supporting shipper: Technicon Instruments Corporation, 511 Benedict Ave., Tarrytown, NY 10591.

MC 148632 (Sub-1-6TA), filed November 7, 1980. Applicant: DIXON MOTOR FREIGHT, INC., 2620 Old Egg Harbor Road, Lindenwold, NJ 08021.

Representative: Gary V. Dixon, 2620 Old Egg Harbor Road, Lindenwold, NJ 08021. *Corrugoted ospholt, roofing ond occesories (including noils ond woshers) rudge rolls, skylite sheets and filler strips*, between Spotsylvania County, VA and AR, CA, CO, ID, MT, NV, NM, OR, UT, WA and WY. Supporting shipper: Orduline USA, Inc., Route 9, Box 195, Fredricksburg, VA 22401.

MC 152202 (Sub-1-2TA), filed November 10, 1980. Applicant: ARGO TRANSPORT LTD., 1570 Montarville Street, Boucherville, Quebec, CD J7B 1Z5. Representative: Me Adrien R. Paquette, Q.C., 200 St. James Street West, Suite 900, Montreal, Quebec, CD H2Y 1M1. *Generol commodities in contoiners hoving a prior or subsequent movement by woter (except those of unusuol volue, Closs A and B explosives, household goods as defined by the Commission, commodity in bulk ond those requiring speciol equipment)*, between the ports of entry on the International Boundary line between the US and CD located in NY, VT, NH, and ME on the one hand, and, on the other, points in VT, NH, MA, CT, ME, NY, NJ, DE, MD, RI, PA, OH, IN, IL. Supporting shipper: Midland Container Terminal, Waterloo, Quebec, CD.

MC 152592 (Sub-1-1TA), filed November 10, 1980. Applicant: D.S. LEASING CORPORATION, Eight John Street, Montvale, NJ 07645. Representative: Paul D. Borghesani, Katz & Borghesani, Suite 300, Communicana Bldg., 421 So. Second Street, Elkhart, IN 46516. *Contract corrier:* irregular routes: *(1) Tope ond tope products ond (2) moteriols, equipment ond supplies used in the monufocture of commodities listed in (1)* between Waterveliet, NY on the one hand, and, on the other, the Chicago, IL Commercial Zone and points in NJ. Restricted to traffic moving under continuing contract with Nashua Corp. Supporting shipper: Nashua Corp., 2600 7th Avenue, Waterveliet, NY 12189.

MC 3753 (Sub-1-7TA), filed November 10, 1980. Applicant: AAA TRUCKING CORP., 3630 Quaker Bridge Road, P.O. Box 8042, Trenton, NJ 08650. Representative: Zoe Ann Pace, Esq., Zelby, Burstein, Hartman & Burstein, One World Trade Center—Suite 2373, New York, NY 10048. *Common corrier:* regular routes: *Generol commodities, except those of unusuol volue, classes A ond B explosives, household goods os defined by the Commission, commodities in bulk and those requiring special equipment* between Washington, DC and Hagerstown, MD; Washington, DC and Baltimore, MD, and Washington, DC and Dover, DE, serving all intermediate points and off route points located in MD and DE, from Washington, DC to Baltimore, MD over Interstate Hwy 95 and return over the same routes; from Washington, DC to Dover, DE over US Hwy 50 to Junction MD Hwy 404, thence MD Hwy 404 to US Hwy 13, thence US Hwy 13 to Dover, DE and return over the same route; from Washington, DC to Hagerstown MD over Interstate Hwy 495 to Junction Interstate Hwy 270, thence Interstate Hwy 270 to Junction Interstate Hwy 70, thence Interstate Hwy 70 to Junction Interstate Hwy 81, thence Interstate Hwy 81 to Hagerstown, MD and return over the same route. Supporting shipper(s): There are 18 shippers in support of this application whose statements may be examined at the I.C.C. Regional Office in Boston, MA.

MC 147841 (Sub-1-3TA), filed November 10, 1980. Applicant: CENTENNIAL TRUCK LINES, INC., 301 Broadway, Jersey City, NJ 07306. Representative: Thomas F. X. Foley, P.O. Box F, Colts Neck, NJ 07722. *Unfinished attoche coses, ond moteriols and supplies used in the monufocture of unfinished ottoche coses*, between New York, NY, on the one hand, and, on the other, Baltimore, MD, Los Angeles, CA, Denver, CO, Washington, MO, Chicago, IL, Richmond, VA, Orlando, FL, Columbus, OH, Utica, NY, Pittsburgh, PA, Indianapolis, IN, Portland, OR, Providence, RI, Norton, MA, Hartford, CT, Greensville, NC, Johnson City, TX, Westville, NJ. Supporting shipper: Glassman Box Co., 2343 41st Street, Long Island City, NY 11105.

The following protest was filed in Region 5. Send protests to: Consumer Assistance Center, Intersate Commerce Commission, Post Office Box 17150, Fort Worth, TX 76102.

MC 115669 (Sub-5-4TA), filed November 3, 1980. Applicant: DAHLSTEN TRUCK LINE, INC., 101 W. Edgar St., P.O. Box 95, Clay Center, NE 68933. Representative: Wilbur G. Hoyt (same address as applicant). *Solt ond solt products*, from Lyons and Reno County, KS, to points in WV. Supporting shippers: American Salt Co., 3142 Broadway, Kansas City, MO 64111. Carey Salt Div. of Processed Minerals, Inc., 1800 Carey Blvd., Hutchinson, KS 67501.

The following applications were filed in Region 6. Send protests to: Interstate Commerce Commission, Region 6 Motor Carrier Board, P.O. Box 7413, San Francisco, CA 94120.

MC 148328 (Sub-6-2TA), filed November 14, 1980. Applicant: LEONARD ALLEN and/or GARY ARIOTTI, d.b.a. ALLEN TRUCKING, 112 Manzanitia Drive, West Covina, CA 91791. Representative: Leonard Allen (same address as applicant). *Controct carrier*, Irregular routes: (1) *Commodities used, sold or distributed by a monufocturer of Cosmetics* (except commodities in bulk), Between Pasadena, CA, and points in the states of AZ, ID, NV, OR, UT and WA, for the account of Avon Products, Inc., for 270 days. Supporting shipper: Avon Products, Inc., 2940 E. Foothill Blvd., Pasadena, CA 91121.

MC 146360 (Sub-6-1TA), filed November 17, 1980. Applicant: ALL FREIGHT TRANSPORTATION, INC., P.O. Box 6699, Boise, ID 83707. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. *Controct carrier*, Irregular routes: *Frozen Foodstuffs, except commodities in bulk* between points in the United States, except AK and HI. Restricted to traffic originating at or destined to the faiclities utilized by Ore-Ida Foods, Inc., for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Ore-Ida Foods, Inc., 220 W. Parkcenter, Blvd., Boise, ID.

MC 152680 (Sub-6-1TA), filed November 17, 1980. Applicant: ALLIANCE FREIGHTWAYS INC., P.O. Box 2295, Los Angeles, CA 90051. Representative: W.G. Reese, Registered Practitioner, 623 E. Artesia, Carson, CA 90746. *Paper, poper products ond supplies used in the monufacture thereof.* Excepting commodities in bulk. Between San Francisco, CA and its commercial zone on the one hand, and, on the other points and places in the states of NY, PA, NJ, and IL, for 270 days. Supporting shipper: Velo-Bind Inc. 650 Almanor Ave., Sunnyvale, CA 94086.

MC 116544 (Sub-6-22TA), filed November 17, 1980. Applicant: ALTRUK FREIGHT SYSTEMS INC., 1703 Embarcadero Rd., Palo Alto, CA 94303. Representative: Richard G. Lougee, P.O.B. 10061, Palo Alto, CA 94303. *Batteries, floshlights, store disploy racks, electricol equipment and ports, ond onti-freeze (except in bulk)* from the facilities of Union Carbide Corporation at or near Asheboro & Greenville, NC; Cleveland & Fremont, OH; Maryville, MO; Red Oak, IA; Alsip & Chicago, IL; Texas City, TX; and Torrance, CA to all points in the U.S. (except AK and HI), for 270 days. Supporting shipper: Union Carbide Corporation, 270 Park Ave., New York, NY. 10017.

MC 152691 (Sub-6-1TA), filed November 12, 1980. Applicant: SANTOS RICO, d.b.a. AUTO TRANSPORTES, 1102 E. Francis, Corona, CA 91720. Representative: Santos Rico (same as applicant). *Contract carrier:* Irregular

routes: (1) *Magnetic recording tape, typewriter tape parts and electranic parts and (2) Electronics, electranic parts, instruments and parts and supplies used in the abave*, between points in Orange County, CA and Mexicali, Mexico for 270 days. Supporting shipper: (1) Certron Corp.; 1701 S. State College Blvd., Anaheim, CA and (2) Beckman Instruments, Inc., 2500 Harbor Blvd., Fullerton, CA 92634.

MC 138322 (Sub-6-4TA), filed November 12, 1980. Applicant: BHY TRUCKING, INC., 9231 Whitmore St., El Monte, CA 91733. Representative: Robert Fuller, 13215 E. Penn St., Suite 310, Whittier, CA 90602. *Oilfield machinery, materials, equipment and supplies*, and *pipe and well casing*, between (1) points in CA, on the one hand, and, on the other, points in AR, CO, KS, LA, MT, NM, OK, TX and Wy, and (2) between points in TX, on the one hand, and, on the other, points in CO, MT and WY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: There are 10 shippers. Their statements may be examined at the Regional Office listed.

MC 152681 (Sub-6-1TA), filed November 17, 1980. Applicant: FRANK BATY, 2045 Tulare Way, Upland, CA 91786. Representative: Frank Baty (same as applicant). *Cantract Carrier*, Irregular routes: *Beer* moving in foreign commerce, from Detroit, MI and commercial zone to CA, for the account of Passino Distributors, Inc., for 270 days. Supporting shipper: Passino Distributors, Inc., 1515 West Mission Road, Alhambra, CA.

MC 152670 (Sub-6-1TA), filed November 12, 1980. Applicant: CANNON MOVING & STORAGE, INC., 18335 Iona Ave., Lemoore, CA 93245. Representative: Trucia Hedge (same address as applicant). *Used Househald Gaads* in a pack-and-crate operation for the United States Government, in and between points in Kings County, CA, Tulare County, CA, and Fresno County, CA, for 270 days. There are no supporting shippers.

MC 138624 (Sub-6-2TA), filed November 14, 1980. Applicant: CARGO TRANSPORT, INC., Route 1, Box 510, Corvallis, MT 59828. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. *Salt, in bulk*, from the facilities of Morton Salt at or near Saltair, UT to points in OR and WA, for 270 days. An underlying ETA seeks 120 days authority. Supporting Shipper: Morton Salt Division of Morton-Norwich Products, Inc., 110 North Wacker Drive, Chicago IL 60606.

MC 152687 (Sub-6-1TA), filed November 12, 1980. Applicant: CASCADE EXPRESS, INC., 1315 D NE. 134th, Vancouver, WA 98665. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Faadstuffs*, (1) from points in WA to points in OR; (2) from WA and OR to points in CA, restricted to traffic moving for the account of, or to or from the facilities of North Pacific Canners and Packers, Inc., for 270 days. Supporting shipper: North Pacific Canners and Packers, Inc., 5200 S.E. McLoughlin Blvd., Portland, OR.

MC 152688 (Sub-6-1TA), filed November 17, 1980. Applicant: CHEMICAL DISPOSAL CO., INC., P.O. Box 397, Rillito, AZ 85246. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85014. *Hazardaus waste and hazardous waste materials*, from points in AZ to Beatty, NV; Grand View, ID; West Covina and Kettleman City, CA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Arizona Public Service Company, P.O. Box 21666, Phoenix, AZ 85036.

MC 140943 (Sub-6-2TA), filed November 14, 1980. Applicant: CHEYENNE ROAD TRANSPORT, LTD., 232 38th Ave., N.E., Calgary, Alberta, Canada T2E 2M2. Representative: Grant J. Merritt, 4444 IDS Center, Minneapolis, MN 55402. *Drilling mud, and drilling mud additives* from MT, WY, and Gray's Harbor County, WA to points along the international boundary line between the U.S. and Canada in WA, ID, MT, and ND, for 270 days. An underlying ETA seeks 120 days authority. Supporting shippers: Superior Mud Sales, Ltd., 600-608 7th St., S.W., Calgary, Alberta, Canada; Apex Mud Service, Ltd., 322-706 7th Ave., S.W., Calgary, Alberta, Canada; Hollimex Products, Ltd., 5830 87th St., Edmonton, Alberta, Canada; Canamara Supply, Ltd., 126 Acheson Road, Winterburn, Alberta, Canada.

MC 42487 (Sub-6-43TA), filed November 13, 1980. Applicant: CONSOLIDATED FREIGHTWAYS CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Cantract carrier*, irregular routes: *General cammadities, (except household goods as defined by the Cammission, and Classes A and B explasives)*, from Shelley, ID and Clearfield, UT to Clearfield, UT, Jersey City, NJ, Cockeysville, MD and points in WI, MO, IL, MI, IN, and OH, for the amount of R. T. French Co., for 270 days. Supporting shipper: R. T. French Co., 434 S. Emerson, Shelley, ID 83274.

MC 113678 (Sub-6-27TA), filed November 13, 1980. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same as above). *Photographic paper and supplies and materials and equipment related thereta*, between Denver, Co; Hastings, MN; Billings, MT; Omaha, NE; Fargo, ND; Richardson, TX; Salt Lake City, UT; and Chehalies and Spokane, WA, and points in the commercial zones of each of the cities listed above for 270 days. Supporting shipper: Trans America Film Service Corp., 433 W. Lawndale Dr., Salt Lake City, UT.

MC 136605 (Sub-6-21TA), filed: November 13, 1980. Applicant: DAVIS TRANSPORT, INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same as applicant). *Package shipments of hause logs, windaws, shakes, shingles, dimensional lumber and insulation*, from Payette County, ID to points in and west of WI, IL, MO, AR, LA, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Homestead Log Company, P.O. B. 161 Industrial Park, Payette, ID 83661.

MC 128685 (Sub-6-1TA), filed November 14, 1980. Applicant: DIXON BROS., INC., P.O.D. 8, Newcastle, WY 82701. Representative: Jerome Anderson, 100 Transwestern Bldg., Billings, MT 59101. *Petroleum or caal praducts and crude petroleum, natural gas or gasoline*, between points in WY, SD, NB, CO and MT for 270 days. Supporting shippers: There are eight supporting shippers. Their statements may be examined at the Regional office listed.

MC 121762 (Sub-6-1TA), filed November 17, 1980. Applicant: DRISKELL TRUCKING, INC., 4739 Durfee Ave., Pico Rivera, CA 90660. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633. *Cantract Carrier*, Irregular routes: *Upholstered, Rattan, Metal and Waod Furniture; and, Air Filtering Equipment*, From points in Los Angeles and Orange Counties, CA to points in UT, NM, AZ, NV, OR, WA, ID, CO, CA and TX, and, from points in OR and TX to points in AZ, NV, CA, UT, and ID, for 270 days. Supporting shippers: There are six shippers. Their statements may be examined at the Regional office listed.

MC 121762 (Sub-6-2TA), filed November 17, 1980. Applicant: DRISKELL TRUCKING, INC., 4739 Durfee Ave., Pico Rivera, CA 90660. Representative: Richard C. Celio, 2300 Camino Del Sol, Fullerton, CA 92633. *Cantract Carrier*, Irregular routes: *Furniture af rattan, metal ar waad construction; air filtering equipment; paper and paper products; and, equipment, materials and supplies used*

*in the manufacture and distribution of the above commodities, except commodities in bulk,* Between the Facilities of Scott Paper Company located in the states of CA, OR, and WA, on the one hand, and, on the other, all points located in the states of AZ, CO, ID, NV, OR, TX, and WA, for 270 days. Supporting shipper: The Scott Paper Company, Scott Plaza II, Philadelphia, Pa. 19113.

MC 152683 (Sub-6-1TA), filed November 17, 1980. Applicant: RICK ENDRESEN COMPANY, 709 S. Lane, Seattle, WA 98104. Representative: R. Patrick McGreevy, Ballard Building, Suite 210, Seattle, WA 98107. *Contract carrier:* Irregular Routes: (1) *Alcoholic beverages,* moving in bond, from the storage facilities of Cloud Trading Company, Inc., at Seattle, to ports in WA and OR, for 270 days. Supporting shipper: Cloud Trading Company, Inc., 1035 22nd Avenue, Oakland, CA 94606.

MC 151191 (Sub-6-3TA), filed November 17, 1980. Applicant: ESPENSCHIED TRANSPORTATION CORPORATION, 322 South 600 East, Centerville, UT 84014. Representative: Lee E. Lucero, 450 Capitol Life Center, Denver, CO 80203. *Contract carrier,* irregular routes: *Merchandise dealt in by retail department stores,* between points in CO, ID, MT, UT and WY for 270 days. Supporting shipper: Spiegel, Inc., 1515 West 22nd St., Oak Brook, IL 60521.

MC 125433 (Sub-6-40TA), filed November 17, 1980. Applicant: F-B TRUCK LINE COMPANY, 1945 So. Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same as applicant). (1) *Paper,* except building paper, (2) *Sanitary tissue stock;* (3) *wrapping paper, wrappers* and *coarse paper;* (4) *sanitary tissue* and *health products:* (5) *containers and boxes, paperboard, fiberboard and pulpboard,* (6) *Drug, Bio Products, Medical Chemicals,* and *Pharmaceutical preparations;* (7) *Soaps, detergents* and *cleaning preparations, cosmetics and other toilet preparations* except electrical, and miscellaneous parts and supplies incidental to the manufacture, distribution of the above commodities, between points in the U.S., restricted to traffic moving between the facilities of Scott Paper Company, for 270 days. Supporting shipper: Scott Paper Company, Scott Plaza I, Philadelphia, PA 19113.

MC 125433 (Sub-6-41TA), filed November 17, 1980. Applicant: F-B TRUCK LINE COMPANY, 1945 So. Redwood Rd., Salt Lake City, UT 84104. Representative: John B. Anderson (same as applicant). (1) *Paper, except building paper,* (2) *sanitary tissue stock or health products,* (3) *paper bags, wrapping paper and coarse paper* by Major Industries Code—Class 26—Pulp, Paper and Allied Products, between at or near Flagstaff, AZ, Pryor, OK, St. Helens, OR and LaPalma, CA, on the one hand, and on the other, points in the U.S. for 270 days. Supporting shipper: Orchid Paper Company, 5911 Fresca Drive, LaPalma, CA 90623.

MC 116457 (Sub-6-3TA), filed November 13, 1980. Applicant: GENERAL TRANSPORTATION INCORPORATED (P.O. Box 6484), Phoenix, AZ 85005. Representative: D. Parker Crosby (same as applicant). *Laminated wood beams, roof structure materials and materials, equipment and supplies used in the manufacture and distribution thereof* (except in bulk in tank vehicles), between points in Apache County, AZ and points in and west of LA, AR, MO, IA and MN, for 270 days. Supporting shipper: Madera Lumber Sales, Inc., P.O. Box 2551, Mesa, AZ 85204.

MC 144860 (Sub-6-2TA), filed November 14, 1980. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K Street NW., Washington, DC 20006. *Contract carrier,* irregular routes, *copying, duplicating or reproducing machines and materials, supplies, parts and accessories used in the manufacture, distribution, installation or operation of copying, duplicating, or reproducing machines,* between points in the U.S. under continuing contracts with the Xerox Corporation for 270 days. Supporting shippers: Xerox Corporation, 800 Phillips Road, Building 214B, Webster, NY 14580.

MC 126996 (Sub-6-3TA), filed November 12, 1980. Applicant: GOLDEN TRANSPORTATION, INC., P.O. Box 26908, Salt Lake City, UT 84125. Representative: Stanley C. Olsen, Jr., 7400 Metro Boulevard, Suite 411, Edina, MN 55435. *Non-exempt foods and kindred products,* from Steele County, MN, on the one hand, and, on the other, points in AZ, CA, CO and UT for 270 days. Supporting shipper: Geo. A. Hormel & Co., P.O. Box 800, Austin, MN 55912.

MC 150726 (Sub-6-4TA), filed November 17, 1980. Applicant: HILGO TRANSPORT, INC., P.O. Box 149, Selma, CA 93662. Representative: Thomas M. Loughran, 100 Bush St., 21st Floor, San Francisco, CA 94104. (A) *air and entraining agent solution,* (B) *concrete or masonry plasticizer and water reducing compound, and,* (C) *lignin, liquor,* in bulk and tank vehicles, from Los Angeles, CA to Phoenix, AZ for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: W. R. Grace Co., 7237 E. Gage Ave., Los Angeles, CA 90040.

MC 110639 (Sub-6-7TA), filed November 17, 1980. Applicant: INCO EXPRESS, INC., 3600 South 124th ST., Seattle, WA 98168. Representative: James T. Johnson, 1610 IBM Bldg., Seattle, WA 98101. *Cardboard containers and paper products* from points in Los Angeles and Orange Counties, CA to points in OR and WA, for 270 days. Supporting shipper: McCabe Quality Meats, 13650 N.E. Whitaker Way, Portland, OR 97220; California Stocktab Co., 11937 Woodruff Avenue, Downey, CA 90241.

MC 139906 (Sub-6-47TA), filed November 13, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O.B. 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O.B. 81849, Lincoln, NE 68501. *Bakery products,* from the facilities of Interbake Foods, Inc., at or near Tacoma, WA to North Sioux City, SD for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Interbake, Inc., P.O.B. 27487, Richmond, VA 23261.

MC 139906 (Sub-6-48TA), filed November 13, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O.B. 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O.B. 81849, Lincoln, NE 68501. *(1) Medical and surgical equipment and supplies, and (2) parts, materials and supplies used in the manufacture, sale or distribution of the commodities listed in (1) above,* (except in bulk) between the facilities of the Bard-Parker Division of Becton Dickinson and Company at or near Los Gatos, CA and Ocala, FL; and (2) between the facilities listed in (1) above on the one hand, and, on the other, the facilities of Automated Moulding Company at or near Pamona, CA the facilities of the Bard-Parker Division of Becton Dickinson and Company at or near Hancock, NY and Salt Lake City, UT; and (3) from the facilities listed in (1) above to Benecia, CA; Atlanta, GA; Itasca, IL; Fairfield, NJ; Dallas, TX; and points in their respective commercial zones, for 270 days. Supporting shipper: Becton Dickinson and Co., Stanley St., East Rutherford, NJ 07070.

MC 125952 (Sub-6-8TA), filed November 14, 1980. Applicant: INTERSTATE DISTRIBUTOR CO., 8311 Durango St. SW., Tacoma, WA 98499. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Contract carrier,* irregular routes: *(1) such merchandise as is dealt in by*

*wholesale, retail, chain grocery and food business houses and agricultural feed business houses and soy products, and (2) materials, equipment and ingredients and supplies used in the development, manufacture, distribution and sale of the items in (1) above (except in bulk),* between the facilities of Ralston Purina Company at or near Denver, CO, and points in AZ, for 270 days. Supporting shipper: Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188.

MC 152528 (Sub-6-1TA), filed November 17, 1980. Applicant: KERWIN F. JENSEN, P.O. Box 308, Cleveland, UT 84518. Representative: Harry D. Pugsley, 1283 East South Temple #501, Salt Lake City, UT 84102. *Contract carrier,* Irregular routes: *Coal,* in bulk, from the Pinnacle Mine in Deadman Canyon in Carbon County, UT to railheads in Carbon County, UT for the account of Tower Resources, Inc., for 270 days. Supporting shipper: Tower Resources, Inc., P.O. Box 1027, Price, UT 84501.

MC 140827 (Sub-6-3TA), filed November 13, 1980. Applicant: MARKET TRANSPORT, LTD., 110 North Marine Drive, Portland, OR 97217. Representative: Nick I. Goyak, 555 Benjamin Franklin Plaza, One Southwest Columbia, Portland, OR 97258. (1) *Paper and paper products;* and (2) *Equipment, materials and supplies such as are used in the production, manufacture, packaging, marketing and distribution of the commodities named in (1) above,* from Toledo, OR to points in CA for 270 days. An underlying ETA seeks 120 days. Supporting shipper: Georgia-Pacific Corporation, 900 SW. Fifth Avenue, Portland, OR 97204.

MC 152678 (Sub-6-1TA), filed November 17, 1980. Applicant: JOHN MATTOS, d.b.a. J. MATTOS TRUCKING, 1088 Belford Drive, San Jose, CA 95132. Representative: Philip J. Bovero, 3798 Flora Vista Ave., Santa Clara, CA 95051. (1) *Foods, foodstuffs, food treating compounds, chemicals, preservatives and additives;* (2) *Groceries and grocers' supplies;* (3) *Materials, supplies, equipment and advertising material* used in the manufacture, sale and distribution of commodities described in (1) and (2) above (except in bulk) between San Jose, CA and Reno, NV including the commercial zones thereof, for 270 days. Supporting shipper: Compass Trading Company, Inc., 975 Yosemite Drive, Milpitas, CA 95035.

MC 152685 (Sub-6-1TA), filed November 12, 1980. Applicant: RON NOBACH TRUCKING, INC., 7404 44th Ave. NE., Marysville, WA 98270. Representative: James T. Johnson, 1610 IBM Bldg., Seattle, WA 98101. *Cheese and cheese products,* from Mt. Vernon, WA to Logan, UT., for 270 days. Supporting shipper: Dairy Marketing-Washington Cheese, P.O. Box 1267, Mt. Vernon, WA.

MC 1977 (Sub-6-8TA), filed November 12, 1980. Applicant: NORTHWEST TRANSPORT SERVICE, INC., 5601 Holly St., Commerce City, CO 80022. Representative: Leslie R. Kehl, 1660 Lincoln St., Suite 1600, Denver, CO 80264. *Contract carrier; Irregular Routes; General Commodities* (except household goods as defined by the Commission). Between points in the U.S. under continuing contract(s) with the Port of Seattle for 270 days. Supporting shipper: The Port of Seattle, P.O. Box 1209, Seattle, WA 98111.

MC 124692 (Sub-6-25TA), filed November 13, 1980. Applicant: SAMMONS TRUCKING, P.O. Box 4347, Missoula, MT 59806. Representative: James B. Hovland, Suite M-20, 400 Marquette Ave., Minneapolis, MN 55401. *Reinforced fiberglass products,* from Seguin and Houston, TX; Anaheim, CA and Cleveland, OH to points in the U.S. (except AK and HI), for 270 days. Supporting shipper: Xerxes Fiberglass, Inc., 7901 Xerxes Avenue South, Bloomington, MN 55431.

MC 126514 (Sub-6-9TA), filed November 17, 1980. Applicant: SCHAEFFER TRUCKING, INC., 5200 West Bethany Home Rd., Glendale, AZ 85301. Representative: Leonard R. Kofkin, 39 South LaSalle St., Chicago, IL 60603. *Such commodities as are dealt in or used by manufacturers of electrical products,* between the facilities of the General Electric Company, Los Angeles, CA, Ontario, CA, and Seattle, WA on the one hand, and on the other, points in the U.S. for 270 days. Supporting shipper: General Electric Company, 234 East Main St., Ontario, CA 91761.

MC 152682 (Sub-6-1TA), filed November 12, 1980. Applicant: THOUSAND TRAILS, INC., 4800 S. 188th Way, Seattle, WA 98188. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 233, Renton, WA 98055. *Passengers and their baggage* in special and charter round trip operations between points in WA, on the one hand, and points in the U.S., excluding HI, on the other, for 180 days.

MC 144846 (Sub-6-3TA), filed November 14, 1980. Applicant: TRANSTATES, INC., 2761 East White Star, Anaheim, CA 92806. Representative: David P. Christianson, 707 Wilshire Boulevard, Suite 1800, Los Angeles, CA 90017. *Paper and paper products; plastic articles, expanded; and equipment, materials, and supplies used in the manufacture and distribution of the above products (except commodities in bulk),* between all points in the United States (except AK and HI), restricted to shipments originating at or destined to the facilities of Scott Paper Company, for 270 days. Supporting shipper: Scott Paper Company, Scott Plaza II, Philadelphia, PA 19113.

MC 143775 (Sub-6-31TA), filed November 14, 1980. Applicant: PAUL YATES, INC., P.O. Box 1059, Glendale, AZ 85301. Representative: Michael R. Burke (same address as applicant). *Foodstuffs* (except in bulk), from Los Angeles, CA, and its commercial zone, to Phoenix, AZ, Columbus, GA, Chicago, IL, Emporia, KS, Hutchinson, KS, Kansas City, KS, Wichita, KS, New Orleans, LA, Dallas, TX, Houston, TX, San Antonio, TX, and Milwaukee, WI, and their respective commercial zones, for 270 days. Supporting shipper: Southern Foods, 5353 Downing Street, Vernon, CA 90058.

MC 115523 (Sub-6-8TA), filed November 17, 1980. Applicant: CLARK TANK LINES COMPANY, 1450 N. Beck St., Salt Lake City, UT 84110. Representative: Melvin J. Whitear (same as applicant). *Potash,* from Potash, UT (near Moab, UT), to AZ, CA, CO, ID, NM, NV, MT, OR, WY, and WA, for 270 days. Supporting shipper: Van Waters & Rogers division of UNIVAC, 84110.

MC 143336 (Sub-6-1TA), filed November 18, 1980. Applicant: BAY RAPID TRANSIT COMPANY, INC., P.O. Box 3258, Salinas, CA 93912. Representative: John Paul Fischer, 256 Montgomery Street, San Francisco, CA 94104. *Passengers and their baggage* in (1) charter operations originating at points in Monterey, San Benito and Santa Cruz Counties, CA, extending to points in OR, WA, CA, ID, UT, NM, AZ, MT, WY and CO; (2) charter operations originating at points in Santa Clara County, CA, and extending to points in OR, WA, CA, ID, UT, NM, AZ, MT, WY, CO and NV; and (3) special operations originating at points in Monterey, San Benito, Santa Cruz and Santa Clara Counties, CA, and extending to points in OR, WA, CA, ID, UT, NM, AZ, MT, WY, CO and NV, for 180 days. A corresponding ETA seeks 90 days authority. Supporting shippers: There are fourteen (14) shippers. Their statements may be examined at the Regional office listed.

MC 138875 (Sub-6-3TA), filed November 17, 1980. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Rd., Boise, ID 83709. Representative: Patricia A. Russell (same as applicant). *Structural wood*

*products and accessories* (except commodities in bulk), from Eugene, OR to points in IA, IL, IN, KS, MI, MN, MO, NE, OH and WI, for 270 days. Supporting shipper(s): Trus Joist Corporation, 195 Bertelsen Road, Eugene, OR 97402.

MC 151028 (Sub-6-44TA, filed November 18, 1980. Applicant: CONSOLIDATED FREIGHTWAYS, CORPORATION OF DELAWARE, 175 Linfield Dr., Menlo Park, CA 94025. Representative: V. R. Oldenburg, P.O. Box 3062, Portland, OR 97208. *Contract carrier,* Irregular routes: *Salt, in packages and blocks,* from Clearfield, UT to points in IL, IA, IN, MO, KS, MN and WI, under a continuing contract or contracts with Great Salt Lake Minerals & Chemical Corporation, for 270 days. Supporting shipper(s): Great Salt Lake Minerals & Chemical Corporation, P.O.B. 1190, Ogden, UT 84402.

MC 152170 (Sub-6-1TA), filed November 13, 1980. Applicant: PUTNAM MOVING & STORAGE, INC., 302 Via Del Norte, Oceanside, CA 92054. Representative: Patrick Collins, (same as applicant). *Used household goods and unaccompanied baggage* in connection with a pack-and-crate operation between points in San Diego and Orange Counties, CA, for the account of the Department of Defense, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Camp Pendleton Marine Corps Base, Traffic Management Officer, Base Materiel Btn., P.O.B. 1430, Oceanside, CA 92054.

Agatha L. Mergenovich,
*Secretary.*

[FR Doc. 80-36910 Filed 11-25-80; 8:45 am]
BILLING CODE 7035-01-M

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**[Directed S.O. No. 1398]**

## Kansas City Terminal Railway Co.—Directed To Operate Over—Chicago, Rock Island and Pacific Railroad Co., Debtor (William M. Gibbons, Trustee); Accounting Report—Instructions Concerning Final Accounting Procedures and Reports

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Decision.

**SUMMARY:** On July 22, 1980, the Kansas City Terminal Railway Company (KCT), as directed rail carrier over the lines of the Rock Island Railroad (KCT-DRC), requested instructions from the Commission regarding the final settlement of the accounting associated with directed service. The Commission has selected a cut-off date for the filing of accounting charges and other claims against KCT-DRC and has ordered all railroads and railroad labor organizations to notify KCT of their willingness to meet the cut-off dates. The Commission has also specified the format of KCT's final report.

**DATE:** This decision is effective on November 18, 1980.

**FOR FURTHER INFORMATION CONTACT:** William Moss (202) 275-7510 or Richard Schiefelbein (202) 275-0826.

**SUPPLEMENTARY INFORMATION:** On July 22, 1980, the Kansas City Terminal Railway Company (KCT) petitioned the Commission for instructions on the proper handling of various accounting functions related to the KCT's operation of the Rock Island Railroad (RI) under directed service (KCT-DRC). Directed service terminated on March 24, 1980, with limited wind-down operations continuing over RI lines until March 31, 1980. In its petition, KCT outlined several standard railroad accounting rules which permit inter-railroad billings for a movement to occur long after the date of the movement. In the case of damage to another railroad's equipment, billing can be as much as five years after the car is damaged. Most of the accounting rules cited in KCT's petition involve time frames of 2-3 years after a movement occurred.

We are deeply concerned about the public costs which would be involved if a large accounting staff were maintained by KCT to handle accounting claims for several years. We are, at the same time, interested in assuring that all valid accounting claims are handled properly and that all directed service responsibilities to other carriers and to the public are concluded in an equitable manner.

In order to balance these goals, we analyzed the railroad accounting rules and practices to determine a reasonable cut-off date for claims against the KCT-DRC. Our intention was to develop a cut-off date which provided railroads and other parties with claims against the KCT-DRC sufficient time to prepare and submit those claims, while at the same time avoiding a multi-year extension of directed service subsidization by the federal government.

We have selected March 1, 1981 as a reasonable cut-off date for the filing of claims by other railroads, railway labor organizations, and other creditors against the KCT-DRC as directed carrier over the RI. The failure to file a claim by March 1, 1981 will not prevent ultimate payment of an otherwise valid claim. However, claimants should be aware that they may face substantial delays in the processing and payment of claims filed after the cut-off date.

We are ordering KCT-DRC to expedite the handling and settlement of all claims received by the cut-off date. After those claims are processed and settled, we intend, at a minimum, to reduce the KCT-DRC directed service accounting force to a minimum staffing level. If feasible, we will eliminate all accounting functions.

We remind parties with claims against KCT-DRC that the costs of directed service have virtually exhausted the Commission's $80 million appropriation for directed service. After the appropriation is exhausted, payment on any subsequent claims may require an additional Congressional appropriation.

Because railroad accounting rules are agreements among the railroads, we are not in a position to modify those rules directly. We are, however, ordering the chief accounting officer of each railroad to notify the KCT-DRC within 20 days of service of this order indicating to the KCT-DRC whether or not that railroad will comply with the established cut-off date for claims. We are similarly ordering the representatives of the railway labor organizations to notify KCT-DRC of their willingness to meet the March 1, 1981 cut-off date for the filing of claims.

We are ordering KCT-DRC to notify us of the responses received from the railroads and labor organizations. We are also ordering KCT-DRC to cancel any transit tonnage which has not moved from the transit point by January 1, 1981. In addition, due to the reduction in accounting staff anticipated after March 1, 1981, it would be extremely difficult to respond within the time frames required by certain claims. Therefore, the time periods specified in any accounting rules or collective bargaining agreements which require KCT-DRC to respond to a claim within a certain period will not be applicable after March 1, 1981.

We have also provided that shippers filing claims, such as overcharge claims, after March 1, 1981, will look only to KCT-DRC for payment, even on interline movements, so long as the other railroad involved in the movement filed all its claims by the March 1, 1981 cut-off date.

We have reviewed the report format specified in the directed service regulations, § 1126.2 of Title 49 of the Code of Federal Regulations. That reporting format is better suited to a limited directed service operation, and is not useful in accounting for the operation of a major railroad system, such as the Rock Island. We are specifying a different reporting format

for the KCT–DRC directed service operations; that format is presented in the Appendix to this order.

We are also establishing two reporting dates for the operations. KCT–DRC is being ordered to file an unaudited interim report on November 20, 1980, covering the period through July 31, 1980. KCT–DRC is being ordered to file its final accounting report, covering the same period, by May 31, 1981.

*It is ordered:*

1. Each railroad and railway labor organization which has a claim against KCT–DRC shall notify the Chief Accounting Officer of KCT–DRC within 20 days of the service date of this order of its willingness to file all claims against KCT–DRC by March 1, 1981.

2. Any claims filed by shippers subsequent to March 1, 1981 will be the sole responsibility of KCT–DRC, even if the claim applies to an interline movement, so long as the other railroad involved in the movement filed all its claims by March 1, 1981.

3. KCT shall notify the Commission in writing within 30 days of the service date of this order of the responses it has received from the railroads, railway labor organizations, and creditors.

4. KCT shall cancel any KCT–DRC transit tonnage which has not been moved from the transit point by January 1, 1981.

5. After March 1, 1981, any accounting rules or collective bargaining agreements which require KCT–DRC to respond to a claim within a specified time period shall not be applicable.

6. KCT shall expedite the processing and settlement of all claims filed by March 1, 1981.

7. KCT shall file its directed service accounting report required by 49 CFR 1126.2 in the format specified in the appendix to this order. KCT shall file its unaudited interim report of revenues, expenses and income as of July 31, 1980 no later than November 20, 1980. KCT shall file its final accounting report as of July 31, 1980, no later than May 31, 1981. KCT shall separate transactions between directed service through July 31, 1980 and subsequent accounting wind-down costs. KCT's accounting report must contain standard required footnotes under generally accepted accounting principles.

This decision does not significantly affect the quality of the human environment, or the conservation of energy resources.

Decided: November 17, 1980.

(49 U.S.C. 10321 and 111.25)

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis, and Gilliam.

**Agatha L. Mergenovich,**

*Secretary.*

**Appendix—Kansas City Terminal Railway Company, Directed Rail Carrier of Chicago, Rock Island and Pacific Railroad Company, Union Station, Kansas City, Missouri 64108**

**Directed Service Order No. 1398—Report of Revenues, Expenses and Income**

For the Period Beginning ———— and Ending ————.

| Line | Nearest whole dollar |
|---|---|
| Operating revenues: [1] | |
| 1. Freight | |
| 2. Passenger | |
| 3. All other operating revenues | |
| 4. Total | |
| 5. Passenger service subsidy (RTA) | |
| 6. Total railway operating revenues | |
| Operating expenses: | |
| 7. Way and structures | |
| 8. Equipment | |
| 9. Transportation | |
| 10. General and administrative | |
| 11. Total railway operating expenses | |
| 12. Loss from railway operations | |
| Other expenses (income): | |
| 13. Other income | |
| 14. Other deductions | |
| 15. Kansas City Terminal Railway Co.—Allowance for profit | |
| 16. Loss (deficit from operations) | |

[1] Operating revenue is to excluda ICC funding.

Note: See accompanying accounting policy disclosures and notes to financial statements.

**Kansas City Terminal Railway Company, Directed Rail Carrier of Chicago, Rock Island and Pacific Railroad Company, Union Station, Kansas City, Missouri 64108**

**Directed Service Order No. 1398—Balance Sheets**

For the Period Ending ————.

| Line | Nearest whole dollar |
|---|---|
| Current assets: | |
| 1. Cash and temporary cash investments | |
| 2. Special deposits | |
| 3. Accounts receivable—interline and customers—net | |
| 4. Accounts receivable (Wm. M. Gibbons, Trustaa, Rock Island) net | |
| 5. Materials and supplies | |
| 6. Other current assets | |
| 7. Total current Assats | |
| Other assats: | |
| 8. Total assets | |
| Current liabilities: | |
| 9. Accounts and wages payable | |
| 10. Accounts payable (Wm. M. Gibbons, Trustee, Rock Island) net | |
| 11. Othar current liabilities | |
| I.C.C. funding received: | |
| 12. I.C.C. funds recaivad | |
| 13. Loss from railway operations | |
| 14. Total I.C.C. funding and losses | |

Note: See accompanying accounting policy disclosures and notas to financial statemants.

**Kansas City Terminal Railway Company, Directed Rail Carrier of Chicago, Rock Island and Pacific Railroad Company, Union Station, Kansas City, Missouri 64108**

**Directed Service Order No. 1398—Reconciliation of I.C.C. Funds Received**

For the Period Ending ————.

| Line | Nearast whole dollar |
|---|---|
| 1. Net loss from railway operations | |
| Less non-cash charges (future cash requirement): | |
| 2. Accounts and wages payable | |
| 3. Casualty reserves | |
| 4. Estimated vacation liability | |
| 5. Accounts payabla (Wm. M. Gibbons—Trustee—Rock Island) | |
| 6. Other accrued liabilities | |
| 7. Total cash applied to operations | |
| Add other cash provided (futura cash collections): | |
| 8. Accounts receivable—Customers and other | |
| 9. Accounts recaivabla (Wm. M. Gibbons—Trustee—Rock Island) | |
| 10. Prepayments | |
| 11. Othar currant assats | |
| 12. Total other cash applied | |
| 13. Total Cash applied | |
| 14. Cash in banks | |
| 15. Total I.C.C. funds received | |

Note: See accompanying accounting policy disclosures and notes to financial statements.

**Kansas City Terminal Railway Company, Directed Rail Carrier of Chicago, Rock Island and Pacific Railroad Company, Union Station, Kansas City, Missouri 64108**

**Directed Service Order No. 1398—Notes to Financial Statements**

Additional Comments

BILLING CODE 7035-01-M

VERIFICATION

The foregoing report shall be verified by the oath of the officer having control of the accounting of the respondent. This report shall also be verified by the oath of the president or other chief officer of the respondent, unless the respondent states that such officer has no control over the respondent's accounting and reporting.

OATH

(To be made by the officer having control of the accounting of the respondent)

State of ______________________

County of ______________________

______________________ makes oath and says that he is ______________________
(Insert here name of the affiant) (Insert here the official title of the affiant).

Of ______________________
(Insert here the exact legal title or name of the respondent)

that it is his duty to have supervision over the books of accounts of the respondent and to control the manner in which such books are kept; that he knows that such books have been kept in good faith during the period covered by this report; that he knows that the entries contained in this report relating to accounting matters have been prepared in accordance with the provisions of the Uniform System of Accounts for Railroads and other accounting and reporting directives of this Commission; that he believes that all other statements of fact contained in this report are true, and that this report is a correct and complete statement, accurately taken from the books and records, of the business and affairs of the above-named respondent during the period of time from and including

______________, 19___, to and including ______________, 19___

______________________
(Signature of affiant)

Subscribed and sworn to before me, a ______________________ in and for the State and county above named, this ______________ day of ______________, 19___

My commission expires ______________________

Use an L.S. impression seal

______________________
(Signature of officer authorized to administer oaths)

SUPPLEMENTAL OATH

(By the president or other chief officer of the respondent)

State of ______________________

County of ______________________

______________________ makes oath and says that he is ______________________
(Insert here name of the affiant) (Insert here the official title of the affiant)

Of ______________________
(Insert here the exact legal title or name of the respondent)

that he has carefully examined the foregoing report; that he believes that all statements of fact contained in the said report are true, and that the said report is a correct and complete statement of the business and affairs of the above-named respondent and the operations of its property during the period of time from and including

______________, 19___, to and including ______________, 19___.

______________________
(Signature of affiant)

Subscribed and sworn to before me, a ______________________ in and for the State and county above named, this ______________ day of ______________, 19___

My commission expires ______________________

Use an L.S. impression seal

______________________
(Signature of officer authorized to administer oaths)

[FR Doc. 80-36855 Filed 11-25-80; 8:45 am]

BILLING CODE 7035-01-C

[Docket No. AB-156 (Sub-No. 9F)]

## Delaware and Hudson Railway Co.—Abandonment—in the Towns of Balston and Milton, NY; Findings

Notice is hereby given pusuant to 49 U.S.C. 10903 that by a Certificate and Decision decided September 30, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in Oregon Short Line R. Co.—Abandoment Goshen, 360 I.C.C. 91 (1979), the present and future public convenience and necessity permit the abandonment by the Delaware and Hudson Railway Company of its line of railroad known as the Ballston Spa Industrial Track which extends from milepost A 31.32 to milepost 31.79, a distance.47 miles. A certificate of public convenience and necessity permitting abandonment was issued to the Delaware and Hudson Railway Company. Since the investigation has been completed, the requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, D.C. 20423, no later than December 8, 1980. The offer, as filed, shall contain information required pursuant to § 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall be become effective 30 days from the service date of the certificate.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80-36856 Filed 11-25-80; 8:45 am]

[Docket No. AB-55 (Sub-35F)]

## Seaboard Coast Line Railroad Co.—Abandonment—Near S & E Junction at Beck Hammock, FL; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided September 8, 1980, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, the public convenience and necessity permit the abandomment by the Seaboard Coast Line Railroad Company of its line of railroad known as the S & E/Beck Hammock segment, which extends from milepost 770 in the City of Sanford, FL, to milepost 773.93 known as Beck Hammock, in Seminole County, FL, subject to the conditions for the protection of employees discussed in *Oregon Short Line R. Co.—Abandonment Goshen,* 360 I.C.C. 91 (1979). A certificate of abandonment will be issued to the Seaboard Coast Line Railroad Company based on the above-described finding of abandonment, 30 days after publication of this notice (December 26, 1980)), unless within 15 days from the date of publication (December 11, 1980), the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued. The offer must be filed with the Commission and served concurrently on the applicant, with copies to Ms. Ellen Hanson, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed. An offer may request the Commission to set conditions and amount of compensation within 30 days after an offer is made. If no agreement is reached within 30 days of an offer, and no request is made on the Commission to set conditions or amount of compensation, a certificate of abandonment will be issued no later than 50 days after this notice is published. Upon notification to the Commission of the execution of an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in 49 U.S.C. 10905 (as amended by the Staggers Rail Act of 1980, Pub. L. 96-448, effective October 1, 1980). All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80-36862 Filed 11-25-80; 8:45 am]

BILLING CODE 7035-01-M

# INTERNATIONAL TRADE COMMISSION

[332-119]

## Background Study of the Economies and International Trade Patterns of the Countries of North America (Including Central America and the Caribbean)

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice is hereby given that the United States International Trade Commission, following receipt on October 10, 1980, of a request from the United States Trade Representative at the direction of the President, has instituted an investigation under Section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) with respect to the economies and international trade patterns of the countries of North America (including Central America and the Caribbean.)

**EFFECTIVE DATE:** November 13, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mr. Martin F. Smith, Trade Reports Division, Office of Economics, United States Internationl Trade Commission, 701 E Street NW., Washington, D.C. 20436 (202) 724-0092.

**SUPPLEMENTARY INFORMATION:** Section 1104 of the Trade Agreements Act of 1979 (Pub. L. 96-39) directs the President to study the desirability of entering into trade agreements with countries in the northern portion of the Western Hemisphere to promote the economic growth of the United States and such countries and the mutual expansion of market opportunities and to report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate his findings and conclusions. The President's study will include, inter alia, chapters on the economic structures and international trade patterns of North American countries. The Commission

investigation will provide materials for these chapters.

**Written Submissions**

The Commission has no public hearings scheduled for this investigation. Written submissions from interested parties are therefore invited concerning any phase of the Commission's study on the economic structures and international trade patterns of North American countries. Commercial or financial information which a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission in this study, written statements should be submitted at the earliest practicable date, but no later than December 10, 1980. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

**COMPLETION DATE:** The Commission plans to complete its study and submit its report to the United States Trade Representative not later than January 31, 1981.

Issued: November 19, 1980.

By Order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 80-36932 Filed 11-25-80; 8:45 am]

**BILLING CODE 7020-02-M**

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**[Investigation No. 337-TA-91]**

## Certain Mass Flow Devices and Components Thereof; Investigation

Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 14, 1980, and amended on October 31, 1980, November 5, 1980, and November 12, 1980 under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Tylan Corp., 19220 South Normandie Avenue, Torrance, Calif. 90220, alleging that unfair methods of competition and unfair acts exist in the importation into the United States of certain mass flow devices and components thereof, or in their sale, by reason of: (1) Infringement by such mass flow devices of claims 1-5 and 7-10 of U.S. Letters Patent 3,650,505, claims 1-10 of U.S. Letters Patent 3,851,526, and claims 1-5 of U.S. Letters Patent 3,938,384; (2) misappropriation of trade secrets; (3) misappropriation of trade dress; (4) misappropriation of trade nomenclature; and (5) passing off. The amended complaint (hereinafter referred to as the complaint) alleges that the effect or tendency of the unfair methods of competition and unfair acts is to substantially injure an industry, efficiently and economically operated, in the United States.

Complainant requests permanent exclusion from entry into the United States of the imports in question after full investighation, or, alternatively, that a cease and desist order be issued.

Having considered the complaint, the Commission, on November 13, 1980, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), an investigation be instituted to determine whether there is a violation of subsection (a) of this section in the unlawful importation of certain mass flow devices, components thereof, and products incorporating said devices into the United States, or in their sale, by reason of the alleged—

(a) Infringement by such mass flow devices of—

(i) Claims 1-5 and 7-10 of U.S. Letters Patent 3,650,505,

(ii) Claims 1-10 of U.S. Letters Patent 3,851,526, and

(iii) Claims 1-5 of U.S. Letters Patent 3,938,384, and

(b) Unfair conduct comprising any one or a combination of—

(i) Misappropriation of trade secrets,

(ii) Misappropriation of trade dress and/or trade nomenclature, and

(iii) Passing off,

the effect or tendency of which is to substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of this investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Tylan Corp., 19220 South Normandie Avenue, Torrance, Calif. 90220.

(b) The respondents are the following companies alleged to be involved in the unlawful importation of such mass flow devices, components thereof, and products incorporating said devices into the United States, or in their sale, and are the parties upon which the complaint shall be served:

Advanced Semiconductor Materials, B.V., Soestdijkseweg 328, Bilthoven, The Netherlands.

Advanced Semiconductor Materials America, Inc., 4302 East Broadway Road, Phoenix, Ariz. 85040.

(c) Talbot S. Lindstrom, Chief, Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, shall name the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Chief Administrative Law Judge Donald K. Duvall, U.S. International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, shall designate the presiding officer.

The phrase "and products incorporating said devices" has been added to paragraphs (1) and (2)(b) above on the basis of informal investigatory activities by the Commission which revealed that mass flow devices of the type alleged to be involved in the aforesaid unfair acts can be imported as mass flow devices, components thereof, and products incorporating said devices.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's rules of practice and procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than twenty (20) days after the date of service of the complaint. Extensions of the time for submitting a response will not be granted unless good and sufficient cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to such respondent, to find the facts to be as alleged in the complaint and this notice and to enter both a recommended determination and a final determination containing such findings.

The complaint, except for the confidential information contained therein, is available for inspection by interested persons at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436.

Issued: November 21, 1980.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 80-36935 Filed 11-25-80; 8:45 am]

**BILLING CODE 7020-02-M**

[Investigation No. 337-TA-74]

## Certain Rotatable Photograph and Card Display Units, and Components Therefor; Commission Determination and Order

Notice is hereby given that, upon consideration of the presiding officer's recommended determination and the record in this proceeding (investigation No. 337-TA-74, Certain Rotatable Photograph and Card Display Units, and Components Therefor), the Commission has unanimously determined that 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 rotatable photograph and card display units which infringe (1) the claim of U.S. Letters Patent 3,218,743, (2) the claim of U.S. Letters Patent 3,791,059, (3) U.S. Trademark Registration No. 838,394, and (4) the common-law trademark "Roto-Photo" and has ordered that infringing devices be excluded from entry into the United States during the lives of said patents or registered trademark or during the use of the common law trademark, except under license. The Commission also ordered that these devices are entitled to entry into the United States under bond in the amount of 200 percent ad valorem during the period that this action is pending before the President.

Notice is also given that the Commission has granted motions Nos. 74-8 and 74-9 to terminate this investigation as to respondents American Consumer, Inc., and Dan-Dee Imports, Inc., on the basis of settlement agreements between complainants and those respondents.

This Commission order is effective on November 26, 1980. Any party wishing to petition for reconsideration must do so within fourteen (14) days of service of the Commission determination. Such petitions must be in accord with § 210.56 of the Commission's rules (19 CFR 210.56). Any person adversely affected by a final Commission determination may appeal such determination to the United States Court of Customs and Patent Appeals.

Copies of the Commission's Determination, Order, and Memorandum Opinion USITC Publication 1109, November 1980) are available to the public during official working hours at the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161. Notice of the institution of the Commission's investigation was published in the Federal Register of November 21, 1979 (44 FR 66997).

Issued: November 21, 1980.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 809-36936 Filed 11-25-80; 8:45 am]

BILLING CODE 7020-02-M

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## Change in Scope of Investigation No. 731-TA-7 (Final); Certain Electric Motors From Japan

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Change in scope of final antidumping investigation.

**EFFECTIVE DATE:** November 20, 1980.

**FOR FURTHER INFORMATION CONTACT:** Bruce Cates, Senior Investigator, Office of Investigations, telephone 202-523-0368.

**SUPPLEMENTARY INFORMATION:** On June 20, 1980, the Department of Commerce published with respect to AC, polyphase electric motors from Japan a notice of "preliminary determination of sales at less than fair value." This notice advised the public that, with the exception of submersible well-pump motors which had been excluded from the investigation, there was reason to believe or suspect that certain industrial electric motors, of greater than 5 but not greater than 500 horsepower, from Japan are being, or are likely to be, sold in the United States at less than fair value.

On October 29, 1980, the Department of Commerce determined, pursuant to section 735(a) of the Tariff Act of 1930 (19 U.S.C. 1673d), that AC, polyphase electric motors of not less than 150 horsepower and not greater than 500 horsepower from Japan are being sold in the United States at less than fair value.

As to AC, polyphase electric motors of greater than 5 horsepower and less than 150 horsepower, on October 29, 1980, pursuant to section 734 of the Tariff Act of 1930 (19 U.S.C. 1673c), the Depart of Commerce accepted an agreement from Toshiba and TIC (the principal importer) to limit the exportation of such motors to the United States. Under the agreement, Toshiba and TIC agree to cease, within 6 months, exports of AC, polyphase electric motors of greater than 5 hp and less than 150 hp, except for oil-well-pump and explosion-proof motors, and to revise prices to completely eliminate any sales at less than fair value of imported oil-well-pump and explosion-proof motors greater than 5 and less than 150 horsepower.

As a result of the agreement, the Department of Commerce, pursuant to section 734(f)(1) of the Tariff Act of 1930 (19 U.S.C. 167c), suspended it investigation with respect to AC, polyphase electric motors of greater than 5 horsepower and less than 150 horsepower. Under section 734(f)(2)(A) of the act, the liquidation of entries of small motors, effective June 20, 1980 (45 FR 41687), is terminated. Any cash deposits, bonds, or other security deposited on entries of small motors pursuant to suspension of liquidation will be refunded. As to the large motors, those of not less than 150 horsepower and not greater than 500 horsepower, the suspension of liquidation shall continue until further notice.

Pursuant to the requirements of section 734(f)(1)(b) of the Tariff Act of 1930, (19 U.S.C. 1673c) the Commission is also suspending that portion of its investigation on certain electric motors from Japan inv. No. 731-TA-7 (Final), that pertains to AC, polyphase electric motors of greater than 5 horsepower but less than 150 horsepower.

Issued: November 20, 1980.

By order of the Commission.

Kenneth R. Mason,

*Secretary.*

[FR Doc. 80-36937 Filed 11-25-80; 8:45 am]

BILLING CODE 7020-02-M

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[Investigation No. 337-TA-84]

## Chlorofluorohydrocarbon Drycleaning Process, Machines and Components Therefor; More Complicated Designation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Designation of this investigation as more complicated within the meaning of 19 U.S.C. 1337(b)(1) and 19 CFR 210.15.

**AUTHORITY:** The authority for Commission designation is contained in section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1)) and in Rule 210.15 of the Commission's *Rules of Practice and Procedure* (19 CFR 210.22).

**SUPPLEMENTARY INFORMATION:**

Background—

Upon receipt of a complaint filed by Research Development Co., of Minneapolis, Minn., the U.S. International Trade Commission instituted an investigation on April 17, 1980, to determine whether there is a violation of section 337(a) of the Tariff Act of 1930 (19 U.S.C. 1337(a)) in the importation into the United States of chlorofluorohydrocarbon drycleaning machines, or in their sale, by reason of the alleged infringement of claims 1, 3, and 4, of U.S. Letters Patent 3,728,074, the effect or tendency of which is to

destroy or substantially injure an industry, efficiently and economically operated, in the United States. Notice of the Commission's investigation was published in the **Federal Register** of June 11, 1980 (45 FR 39580).

On October 8, 1980, the complainant filed a motion (Motion 84–9) to designate the investigation "more complicated," within the meaning of section 337(b)(1) of the Tariff Act of 1930 (19 U.S.C. 1337(b)(1)) and Rule 210.15 of the Commission's *Rules of Practice and Procedure*. The motion was supported in a response from the Commission investigative attorney, filed October 17, 1980. The motion was opposed in a response from Macchine Suprema, filed October 21, 1980. On October 24, 1980, the presiding officer certified to the Commission the recommendation that Investigation No. 337–TA–84 be designated more complicated.

Discussion—

In determing whether an investigation is more complicated, the Commission must find that it "is of an involved nature owing to the subject matter, difficulty in obtaining information, or large number of parties involved." 19 CFR 210.15. In the present case, two parties were recently joined as respondents and joinder of a third (E.I. duPont de Nemours & Co., Inc.) is proposed. DuPont has admitted that it has caused to be imported machinery which allegedly infringes the subject patent. Since these allegations must be investigated and further discovery must taken place, there is clearly a present difficulty in obtaining information.

In addition, the recent joinder of the two respondents and the proposed joinder of duPont increases the number of parties to the investigastion. Since the record indicates that the interests of the various parties are not coincident, the respondents cannot be expected to consolidate their actions. Under these circumstances, the Commission believes that there is now a large number of parties in this investigation.

For these reasons, the Commission concludes that this investigation must be designated more complicated. The practical effect of this determination is that the deadline for making a final determination in this investigation will be extended from June 11, 1981, to December 11, 1981.

Copies of the Commission's action and order 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.

**FOR FURTHER INFORMATION CONTACT:** Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0493.

Issued: November 17, 1980.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 80–36933 Filed 11–15–80; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 377–TA–84]

## Chlorofluorohydrocarbon Drycleaning Process, Machines and Components Therefor; Addition of a Party Respondent

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Addition of party respondent: E. I. duPont de Nemours & Co., Inc., 1007 Market Street, Wilmington, Delaware 19898.

**AUTHORITY:** The authority for Commission disposition of the subject motion is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in 19 CFR 210.22.

**SUPPLEMENTARY INFORMATION:** Upon receipt of a complaint filed by Research Development Co., of Minneapolis, Minn., the U.S. International Trade Commission instituted an investigation on April 17, 1980, to determine whether there is a violation of section 337(a) of the Tariff Act of 1930 (19 U.S.C. 1337(a)) in the importation into the United States of chlorofluorohydrocarbon drycleaning machines, or in their sale, by reason of the alleged infringement of claims 1, 3, and 4 of U.S. Letters Patent 3,728,074, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. Notice of the Commission's investigation was published in the **Federal Register** of June 11, 1980 (45 FR 39580).

On September 26, 1980, E. I. duPont de Nemours & Co., Inc. (hereinafter "duPont"), filed a motion to intervene (motion 84–8), pursuant to rule 210.6 of the Commission's *Rules of Practice and Procedure*, as a non-party intervenor.

On October 14, 1980, the Commission investigative attorney's response to motion 84–8 was redesignated motion 84–12 to amend the complaint and notice of investigation by addition of E. I. duPont de Nemours & Co., Inc. as a party respondent. On October 27, 1980, the motion was certified to the Commission by the presiding officer, who recommended that the motion be granted. Copies of the Commission's action and order 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.

**FOR FURTHER INFORMATION CONTACT:** Jack Simmons, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0493.

Issued: November 17, 1980.

By order of the Commission.

**Kenneth R. Mason,**

*Secretary.*

[FR Doc. 80–36934 Filed 11–25–80; 8:45 am]

BILLING CODE 7020–02–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 79–24]

## Metro Substance Abatement Program, Inc.; Revocation of Registration

On December 18, 1979, the Administrator of the Drug Enforcement Administration [DEA] issued to Metro Substance Abatement Program, Inc. [Respondent], of Detroit, Michigan, an Order to Show Cause proposing to revoke the Respondent's DEA Certificates of Registration. Simultaneously, citing his preliminary finding of imminent danger to the public health and safety, the Administrator ordered that the Respondent's registrations be immediately suspended pending a final determination in these proceedings. The Order to Show Cause and the self-executing Immediate Suspension of Registration were served on the Respondent on December 20, 1979. The Respondent sought relief from the Immediate Suspension in the U.S. District Court for the Eastern District of Michigan. The Honorable Ralph M. Freeman, of that Court, issued a temporary restraining order on December 22, 1979. On January 4, 1980, after a hearing, Judge Freeman issued a preliminary injunction which enjoined the Administrator from suspending the Respondent's registrations pending a full hearing in these administrative proceedings.

The Respondent, on December 28, 1979, requested an administrative hearing on the issues raised by the Order to Show Cause. On January 4, 1980, Government counsel requested

that the hearing be held as soon as possible in light of the entry of the preliminary injunction in the U.S. District Court in Detroit. The Administrative Law Judge acceded to this request and, after conferring with counsel for both sides, set the hearing to begin in Detroit on January 24, 1980. Due to the hospitalization of the Administrative Law Judge, this hearing date was cancelled. The hearing was reset to commence on March 11, 1980 in Detroit. Due to various factors, the hearing could not be concluded in the two days set aside for it. Therefore, it was recessed on March 12 and reconvened on April 29, 1980, again in Detroit. The taking of testimony was completed the following day. The Honorable Francis L. Young, Administrative Law Judge, presided throughout these proceedings.

On October 1, 1980, Judge Young issued his opinion and recommended ruling, findings of fact, conclusions of law and decision in this matter. In compliance with 21 CFR § 1316.65(b), copies of the Administrative Law Judge's opinion were served on counsel for both sides. Counsel for the Respondent filed exceptions to Judge Young's findings and counsel for the Government filed a letter requesting that this matter be submitted for the Administrator's consideration as soon as the regulations permitted. On October 27, 1980, Judge Young transmitted the record of these proceedings to the Administrator. The record included, *inter alia,* the Administrative Law Judge's report or opinion; the transcript of the four days of hearing testimony; all of the exhibits which had been placed in the record; the proposed findings of fact and conclusions of law, or briefs, submitted by counsel for both sides; the Respondent's exceptions; and all other post-hearing correspondence.

The Administrator has considered this record in its entirety and, pursuant to 21 CFR § 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

The Administrator considers the issues in this matter to be the following, as set forth by the Administrative Law Judge in his opinion:

Whether the Respondent has failed to comply with the standards established by the Attorney General with respect to the security of stocks of narcotic drugs used in the Respondent's detoxification and maintenance treatment programs and with respect to the maintenance of records on such drugs. (See 21 U.S.C. 823(g); 21 CFR §§ 1301.72, 1301.73, 1301.74, 1304.28 and 1304.29)

Whether, therefore, there is a lawful or statutory basis for the revocation of the Respondent's DEA registrations pursuant to 21 U.S.C. 824(a), as amended by the Narcotic Addict Treatment Act of 1974 (P.L. 93–281; May 14, 1974).

Whether, if such lawful or statutory basis is found to exist, the Administrator, in the exercise of his discretion, should order the revocation of the Respondent's registrations.

Whether the Respondent has taken immediate and adequate corrective measures to provide and maintain adequate security for the dispensation and administration of narcotic controlled substances used in its detoxification program, so as to prevent further losses of methadone.

The Administrative Law Judge recommended 91 separate findings of fact, covering 24 pages of his opinion. These recommended findings were supported by evidence received in this case. They trace the Respondent's problems with security and recordkeeping from 1977 through 1979. They summarize the evidence clearly and fairly. Although some of Judge Young's recommended findings are repeated or paraphrased in this final order, the Administrator has adopted the recommended findings of fact and conclusions of law in their entirety.

The Respondent is registered under 21 U.S.C. 823(g) as a narcotic treatment program authorized to dispense narcotic drugs to addicted persons for detoxification and maintenance purposes. Its registration, PM0120294, also permits it to "compound" bulk quantities of methadone into individual dosage units and to distribute these dosage units to other treatment programs. The Respondent holds a second DEA registration, PM0154334, adjunctive to the first, which registration authorized the Respondent to operate as a researcher in order to use a Schedule I substance, 1-alpha-acetylmethadol (LAAM) in addition to methadone in its treatment program.

The Respondent has suffered a number of losses or suspected losses of methadone and there has been at least one instance in which the security of methadone was seriously compromised. There were at least eight such incidents during 1979. This is an unusually high number of such incidents by comparison with other narcotic treatment programs in the Detroit area.

While the Administrator views any loss or compromise of methadone as an extremely serious matter, some of the incidents which reflect upon the manner in which the Respondent handled its narcotic drugs ought to be recounted in this final order. On February 2, 1979, Mr. Andrew W. Petress, Jr., the Respondent's executive director, and Mr. Eural Johnson, the program's administrator, placed 272 dosage units of methadone, totalling 1,016.5 grams of methadone, into the trunk of a vehicle leased by the firm and assigned to Mr. Johnson. This was done preparatory to delivering the methadone to Care Clinic, a sattelite treatment program operated by the Respondent, located about 15 miles distant from the Metro facility. While Mr. Petress and Mr. Johnson were otherwise engaged inside the Metro clinic, the vehicle was repossessed by the leasing company. The methadone was subsequently turned over to the Detroit Police Department by the leasing company and was ultimately returned to the Respondent. Although this compromise was initially reported to DEA by telephone, the required written report was not submitted to the agency. Numerous loss, or suspected loss, incident reports were initiated by the Respondent's pharmacist, Mr. Lethel Dillard, and then not reported to DEA as required by 21 CFR § 1301.74(c). Such reports were not obtained by DEA until they were seized on December 20, 1979, in connection with the execution of the immediate suspension order. Among the papers so obtained was one in which Mr. Dillard's assistant noted that a liter bottle of methadone was missing. The note contains the following postscript: "P.S. I didn't say nothing to no-one."

The most severe loss of methadone from the Respondent's facility occurred on December 1, 1979, when a night-time burglary resulted in the loss of eight one-liter bottles of methadone. Again, although the Respondent reported the theft to the police department and to DEA, at least verbally or telephonically, the required written report was not submitted until February 21, 1980, well after the commencement of these proceedings.

During 1979, the Respondent has lost, had stolen, or could not account for, the equivalent of almost eleven and one-half one-liter bottles of methadone hydrochloride. The illicit demand for methadone is well documented. One Government witness in the hearing estimated that a single dosage unit bottle of methadone, one containing 20 to 25 milligrams of the drug, could be sold for $25.00; a bottle containing 60 to 80 milligrams would bring $40.00; and a one-liter bottle of undiluted methadone, such as the eight which were stolen from the Respondent's facility on December 1, 1979, would be worth at least $5,000.00, or whatever the traffic would bear.

By way of comparison, the Detroit Health Department's Division of Pharmacy, which serves as compounder for sixteen narcotic treatment programs, has lost but eight unit doses of

methadone, totalling approximately 200 milligrams, during the ten-year period from March 1970 through March 1980. During this period, the city's compounding facility provided daily methadone doses for between 2,000 and 3,600 patients. A smaller program, that of Detroit's Lafayette Clinic, which handles about 50 patients, as compared to the Respondent's 245, has never experienced a theft of methadone and has never had an instance in which the drug was missing or unaccounted for.

There are 51 narcotic treatment programs within the jurisdiction of DEA's Detroit District Office. During 1979, only two of these programs, other than the Respondent's, filed reports of theft or loss of methadone. Each of these programs reported one incident. In one of the cases, it was found that there was no actual loss of methadone. In the other, the loss totalled 290 milligrams of the drug.

A persistent problem encountered by narcotic treatment programs is the diversion of methadone by patients who "mouth" or "palm" the medication. To discourage this practice, the Detroit city programs employ security guards to prevent the patients from leaving without having first ingested the methadone. The Lafayette Clinic adds fruit juice to the medication and then fills the dosage bottles to the top, making it very difficult for the patient to hold the substance in his or her mouth without swallowing. The evidence in this hearing reveals that the Respondent took no effective measures to curb such diversion. Indeed, when the Respondent's clients were referred to the city program during the brief suspension of the Respondent's DEA registration, an unusually high number of such patients were caught trying to "mouth" or "palm" their medication.

In terms of the dosage strength of methadone dispensed, the Respondent's average daily dosage per patient was nearly double that of the average for all of the patients in the clinics served by the city's pharmacy division. Nevertheless, when the Respondent's clients were referred to the city treatment program, they were given the exact dosage of methadone which the Respondent's records indicated that they had been receiving. A few of these individuals "nodded" after receiving their medication, suggesting that they may have actually been receiving somewhat less methadone than the Respondent's records showed them to be taking.

A number of the Respondent's clients were receiving as much as 80 milligrams of methadone per day. The chief pharmacist for the city programs testified that she could recall only one patient who had ever received that much methadone. That patient was an elderly man who had been an addict since he was a young boy. Attempts had been made to reduce this patient's intake of methadone, but these had proved unsuccessful due to his advanced age.

The Detroit Police Department received numerous complaints of illicit drug activity outside of, and in the vicinity of, the Respondent's facility. People selling methadone and other drugs were arrested in the same area. While this activity could not be tied directly to the Respondent's clientele, such complaints and arrests rarely occurred near similar drug treatment programs in Detroit. Early this year, a DEA compliance investigator and her partner were about to enter the Respondent's building on official business when they were approached by an individual who asked whether they had any methadone to sell.

An in-depth regulatory compliance inspection of the Respondent's recordkeeping and physical security was conducted in 1977; both were found to be inadequate. As a result of that inspection, an informal hearing was held and subsequent to that, Mr. Petress executed an agreement in which he undertook to abide by the requirements of the Controlled Substances Act and the regulations thereunder. Mr. Petress agreed, in essence, to make, keep and maintain records which would provide for the strict accountability of the methadone dispensed by the clinic.

Subsequent to the issuance of the Order to Show Cause in the instant proceeding, another accountability audit was performed. Completion of the audit was complicated because relevant records were either missing or not located on the Respondent's premises and because the Respondent had not timely filed reports of its various losses of methadone. The audit of the Respondent's methadone compounding function, using only primary records actually on hand at the facility, revealed an accountability shortage of 412,060 milligrams, the equivalent of 41.2 liters of methadone. Using various secondary records, thus giving the Respondent the benefit of records which the investigators were not required to examine, and applying more lenient standards than are required by the regulations, the shortage was reduced to 218,300 milligrams or 21.8 liters of methadone. Serious overages and shortages were found in the other functions involving the dispensing of methadone and LAAM. The Respondent's records, which were supposed to be meticulously kept, were very poorly maintained despite Mr. Petress' earlier promise to maintain complete and accurate records as required by the law and the regulations.

In 1978, the United States House of Representatives, Select Committee on Narcotics Abuse and Control published a report titled *Methadone Diversion*. In this document, the Committee reported that it had found a high and most disturbing rate of methadone diversion from clinics into the black market. A number of identifiable deficiencies in methadone treatment programs made it relatively easy for methadone to be diverted. Several factors were so identified, including loose or careless evaluation; admission and treatment of patients; overly generous or heavy dosage dispensing of the drug; inadequate recordkeeping and physical security; unqualified staff or inadequate facilities; and operations beyond the capacity of the staff and facilities. A study of methadone deaths and diversion, done by the U.S. General Accounting Office (GAO), found that in poorly operated treatment programs, lack of control due to negligence or ignorance could result in methadone finding its way into the illicit traffic. Failure to adequately safeguard and account for methadone supplies facilitated employee theft and patient diversion of the drug.

The Respondent's narcotic addict treatment program has suffered an inordinate number of thefts and losses of methadone. It has not adequately accounted for its supplies of the drug. Its recordkeeping has been inadequate and slipshod. In some cases, according to its records, it dispensed overly generous dosages of methadone. In short, the Respondent's program has suffered from the very deficiencies which the Select Committee and the GAO found result in the diversion of methadone into illicit channels.

The Narcotic Addict Treatment Act of 1974 (P.L. 93–281) authorized DEA to register methadone treatment programs under the general umbrella of the Controlled Substances Act; to establish strict security and recordkeeping standards for such programs; and to revoke or suspend the registrations of such programs when it is found that they have failed to comply with these standards. Congress enacted the Narcotic Addict Treatment Act after it had found that the rapid and widespread use of methadone in these programs had brought with it a proportional increase in the diversion of methadone for illegal use and sale. The

DEA regulation and supervision of these programs is intended to prevent the loss and diversion of methadone.

DEA inspections of the Respondent's program have revealed serious deficiencies in security, recordkeeping and accountability. Methadone which could have been worth $110,000 on the illicit market was not accounted for. Judge Young found that the evidence received in this proceeding was, as a whole, indicative of a casual indifference to the subject of methadone security and to the important of keeping records so as to account for all supplies of the drug. He also found that the record did not provide a basis for reasonable assurance that the failures of the past will not be continued. He recommended that the Respondent's registrations should be revoked, effective immediately. The Administrator agrees.

After a thorough review of the record of this proceeding, the Administrator finds that the Respondent, Metro Substance Abatement Program, Inc., has failed to comply with the standards established pursuant to the Controlled Substances Act and the Narcotic Addict Treatment Act. The Respondent's casual indifference to its obligation to provide adequate security, to keep complete and accurate records, and to properly account for its supplies of narcotic drugs has resulted in the loss of methadone and, presumably, its diversion into illicit channels. There is, therefore, a lawful or statutory basis for the revocation of the Respondent's DEA registrations. Furthermore, on the basis of the record in this proceeding, the Administrator concludes, as did the Administrative Law Judge, that there is no reason to believe that the Respondent will act more responsibly in the future than it did in the past. The integrity of the controlled substances distribution system, particularly where highly abusable, dangerous, and much sought-after drugs such as methadone are concerned, is too important a consideration to be left to speculation. To hope that the Respondent will operate responsibly in the future, in light of its well-documented past performance, would be speculative at best. The Narcotic Addict Treatment Act provides for, and mandates a remedy for cases such as this one. The Respondent's registrations must be revoked. Having concluded that revocation is an appropriate remedy in this matter, and having determined that the Respondent cannot be entrusted to handle methadone and LAAM without an unacceptable risk of further loss, the revocation must be effective immediately.

Accordingly, pursuant to the authority vested in the Attorney General by Title 21, United States Code, Section 824(a), and redelegated to the Administrator of the Drug Enforcement Administration, the Administrator hereby orders that Certificates of Registration PM0120294 and PM0154334, previously issued to Metro Substance Abatement Program, Inc., be, and they hereby are, revoked, effective immediately.

Dated: November 24, 1980.

**Peter B. Bensinger,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 80-37070 Filed 11-25-80; 8:45 am]

BILLING CODE 4410-09-M

## Federal Bureau of Investigation

### Advisory Policy Board National Crime Information Center, Meeting

The Advisory Policy Board of the National Crime Information Center (NCIC) will meet on December 10 and December 11, 1980, from 9:00 a.m. until 5:00 p.m. in the Executive Hotel, San Diego, California.

The major topics to be discussed include:

(1) NCIC access by government regional dispatch centers.

(2) The proposed implementation of the Pilot Project of the Interstate Identification Index designed to decentralize storage of criminal history records.

(3) The presentation of proposals recommended by local and state users of the NCIC System to improve the effectiveness of the System and the quality of records within the System.

The meeting will be open to the public with approximately 30 seats available for seating on a first-come first-served basis. Any member of the public may file a written statement with the Advisory Policy Board before or after the meeting. Anyone wishing to address a session of the meeting should notify the Advisory Committee Management Officer, Mr. W. A. Bayse, FBI, at least twenty-four hours prior to the start of the session. The notification may be by mail, telegram, cable or hand-delivered note. It should contain the name, corporate designation, consumer affiliation or Government designation, along with a capsulized version of the statement and an outline of the material to be offered. A person will be allowed not more than 15 minutes to present a topic, except with the special approval of the Chairman of the Board.

Inquiries may be addressed to Mr. David F. Nemecek, Committee Management Liaison Officer, NCIC, Federal Bureau of Investigation, Washington, D.C. 20535, telephone number 202-324-2606.

Dated: November 21, 1980.

**William H. Webster,**

*Director.*

[FR Doc. 80-36907 Filed 11-25-80; 8:45 am]

BILLING CODE 4410-02-M

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Humanities Panel, Meetings

*Correction*

In FR Doc. 80-35633, appearing on page 75369, in the issue of Friday, November 14, 1980, make the following corrections:

1. In the second column, the date in 30th line now reading "Date: December 18, 1980" should read "Date: December 16, 1980".

2. In the third column, the phone number in the second line now reading "(202) 274-0367" should read "(202) 724-0367."

BILLING CODE 1505-01

### Humanities Panel, Meetings

*Correction*

In FR Doc. 80-35878, appearing on page 76276, in the issue of Tuesday, November 18, 1980, make the following correction:

In the second cloumn, the 19th line should have read "Date: December 15, 1980".

BILLING CODE 1505-01-M

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Media Arts Panel (In Residence/Workshop); 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 Media Arts Panel (In Residence/Workshop) to the National Council on the Arts will be held on December 15-16, 1980, from 9:00 a.m.-5:30 p.m., in the 12th floor screening room, Columbia Plaza Office Complex, 2401 E Street, N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the

Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

Dated: November 19, 1980.

**John H. Clark,**

*Director, Office of Council and Panel Operotion, Nationol Endowment for the Arts.*

[FR Doc. 80-36786 Filed 11-25-80; 8:45 am]

BILLING CODE 7537-01-M

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## Visual Arts Panel (Drawing/Printmaking/Artists Books); Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Panel (Drawing/Printmaking/Artists Books) to the National Council on the Arts will be held on December 15-16, 1980, from 9:00 a.m.-5:30 p.m., in room 1426, Columbia Plaza Office Complex, 2401 E Street, N.W., 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) 634-6070.

Dated: November 19, 1980.

**John H. Clark,**

*Director, Office of Council ond Panel Operotion, Notionol Endowment for the Arts.*

[FR Doc. 80-36787 Filed 11-25-80; 8:45 am]

BILLING CODE 7537-01-M

# NUCLEAR REGULATORY COMMISSION

## Advisory Committee on Reactor Safeguards, Subcommittee on Reactor Radiological Effects; Meeting

The ACRS Subcommittee on the Reactor Radiological Effects will hold a meeting at 8:30 a.m. on December 12, 1980 in Room 1046, 1717 H Street, NW, Washington, DC to discuss the state-of-the-art in the area of radiation standards and dose limits of radiation workers.

In accordance with the procedures outlined in the Federal Register on October 7, 1980, (45 FR 66535), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

*Friday, December 12, 1980; 8:30 a.m. Until the Conclusion of Business.*

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to Mr. Garry G. Young (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EST. The cognizant Designated Federal Employee for this meeting is Mr. John C. McKinley.

Dated: November 20, 1980.

**John C. Hoyle,**

*Advisory Committee Monogement Officer.*

[FR Doc. 80-36854 Filed 11-25-80; 8:45 am]

BILLING CODE 7590-01-M

## Regulatory Guide; Issuance and Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 3.11.1, "Operational Inspection and Surveillance of Embankment Retention Systems for Uranium Mill Tailings," provides detailed guidance acceptable to the NRC staff for developing an appropriate inservice inspection and surveillance program for earth and rock fill embankments used to retain uranium mill tailings. It supplements the general guidance in this area provided in Regulatory Guide 3.11, "Design, Construction, and Inspection of Embankment Retention Systems for Uranium Mills."

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Copies of active guides may be purchased at the current Government Printing Office price. A subscription service for future guides in specific divisions is available through the Government Printing Office. Information on the subscription service and current prices may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Publications Sales Manager.

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

Dated at Rockville, Maryland this 18th day of November 1980.

For the Nuclear Regulatory Commission.

**Robert B. Minogue,**

*Director, Office of Stondords Development.*

[FR Doc. 80-36853 Filed 11-25-80; 8:45 am]

BILLING CODE 7590-01-M

## UNITED STATES RAILWAY ASSOCIATION

[Docket 211-27]

### Consolidated Rail Corp.; Application for a Loan

Subsection (h) of Section 211 of the Regional Rail Reorganization Act of 1973, as amended (45 U.S.C. 721) (the Act), authorizes the United States Railway Association (Association) to enter into loan agreements with the Consolidated Rail Corporation (Conrail), the National Railroad Passenger Corporation, and any profitable railroad to which rail properties are transferred or conveyed pursuant to Section 303(b)(1) of the Act under conditions and for purposes set forth in this Subsection. Subsection (b) of Section 211 requires that the Association publish notice of the receipt of any application thereunder in the **Federal Register** and afford interested parties an oportunity to comment thereon.

Conrail submitted a Borrowing Application dated November 18, 1980 requesting new borrowings of $934,000.00. Conrail states that it will use the funds to pay nonemployee injury claims of the Penn Central Transportation Company. The Borrowing Application includes the certification and exhibits required by the Loan Procedures.

Interested parties are invited to submit written comments relevant to this application. Any such submissions must identify by its Docket No., the application to which it relates, and must be filed with the Office of General Counsel, United States Railway Association, 955 L'Enfant Plaza North, S.W., Washington, D.C. 20595, on or before December 10, 1980, to enable timely consideration by USRA. The docket containing the original application shall be available for public inspection at that address Monday through Friday (holidays excepted) between 8:30 a.m. and 5:00 p.m.

Dated at Washington, D.C. this 21st day of November 1980.

**David Kleyps,**

*Assistant Secretary, United States Railway Association.*

[FR Doc. 80-36826 Filed 11-25-80; 8:45 am]

BILLING CODE 8240-01-M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-20]

### American Home Assurance Co.; Hearing on Proposed Action

Pursuant to Section 304(b)(1) of the Trade Act of 1974, as amended, the United States Trade Representative by this notice requests interested parties to present their views on proposed recommendations to the President for action in relation to the petition (see 44 FR 75246) filed under section 301 of the Trade Act of 1974 (19 U.S.C. 2411) on November 5, 1979 on behalf of American Home Assurance Co.

Under section 301(a) of the Trade Act of 1974, the President is required to take all appropriate and feasible action within his power to obtain the elimination of any act, policy or practice of a foreign government which is determined to be unjustifiable, unreasonable or discriminatory and which burdens or restricts U.S. commerce. The U.S. Trade Representative, after considering the advice of the 301 Committee recommends appropriate action to the President. Under section 304 of the Trade Act of 1974, the recommendation of the USTR must be made with respect to this matter on or before December 19, 1980.

The 301 Committee is therefore considering whether the Korean practices 1) of prohibiting American Home Assurance Co. from writing marine insurance in Korea; 2) of prohibiting American Home from joining the Korean Fire Pool or writing most forms of joint venture fire insurance; and 3) of discriminating against American Home with respect to the granting of retrocessions from the Korean Reinsurance Corporation are actionable under section 301 and what, if any, action the USTR should recommend that the President take in response. The following actions have been proposed by the petitioner for consideration as an appropriate action to obtain elimination of these practices:

Denial of the right to enter U.S. ports to Korean vessels owned by shipping companies related to Korean insurance companies by denying Certificaties of Financial Responsibility required under the Federal Pollution Control Act.

Imposition of substantial fees on Korean vessels owned and operated by entities related to Korean insurance companies.

Disqualification of Korean construction companies related to Korean insurance companies from bidding on U.S. government contracts other than contracts related to the support of U.S. forces in Korea.

Imposition of additional duties on imports of products manufactured by affiliates of companies related to Korean insurance companies.

Written briefs submitted by interested parties which present comments on these recommendations, suggestions for other recommendations, and all other aspects of the case will be considered if received on or before December 9, 1980. Regulations concerning the submission of briefs can be found in 15 CFR 2006.8 (45 FR 34872). Briefs should be sent, in twenty (20) copies, to Chairman, Section 301 Committee, Room 715, 1800 G Street, NW, Washington, D.C. 20506.

**Jeanne S. Archibald,**

*Chairman, Section 301 Committee.*

[FR Doc. 80-36947 Filed 11-24-80; 10:49 am]

BILLING CODE 3190-01-M

# Sunshine Act Meetings

Federal Register

Vol. 45, No. 230

Wednesday, November 26, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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### 1

**COMMODITY FUTURES TRADING COMMISSION.**

**TIME AND DATE:** 11 a.m., Friday, December 5, 1980.

**PLACE:** 2035 K Street NW., Washington, D.C., eighth floor conference room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Briefing.

**CONTACT PERSON FOR MORE INFORMATION:** Jane Stuckey, 254-6314.

[S-2157-80 Filed 11-24-80; 12:48 pm]

**BILLING CODE 6351-01-M**

### 2

**COUNCIL ON ENVIRONMENTAL QUALITY.**

November 24, 1980.

**TIME AND DATE:** 11:30 a.m., December 4, 1980.

**PLACE:** Conference room, 722 Jackson Place NW., Washington, D.C. 20006.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Old Business.
2. Status of the Chemical Substance Information Network.
3. Current Staff Research on Ecology of Blue Crabs.

**CONTACT PERSON FOR MORE INFORMATION:** John F. Shea III, (202) 395-4616.

[S-2154-80 Filed 11-24-80; 10:25 pm]

**BILLING CODE 3125-01-M**

### 3

**NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE.**

**TIME:**

8:00 p.m.–10:00 p.m.
8:30 a.m.–10:00 p.m.
8:30 a.m.–3:00 p.m.

**DATE:** December 11–13, 1980.

**PLACE:** Mayflower Hotel, Washington, D.C.

**STATUS:** Open.

**MATTERS TO BE DISCUSSED:** Public/Private Sector Task Force Progress Report (Dec. 11, 8:00 p.m.–10:00 p.m.)

Introductions.
Approval of Minutes.
Review of Agenda.
Discussion of Public/Private Sector Report & Implications.
Executive Session (closed) December 12, 11:30 a.m.–12:30 p.m.
Discussion of:
 President's Message concerning WHCLIS Report.
 Supplemental Request to OMB.
 Possible Congressional and Administrative Action(s).
 Institute for Information Policy and Research.
Standing Committee Reports.
Project Reports.
Executive Director and Staff Reports.
1981 and 1982 Meeting Dates.
Old/New Business.
Summary and Conclusions.

**CONTACT PERSON FOR MORE INFORMATION:** Mary Alice Hedge Reszetar, Associate Director, NCLIS, Area Code 202 653-6252.

Mary Alice Hedge Reszetar,
*Associate Director, NCLIS.*
November 20, 1980.

[S-2158-80 Filed 11-24-80; 3:35 pm]

**BILLING CODE 7527-01-M**

### 4

**POSTAL SERVICE.**

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to meet at 11 a.m. on Monday, December 1 and at 9 a.m. on Tuesday, December 2, 1980, at Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. Except as indicated in the following paragraph, the meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

On November 6, 1980, the Board of Governors voted to close to public observation a portion of its next meeting. Each of the members of the Board voted in favor of closing this meeting, which is expected to be attended by the following members: Governors Wright, Hardesty, Babcock, Camp, Ching, Hughes, Jenkins and Sullivan; Postmaster General Bolger; Deputy Postmaster General Benson; Senior Assistant Postmaster General Ulsaker; Counsel to the Governors Joseph A. Califano; and Secretary to the Board Cox. This closed portion will consist of a discussion of the Postal Service's possible strategies and positions in anticipated collective bargaining negotiations involving parties to the 1978 National Agreement between the Postal Service and labor organizations representing certain postal employees, which is scheduled to expire in July of 1981.

**Agenda**

*Monday Morning Session*

Discussion of strategies and positions in anticipated collective barganing negotiations.
 (The Board will discuss the forthcoming collective bargaining negotiations. As stated above in the Notice of Meeting, this part of the meeting will be closed to the public.)

*Tuesday Session*

1. Minutes of the Previous Meeting.
2. Remarks of the Postmaster General.
 (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)
3. Adjustments in compensation of certain postal executives.
 (The Board will consider recommendations by the Postmaster General for compensation adjustments for certain individuals which require approval by the Board under the Board's Bylaws.)
4. Report of the Audit Committee on fiscal year 1980 Financial Statement.
 (Mr. Sullivan, as Chairman of the Audit Committee of the Board, will report to the members on the meeting of the Audit Committee (which is to be held on December 1, 1980) with representatives of the Postal Service's outside auditors concerning the Service's Balance Sheet and Financial Statements for FY 1980.

5. Review of Postal Service Budget Program.
(Mr. Finch, Senior Assistant Postmaster General for Finance, will present the Postal Service's budget for FY 1982 as it is proposed for transmission to the OMB and the Congress.)
6. Review of the Annual Comprehensive Statement to the Congress.
(Public Law 94-421 amended 39 U.S.C. § 2401 to require the Postal Service to present a "Comprehensive Statement" to the Legislative and Appropriations Committees of the Congress having cognizance over postal matters. The Comprehensive Statement is to describe the plans, policies, and procedures of the Postal Service designed to comply with the policies of the Postal Reorganization Act; postal operations generally; and financial summaries and the projections. The Comprehensive Statement is on the Board's agenda because approval of the annual Comprehensive Statement is included in the list of matters that the Board has reserved for its own decision.)
7. Capital Investment Projects:
a. Automated System for the expanded Zip Code Program
(The Board will consider a proposed capital investment for the procurement of optical character reader channel sorters and related mechanization for the expanded Zip Code letter mail processing system.)
b. General Mail Facility and Vehicle Maintenance Facility for Green Bay, Wisconsin.
(Mr. Biglin, Senior Assistant Postmaster General for Administration, will present a proposed project for the construction of a new General Mail Facility and Vehicle Maintenance Facility in Green Bay, Wisconsin.)
c. General Mail Facility and Vehicle Maintenance Facility for Sioux City, Iowa.
(Mr. Biglin will present a proposed project for the construction of a new General Mail Facility and Vehicle Maintenance Facility in Sioux City, Iowa.)

Louis A. Cox,
*Secretary.*

[S-2156-80 Filed 11-24-80; 12:14 am]
BILLING CODE 7710-12-M

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5

**POSTAL SERVICE.**

The Committee on Audit of the Board of Governors of the United States Postal Service, pursuant to the Bylaws of the Board (39 CFR 5.2, 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 4 p.m. on Monday, December 1, 1980, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza SW., Washington, D.C. 20260. The meeting is open to the public. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

The Committee will review with representatives of the Postal Service's outside auditors the Postal Service's Balance Sheet and Financial Statements for fiscal year 1980.

Louis A. Cox,
*Secretary.*

[S-2155-80 Filed 11-24-80; 12:14 pm]
BILLING CODE 7710-12-M