10-30-80
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Thursday
October 30, 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

72044 **Loan Program—Biomass Energy and Alcohol Fuels** USDA/FmHA publishes regulations containing guidelines for implementing the program which the Biomass Energy and Alcohol Fuels Act requires to be established to enable applications for financial assistance; effective 10-30-80 (Part XII of this issue)

72024 **Hazardous Waste** EPA modifies regulations regarding hazardous waste management system; for various effective dates and comment periods see documents (Part XI of this issue) (6 documents)

71792 **Supplemental Security Income** HHS/SSA reorganized and simplified regulations on family relationships under the Supplemental Security Income program; effective 10-30-80

71807 **Nuclear Materials** NRC proposes to clarify regulations regarding jurisdiction over persons using byproduct, source and special nuclear material in offshore waters beyond agreement States' territorial waters; comments by 12-29-80

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Highlights

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Area Code 202-523-5240

71816 **Surface Mining** Interior/SMO proposes to establish final actions of the Secretary of the Interior regarding State or Federal programs governing surface mining and reclamation operations; comments by 12-1-80

71787 **Natural Gas** DOE/FERC exempts mechanical cogeneration facilities from the incremental pricing of natural gas under Title II of the Natural Gas Policy Act; effective 30 days after transmittal to Congress

71938 **Transportation** DOT/Sec'y gives notice of final policy and proposed guidelines on citizen participation in local transportation planning; effective 10-30-80; comments by 12-29-80 (Part IV of this issue)

71766 **Loan Programs—Housing** USDA/FmHA revises regulation on loan servicing to provide a computer input form for FmHA loan servicing offices to update Finance Office accounting records; effective 10-30-80

71791 **Old-age, Survivors and Disability Insurance** HHS/SSA publishes interim regulation regarding payment for medical evidence of record; effective 12-1-80, comments by 12-29-80

71800 **Flood Control Projects** DOD/Army revises regulations providing policy guidance and procedures to alleviate existing and future flood damage problems; effective 10-31-80

71781 **Natural Gas** DOE/FERC publishes regulations regarding State-wide exemptions from incremental pricing; effective 10-21-80

71764 **Petroleum** DOE/ERA conforms amendments regarding crude oil acquired for the strategic petroleum reserve; effective 9-24-80

71885 **Sunshine Act Meetings**

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71922 **Part III, DOT (9 documents)**
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Part 705

Final Anti-Inflationary Price Standards; Amendment of Modified 2-Year Price Change for Gold and Silver Passthrough

AGENCY: Council on Wage and Price Stability.

ACTION: Amendment of the final price standards for the second program year.

SUMMARY: The Council is amending the Modified Two-Year Price Change for Gold and Silver Passthrough (6 CFR 705.79) for the second program year to provide the average prices for gold and silver for the eighth program quarter and the dollar values for gold and silver [$P_g(8)$ and $P_s(8)$] that may be passed through in the eighth program quarter.

EFFECTIVE DATE: October 24, 1980.

FOR FURTHER INFORMATION CONTACT: Eugene P. Roberts, Office of Price Monitoring—(202) 456-7784 or Richard Rossier, Office of General Counsel—(202) 456-6286.

(Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904, Note); E.O. 12092 (November 1, 1976); E.O. 12161 (September 28, 1979))

Issued in Washington, D.C., October 24, 1980.

R. Robert Russell,
Director, Council on Wage and Price Stability.

The Council is amending the last paragraph of § 705.79, Modified Two-Year Price Change for Gold and Silver Passthrough, for the second program year to read as follows:

§ 705.79 Modified two-year price change for gold and silver passthrough.

* * * * *

Gold (silver) prices are calculated by taking the simple arithmetic averages of the closing prices on the COMEX in the base quarter. Thus, the base-quarter gold price is $203.030 per troy ounce ($5.472 per troy ounce for silver) and the prices for the 5th, 6th, 7th, and 8th program quarters are $413.117, $630.094, $544.179, and $648.517 ($18.561, $32.512, $14.318, and $17.438).

Thus,

$P_g(5) = \$413.117 - [\$203.030 \times (1.0 + .0654)] = \$192.78,$
$P_g(6) = \$630.094 - [\$203.030 \times (1.0 + .1025)] = \$406.253,$
$P_g(7) = \$544.179 - [\$203.030 \times (1.0 + .1206)] = \$316.664,$
$P_g(8) = \$648.517 - [\$203.030 \times (1.0 + .1390)] = \$417.266,$
$P_s(5) = \$18.51 - [\$5.472 \times (1.0 + .0777)] = \$12.664,$
$P_s(6) = \$32.512 - [\$5.472 \times (1.0 + .0939)] = \$26.526,$
$P_s(7) = \$14.318 - [\$5.472 \times (1.0 + .1104)] = \$8.242,$
$P_s(8) = \$17.438 - [\$5.472 \times (1.0 + .1271)] = \$11.271$

[FR Doc. 80-33711 Filed 10-29-80; 8:45 am]
BILLING CODE 3175-01-M

6 CFR Part 705

Anti-Inflationary Pay Standard: Correction in Numbering of Questions and Answers

AGENCY: Council on Wage and Price Stability.

ACTION: Correction in numbering of pay standard questions and answers.

SUMMARY: The Questions and Answers on the Pay Standard issued on March 28, 1980, June 3, 1980, June 25, 1980, October 6, 1980, and October 20, 1980, are being renumbered to correct an error in numbering.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Hugh Breslin (202/456-6210).

SUPPLEMENTARY INFORMATION: On March 28, 1980, June 3, 1980, June 25, 1980, October 6, 1980, and October 20, 1980, the Council published Questions and Answers on the Pay Standard (45 FR 20453, 45 FR 37397, 45 FR 42589, 45 FR 65995, and 45 FR 69209). These Pay Standard Questions and Answers were generally identified by roman numeral II., the same roman numeral earlier used to identify the Questions and Answers on "Modified Price Standards for Selected Industries," published by the Council on November 21, 1979 (44 FR 67065). To correct this misnumbering, the Questions and Answers on the Pay Standard issued on March 28, 1980, June 3, 1980, June 25, 1980, October 6, 1980, and October 20, 1980, are now identified by roman numeral IV.

(Council on Wage and Price Stability Act, as amended (12 U.S.C. 1904, note); E.O. 12092 (November 1, 1978); E.O. 12161 (September 28, 1979))

Issued in Washington, D.C. October 24, 1980.

R. Robert Russell,
Director,

Accordingly, the Second-Year Pay Standard Questions and Answers published by the Council at 45 FR 20453, 45 FR 37397, 45 FR 42589, 45 FR 65995, and 45 FR 69209 are now identified by roman numeral IV.

[FR Doc. 80-33710 Filed 10-29-80; 8:45 am]
BILLING CODE 3175-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

Spearmint Oil Produced in the Far West; Establishment of Subpart—Administrative Rules and Regulations: Changing Date for Transfer of Excess Oil

ACTION: Agricultural Marketing Service, USDA.

ACTION: Emergency final rule.

SUMMARY: This rule extends the time spearmint oil producers have for transferring excess oil to other producers in order to fill deficiencies in those producers' annual allotments. Section 985.56(a) of the marketing order permits changing the date from October 15, to such other date as the Committee, with approval of the Secretary, may establish. The Committee has recommended that the date be changed to November 1 because, in some years, harvesting continues later into the season and October 15 is too early to effectively administer the provisions of that paragraph.

EFFECTIVE DATES: November 1, 1980.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS,

USDA, Washington, D.C. 20250 (202) 447-5053.

SUPPLEMENTARY INFORMATION: This emergency final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "non-significant." Mr. Miller determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this emergency final action because the October 15th deadline has already passed and changing the date to November 1, does not permit enough time for response. Moreover, this adjustment of the time period for exchanging excess oil does not impose any hardship on either producers or handlers.

Further, 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 emergency final action are impracticable and contrary to the public interest; and good cause if found for making this emergency final action effective less than 30 days after publication of this document in the Federal Register.

Changing the date for allowing producers to transfer excess oil from October 15 to November 1 is pursuant to Marketing Order No. 985, regulating the handling of spearmint oil produced in the Far West. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

Currently § 985.56(a) required that producers transfer excess spearmint oil to fill other producers' deficiencies in their annual allotments before October 15. Section 985.56(a) also provides that the Committee, with the approval of the Secretary, may establish such other date as it deems necessary to administer this program. The Committee found that the October 15 date is too early, because harvesting and distilling oil can occur after October 15. Thus, the Committee unanimously recommended that that date be changed to November 1.

After consideration of all relevant matter presented including the information and recommendation submitted by the Committee, and other information, it is further found that changing the date for allowing producers to transfer excess oil to fill other producers' deficiencies, as hereinafter set forth, would tend to effectuate the declared policy of the act.

Therefore, a new subpart is added to Part 985 to read as follows:

Administrative Rules and Regulations

§ 985.156 Transfer of excess oil by producers.

Before November 1 a producer, following notification of the Committee, may transfer excess oil to another producer to enable that producer to fill a deficiency in that producer's annual allotment.

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

Dated: October 24, 1980, to become effective November 1, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 80-33603 Filed 10-29-80; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 991

Hops of Domestic Production; Revision of Salable Quantity and Allotment Percentage for the 1980-81 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Emergency final rule.

SUMMARY: This emergency final rule increases the quantity of hops that may be freely marketed from the 1980 crop. This action is taken under the marketing order for domestic hops to promote orderly marketing conditions.

EFFECTIVE DATE: Fully effective for the 1980-81 marketing year, which began August 1, 1980.

FOR FURTHER INFORMATION CONTACT: J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C., (202) 447-5053. Actions of this kind were anticipated under the provisions of 7 CFR 991.36 and are specifically considered in the Final Impact Statement prepared for that action. Thus, the Final Impact Statement describing the options considered in developing this emergency final rule and the impact of implementing each option is available on request from Mr. Miller.

SUPPLEMENTARY INFORMATION: This emergency final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has not been classified "significant". Mr. Miller determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this emergency final action. This action would increase the salable quantity and allotment percentage for the 1980-81 marketing year, which began August 1, 1980. It relieves restrictions on handlers. Since handlers currently are receiving hops from producers in volume, this action must be taken promptly so that they know what regulation will be in effect for the current marketing year.

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 impractical 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.

Notice was published in the March 11, 1980, issue of the Federal Register (45 FR 15555) of a proposal to establish for the 1980-81 marketing year, beginning August 1, 1980, a salable quantity of 69,200,000 pounds, and an allotment percentage of 115 percent. This action was based on the recommendation of the Hop Administrative Committee in accordance with provisions of Marketing Order No. 991, as amended (7 CFR 991), regulating the handling of hops of domestic production. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The final rule on this matter was issued April 4, 1980, and published in the April 10, 1980, issue of the Federal Register (45 FR 24441).

The revised salable quantity for the current marketing year is based upon a recommendation of the Committee made at its meeting October 14, 1980, and the following estimates for the marketing year beginning August 1, 1980.

(1) Total domestic consumption of 45,000,000 pounds of hops;

(2) Minus imports of 15,000,000 pounds of hops to result in domestic consumption of U.S. hops of 30,000,000 pounds;

(3) Plus total exports of 40,000,000 pounds of hops to equal 70,000,000 pounds total usage of U.S. hops;

(4) Plus 1,500,000 pounds to adjust for weight loss of hops processed into pellets and extract;

(5) Plus 4,100,000 pounds as an inventory adjustment; and

(6) Plus an adjustment of 500,000 pounds to provide for adequate supplies should some producer allotments not be fully produced.

Therefore, the salable quantity for the 1980-81 marketing year will be 76,100,000 pounds.

The salable percentage of 127 percent is computed by subtracting from this salable quantity 1,000,000 pounds for

additional allotment bases for hops of the Fuggle variety pursuant to § 991.38(b) and § 991.138(c) and dividing the remainder by 59,270,000 pounds, the total of all allotment bases less the 1,000,000 pounds additional allotment bases for Fuggle variety hops.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee; and other available information, it is found that to establish a salable quantity and allotment percentage as hereinafter set forth will tend to effectuate the declared policy of the act.

Therefore, the salable quantity and allotment percentage to be applicable to the 1980–81 marketing year (August 1, 1980–July 31, 1981) are established as follows:

§ 991.218 Allotment percentage and salable quantity for hops during the marketing year beginning August 1, 1980.

The allotment percentage during the marketing year beginning August 1, 1980, shall be 127 percent, and the salable quantity shall be 76,100,000 pounds.

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

Dated: October 24, 1980.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division.

[FR Doc.–80–33804 Filed 10–29–80; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1872

Real Estate Security; Servicing and Liquidation of Real Estate Security for Loans to Individuals and Certain Note-Only Cases

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is revising its regulation on loan servicing to provide a computer input form for FmHA loan servicing offices to use to update the FmHA Finance Office accounting records. The use of this form will result in a faster and more accurate update of accounts. The use of the form will have no impact on the public or FmHA borrowers.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. L. A. Isenberg, Systems Accountant, Financial Support Division, Room 4118, South Agriculture Building, 14th and Independence Avenue, Washington, DC 20250, (202) 447–4871.

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 determined to be exempt from those requirements. L. A. Isenberg, Systems Accountant, made this determination because this item involves agency management and does not place any requirements on the public or FmHA borrowers. This instruction does not directly affect any programs or projects which are subject to A–95 clearinghouse review. FmHA is revising Subpart A of Part 1872, Chapter XVIII, Title 7, Code of Federal Regulations. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action however, is not published for proposed rulemaking since the purpose of the change is administrative in nature and publication for comment is unnecessary. Therefore, Part 1872, Subpart A, is amended as follows:

§ 1872.18 [Amended]

1. In § 1872.18(g)(2)(iii) add the following entry to the listing of forms following the reference to Form FmHA 451–25, "Status of Account."

1960–6 Assumption Agreement (Information) 2(9)—1–C—

2. In § 1872.18(g)(2)(iii), in the listing of footnotes, add a new footnote (9) following Footnote (8) to read:

(9) Original to Finance Office.

Note.—This document has been reviewed in accordance with FmHA Instruction 1901–G, "Environmental Impact Statements." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Authority: 7 U.S.C. 1989; 42 U.S.C. 1180; 42 U.S.C. 2942; 5 U.S.C. 301; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary of Rural Development, 7 CFR 2.70; delegation of authority by the Director, Office of Equal Opportunity, 29 FR 14764, 33 FR 9850.

(FCDA No. 10.407—Farm Ownership Loans; FCDA No. 10.410—Low to Moderate Income Housing Loans)

Dated: October 9, 1980.

James E. Thornton,

Associate Administrator, Farmers Home Administration.

[FR Doc. 80–33842 Filed 10–29–80; 8:45 am]

BILLING CODE 3410–07–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Standards for Protection Against Radiation; Burial of Small Quantities of Radionuclides

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to require NRC licensees to obtain specific approval to bury small quantities of radionuclides. Current NRC regulations provide that licensees may bury certain small quantities of radionuclides without prior approval. The amendments will provide greater assurance that buried radioactive material will not present a health hazard.

EFFECTIVE DATE: January 28, 1981.

Note.—The Nuclear Regulatory Commission has submitted this rule to the Comptroller General for such review as may be appropriate under the Federal Reports Act, as amended, 44 U.S.C. 3512. The date on which the reporting requirement of this rule becomes effective, unless advised to the contrary, reflects inclusion of the 45-day period which that statute allows for such review (44 U.S.C. 3512(c)(2)).

FOR FURTHER INFORMATION CONTACT: Mr. John W. N. Hickey, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (phone: 301–443–5966).

SUPPLEMENTARY INFORMATION: On December 4, 1978, the Nuclear Regulatory Commission (NRC or Commission) proposed to delete § 20.304 of 10 CFR Part 20, "Standards for Protection Against Radiation" (43 FR 56677). Section 20.304 allows licensees to bury certain small quantities of radionuclides without prior NRC approval.

As discussed in the notice of proposed rulemaking, several State representatives have suggested that the risk from burials of radioactive waste allowed by § 20.304 may be unacceptable. The quantities of radionuclides allowed to be buried pursuant to § 20.304 are 1,000 times greater than exempt quantities. Such quantities pose a small risk if they are properly buried and left undisturbed, particularly if they are dispersed through a large volume of waste material. However, § 20.304 imposes no concentration limits, and the quantities as concentrated "point sources" are potentially large enough to cause excessive radiation exposures if the radioactive material is mishandled.

improperly buried, or disturbed after burial. For example, § 20.304 allows burial of up to one millicurie of cobalt-60. As a point source this quantity delivers a dose rate of over 100 millirems per hour at a distance of 10 centimeters. If a burial site were disturbed, and a person came into contact with one millicurie of cobalt-60 for an extended period, an overexposure could occur.

The Commission has concluded that it is inappropriate to continue generic authorization of burials pursuant to § 20.304 without regard to such factors as location of burial, concentrations of radioactive material, form of packaging, and notification of NRC. Therefore, the Commission will require that licensees obtain prior approval for new burials of the type currently allowed by § 20.304, and accordingly § 20.304 is being deleted from NRC regulations. Prior review of proposed burials will result in improved records regarding amounts and locations of future burials of radioactive material, and provide greater assurance that buried material will not present a health hazard at a later date. Thus, the risk of exposure of individuals accidentally disturbing buried radioactive waste would be reduced.

The Commission staff estimates that fewer than 100 licensees (out of about 20,000 NRC and Agreement State licensees) are performing burials allowed by § 20.304. NRC licensees will have 90 days to halt burials and apply for specific approval to resume burials pursuant to 10 CFR 20.302, or use alternative disposal methods such as transfer of waste to licensed commercial burial grounds. The NRC staff will provide information to licensees as appropriate related to obtaining approval for burials. Deletion of 10 CFR 20.304 will not affect material already buried, generally licensed and exempt material, or licensees who have already obtained specific approval to perform burials pursuant to 10 CFR 20.302.

Agreement State licensees will not be directly affected by the final rule, because they are subject to individual State regulations rather than NRC regulations. However, Agreement State officials have consistently supported deletion of § 20.304, and the Commission anticipates that those States which have not already done so will make changes in their regulations compatible with deletion of § 20.304.

As discussed in the notice of proposed rulemaking, the Commission has determined that an environmental impact statement need not be prepared because deletion of 10 CFR 20.304 will not significantly affect the quality of the human environment.

Public Comments

In reaching the decision to delete § 20.304, the Commission considered public comments received on the proposed rule change. These comments and the impact of deletion of § 20.304 are discussed in the value-impact assessment, which is available for inspection or copying for a fee at the NRC Public Document Room, 1717 H Street, Washington, D.C. 20555. The major public comments received are discussed below.

Thirty-eight sets of public comments were received on the proposed deletion of § 20.304. Seventeen commenters favored deletion, fourteen opposed deletion, and seven took no clear position. The major comments opposing deletion are: (1) Burials pursuant to § 20.304 do not represent a public health problem, (2) disposal of wastes at commercial burial grounds is not a good alternative because it is too expensive, it carriers its own risks, and the commercial sites are overburdened, and (3) NRC has not adequately outlined requirements for obtaining specific approvals for burials.

1. *Public health risk.* Several comments from institutions performing burials pursuant to § 20.304 provided information on their operations, indicating that their burial sites are safe because they are owned by the licensee, fenced and marked, located in areas of low risk of ground water contamination, or contain short-lived radionuclides in waste with low specific activity. Nevertheless, as discussed previously, the radionuclide quantities involved are potentially large enough to cause significant radiation exposures, if they are concentrated point sources, and the Commission has decided that case-by-case review of proposed burials is appropriate.

2. *Commercial burial grounds.* Many commenters incorrectly interpreted the proposed rule to mean that local burial would be prohibited, and that all waste would have to be shipped to commercial burial grounds. The Commission is not requiring that all radioactive waste affected by deletion of § 20.304 be shipped to commercial burial grounds. Licensee proposals for waste disposal will be reviewed on a case-by-case basis, including consideration of risk and economic costs. This is consistent with § 20.1(c) which provides that licensees should make every reasonable effort to maintain radiation exposures as low as is reasonably achievable, where "as low as is reasonably achievable" includes taking into account economics of improvement in relation to benefits to the public health and safety.

Several licensees performing burials pursuant to § 20.304 commented that it would be too expensive to ship wastes to commercial burial sites, and that in any case the sites are already overburdened. Estimates of the extra costs and volumes of waste involved ranged from $400 to $21,000 and 70 to 2000 cubic feet per year. It should be noted that: (1) The staff estimates that fewer than 100 licensees are performing burials pursuant to § 20.304, (2) until recently about 3,000,000 cubic feet of radioactive waste were being shipped annually to commercial sites, and (3) many institutions similar to those using § 20.304 are using commercial disposal sites. Therefore, while certain licensees may wish to dispose of high-volume, slightly contaminated waste by local burial for justifiable economic reasons, in many cases licensees could ship low-volume waste to commercial sites at reasonable cost without adding significantly to the total volume accepted at the sites.

The Commission recognizes problems associated with closures or reduced capacity of commercial burial grounds. This issue affects all licensees disposing of low-level radioactive waste, not just burials pursuant to § 20.304. The Commission staff will, of course, take into account the status of commercial burial sites in making any licensing decisions regarding disposal of radioactive waste.

3. *Criteria for disposal.* As discussed in the notice of proposed rulemaking, the Commission is reviewing existing policy on disposal of low-level radioactive waste and developing new regulations. These will be published in separate notices of proposed rulemaking. Until new regulations are developed, applications for waste disposal will be reviewed according to § 20.302, which requires licensees to submit information describing the waste material, the levels of radioactivity involved, the proposed conditions of disposal, the environment of the disposal site, and procedures to be observed to minimize the risk of unexpected or hazardous exposures.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 20, are published as a document subject to codification.

§ 20.304 [Removed]

1. Section 20.304, Disposal by burial in soil, is deleted.

2. In § 20.301, paragraph (c) is revised to read as follows:

§ 20.301 General requirement.

* * * * *

(c) As provided in § 20.303, applicable to the disposal of licensed material by release into sanitary sewerage systems, or in § 20.106 (Radioactivity in effluents to unrestricted areas).

3. In § 20.401, paragraphs (b) and (c)(3) are revised to read as follows:

§ 20.401 Records of surveys, radiation monitoring, and disposal.

* * * * *

(b) Each licensee shall maintain records in the same units used in this part, showing the results of surveys required by § 20.301(b), monitoring required by §§ 20.205(b) and 20.205(c), and disposals made under §§ 20.302, 20.303, and deleted § 20.304.[1]

(c) * * *

* * * * *

(3) Records of disposal of licensed material made pursuant to §§ 20.302, 20.303, and deleted § 20.304[1] are to be maintained until the Commission authorizes their disposition.

[1] Section 20.304 provided for burial of small quantities of licensed materials in soil. Notice of its deletion appears in the Federal Register of October 30, 1980 (45 FR ——).

4. The note following Appendix C of 10 CFR Part 20 is amended to read as follows:

Appendix C

* * * * *

Note.—For purposes of § 20.303, where there is involved a combination of isotopes in known amounts, the limit for the combination should be derived as follows: Determine, for each isotope in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific isotope when not in combination. The sum of such ratios for all the isotopes in the combination may not exceed "1" (i.e., "unity").

* * * * *

(Sec. 161, b. and i., Pub. L. 83-703, 68 Stat. 948; sec. 201, Pub. L. 93-438, 88 Stat. 1243 (42 U.S.C. 2201, 5841))

Dated at Washington, DC this 24th day of October 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-33823 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

10 CFR Part 25

Access Authorization for Licensee Personnel

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulation "Access Authorization for Licensee Personnel" to comply with a Commission policy easing security forms requirements for those individuals already possessing a security clearance granted by another Federal agency.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Duane G. Kidd, Chief, Security Policy Branch, Division of Security, Office of Administration, United States Nuclear Regulatory Commission, Washington, D.C. 20555 (301) 427-4415.

SUPPLEMENTARY INFORMATION: 10 CFR Part 25, "Access Authorization for Licensee Personnel," was published in the Federal Register on March 5, 1980 (45 FR 14476) with an effective date of May 19, 1980. The effective date was changed to October 1, 1980 in a Federal Register Notice dated July 3, 1980 (45 FR 45256) to provide the Nuclear Regulatory Commission (NRC) additional time to furnish necessary administration guidance and for licensees to be able to achieve compliance with the regulations. The existing provisions of § 25.17 require that a complete set of NRC personnel security forms be completed as part of an application for a security clearance with NRC. This requirement was based on existing procedures and the necessity for the NRC Division of Security to review these forms and then seek copies of existing reports of investigations or initiate requests for new investigations. Realizing that many individuals already possess a security clearance or access authorization granted by another Federal agency and realizing that these security clearances were based on the same or very similar criteria and procedures, NRC sought to eliminate or substantially reduce the burden on licensees and their employees in obtaining an NRC security clearance. In this regard, the Commission, on July 17, 1980, approved a policy change in NRC's personnel security program that permits the NRC Division of Security to accept the certification of an individual's existing security clearance granted by another Federal agency and also eliminates the requirement to review reports of investigations. Based on this decision, the NRC Division of Security will not require new investigations for those individuals who had or were in processing for another Federal security clearance on October 1, 1980. This action may expedite the security clearance processing of individuals affected by this Part and may reduce the cost to licensees since new investigations will not be initiated. Additionally, the NRC Division of Security has decided to waive the forms requirements of § 25.17 for those individuals who possessed or who were in processing for another Federal security clearance on October 1, 1980. These amendments to 10 CFR Part 25 modify § 25.17 to permit individuals and licensees affected by this Part to submit applications in accordance with these revised procedures. Applications received after October 1, 1980 will be processed in accordance with the provisions of Part 25 and guidance supplied to licensees by the NRC Division of Security.

These revisions will substantially reduce the public burden by cutting the cost and reporting time required of licensees seeking NRC security clearances for their employees. These revisions will also reduce the burden on NRC by cutting the time and cost in processing applications for clearance. Furthermore, these revisions reflect public comments made during extensive discussions at public meetings held in Silver Spring, MD in April and May 1980. Therefore, the Commission for good cause finds that, in accordance with 5 U.S.C. 553(b) and (d), public comment procedures are not required, and these revisions become effective October 30, 1980.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and §§ 552 and 553 of Title 5 of the United States Code, the following amendments to 10 CFR Part 25 are published as a document subject to codification:

1. In § 25.17, paragraph (c)(6) is amended and paragraph (e) is revised to read as follows:

§ 25.17 Approval for processing applicants for access authorization.

* * * * *

(c) * * *

(6) Related forms where specified in accompanying instructions (NRC-254 and NRC-254A).

Forms identified in paragraphs (c) (1) and (2) of this section must be typed. Only a Security Acknowledgment (NRC Form 176) need be completed by any person possessing an active access authorization or in processing for an access authorization prior to the effective date of this rule. The access authorizations must be at an equivalent level to those required by NRC and granted or processed by another Federal agency.

* * * * *

(e) Applications for access authorization processing must be accompanied by a check or money

order, payable to the United States Nuclear Regulatory Commission, representing the current cost for the processing of each "Q" and "L" access authorization request. Access authorization fees will be published in December of each year and will be applicable to each access authorization request received during the following calendar year. Applications from individuals having current Federal access authorizations may be processed expeditiously at less cost, since the Commission may accept the certification of access authorizations and investigative data from other Federal Government agencies which grant personnel access authorizations.

(Sec. 161i, Pub. L. 83-703, 68 Stat. Pub. L. 93-377, 88 Stat. 475; Sec. 201, Pub. L. 93-438, 88 Stat. 1242-2143, Pub. L. 94-79, 89 Stat. 413 (43 U.S.C. 2201, 5841))

Dated at Washington, D.C. this 23rd day of October 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 33636 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Parts 211 and 212

[Docket No. ERA-R-80-37]

Conforming Amendments Regarding Crude Oil Acquired for the Strategic Petroleum Reserve

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is deleting 10 CFR 212.95, which currently sets forth the special pricing rule for crude oil acquired by the Federal Government for the Strategic Petroleum Reserve (SPR). Consequently, transactions involving crude oil sales for the SPR generally will be subject to the same rules as any other transaction. Certain technical provisions currently in § 212.95 concerning certifications and first sales in U.S. commerce will be retained as amendments to other sections of our regulations. In addition, we are clarifying the treatment of exchanges of crude oil for the SPR.

DATE: Effective September 24, 1980.

FOR FURTHER INFORMATION CONTACT: Cynthia Ford (Comment Procedures), Economic Regulatory Administration, Room B-210, 2000 M Street, NW., Washington, D.C. 20461, (202) 653-3971.

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

Scott Buch (Office of Regulatory Development), Economic Regulatory Administration, Room 7219, 2000 M Street NW., Washington, D.C. 20461, (202) 653-3166.

Harry A. Jones (Strategic Petroleum Reserve Office), Room 3G-024 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-4410.

Ben McRae (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6739.

SUPPLEMENTARY INFORMATION:

I. Background
II. Amendments Adopted
III. Procedural Requirements

I. Background

On June 30, 1980, the President signed the Energy Security Act ("ESA", Pub. L. 96-294). Section 801(a) of the ESA requires the President to undertake and continue crude oil acquisition for the SPR, at a level sufficient to assure that storage of crude oil in the SPR will be increased at an average rate of at least 100,000 barrels per day (B/D) for each fiscal year beginning after September 30, 1980. Section 805(a)(1) of the ESA directed the President to amend the Entitlements Program no later than August 29, 1980, so as to achieve the same effect as if lower tier crude oil were directly allocated to the Federal Government for storage in the SPR.

On August 21, 1980, in accordance with the ESA requirements, we issued a final rule that amended those sections of the Entitlements Program regulations dealing with the acquisition of crude oil for the SPR (45 FR 56788, August 25, 1980). Formerly, a supplier of imported crude oil to the SPR received entitlements as if the imported crude oil had been processed in a domestic refinery. The effect of these provisions was to reduce the Government's cost of imported crude oil for the SPR to approximately the national average cost of crude oil for all refiners. Under the new provisions, however, suppliers of crude oil for the SPR will not receive any entitlements for such crude oil. Rather, the Government will receive entitlement benefits for each barrel of crude oil, other than lower tier crude oil, that it acquires for the SPR. These benefits will be sufficient to lower the actual cost of crude oil for the SPR to approximately the lower tier ceiling price.

We have begun to acquire crude oil for the SPR by using the Federal share of Naval Petroleum Reserves (NPR) production at Elk Hills. Since inadequate transportation facilities prevent the direct placement of most of the NPR crude oil in the SPR, NPR crude oil will be exchanged for more accessible crude oil. On August 11, 1980, the Defense Fuel Supply Center (DFSC), the purchasing agent for DOE, issued a solicitation for competitive bids for crude oil to be exchanged for NPR crude oil. Some contracts have already been executed. In addition, we have proposed a mechanism for requiring exchanges of crude oil for NPR crude oil if this solicitation for competitive bids does not result in acceptable offers (45 FR 54662, August 15, 1980).

Under the DFSC solicitation, exchanges of NPR crude oil are to be accomplished by means of matching purchase and sale transactions. That is, each party would purchase the same volume of crude oil from the other party for the same price. One party could pay the other party a premium to reflect the greater value of the crude oil that it receives due to quality, location or other factors. Under the new entitlements rule noted above, the supplier of crude oil to the SPR will be deemed to retain the crude oil given up.

In anticipation of such transactions, we reviewed the special pricing rules for purchases of crude oil for the SPR at 10 CFR 212.95, which were adopted in June 1977 (42 FR 27908, June 1, 1977). We have determined that most of these provisions are unnecessary in light of changes to other regulations that have been made since § 212.95 was adopted.

II. Amendments Adopted

We are deleting 10 CFR 212.95 from the pricing regulations. While we are retaining certain parts of the former § 212.95 as amendments to other sections of our regulations, two of the primary provisions of § 212.95 are being completely eliminated. These provisions involve the "net return to seller" rule and the "separate inventory for SPR sales" rule.

The "net return to seller" rule was designed to ensure that the value of entitlements received by sellers of crude oil for the SPR would be taken into account in determining the price paid by the Government for such crude oil. Since the seller of crude oil for the SPR now does not receive any benefit under the Entitlement Program, the "net return to seller" rule is no longer relevant.

The "separate inventory for SPR sales" rule was designed to facilitate

sales to the SPR by allowing resellers to segregate such sales from their ordinary transactions. This segregation of sales enabled a reseller to comply more easily with the provisions of Subpart F of Part 212, which governed crude oil resellers at the time § 212.95 was adopted. Currently, crude oil resellers are governed by the provisions of Subpart L of Part 212. These provisions make the "separate inventory for SPR sales" rule unnecessary.

Section 212.95 also contains special provisions concerning "first sales into U.S. commerce" and certifications by offerors and sellers of crude oil for the SPR. We are retaining these provisions with certain modifications discussed below and are placing them in the appropriate sections of the regulations.

The "first sales into U.S. commerce" rule in § 212.95 currently treats all sales of imported crude oil to the Government for the SPR as the first sale of such crude oil into U.S. commerce and thus, exempted by § 212.53(b) [1] from the pricing regulations. We adopted this rule because of uncertainty concerning the treatment of foreign crude oil acquired specifically for sale to the SPR. This objective can be achieved by a less expansive rule that only applies to sales of volumes of crude oil that have not already entered into the U.S. customs territory. Accordingly, we are modifying the rule to cover only these sales and are moving it to § 212.53(b).

The certification provision in § 212.95 generally provides that when a firm offers to sell or delivers crude oil to the Government for the SPR, it must certify the regulatory classification and ceiling price, if any, of the volumes of crude oil involved. The certification provisions are being set forth without any substantial change in a new § 212.133 of Subpart I of Part 212.[2]

In order to facilitate negotiations concerning exchanges of crude oil for the SPR, we are revising § 211.67(a)(7)(ii).[3] Specifically, we are clarifying the pricing of crude oil acquired for the SPR by means of a matching purchase and sale transaction. As explained in the recent rule on SPR entitlements, each party to such a matching purchase and sale transaction is deemed to retain the crude oil given up by it for the purposes of the entitlements program. Where the oil acquired for the SPR is domestic price-controlled crude oil, such a transaction can be economically practicable only if both parties are able to charge and receive market level prices for the crude oils involved in the matching purchase and sale. Of course, the selling refiner would still have to purchase entitlements for such price-controlled oil given up. Such a matching purchase and sale then becomes the economic equivalent of a crude oil exchange. Since the Government may engage in matching purchases and sales transactions, as well as exchanges, involving price-controlled oil, we are amending 10 CFR 211.67(a)(7)(ii) to clarify that in such matching purchases and sales the Government may pay, and the seller may receive, market level prices for the crude oil involved.

Another potential difficulty in negotiating exchanges of crude oil for the SPR is the valuation of a refiner's position in the Entitlements Program after such an exchange is completed. Section 211.67(a)(7)(ii) currently provides that crude oil deemed to be retained by a refiner shall be included in that refiner's crude oil receipts under the provisions of § 211.67(g)(2). Since § 211.67(g)(2) includes crude oil deemed to be retained in an exchange at the time that the crude oil acquired in an exchange would constitute a crude oil receipt, a refiner potentially might not incur a crude oil receipt until several months after the crude oil is transferred to the SPR. Calculation of the economic effect of this potential delay in the inclusion of a crude oil receipt involves many variables and, thus, could slow negotiations concerning exchanges for the SPR. Accordingly, in order to expedite negotiations involving exchanges for the SPR, we are amending § 211.67(a)(7)(ii) to provide that the crude oil deemed to be retained by a refiner shall be included as a crude oil receipt in the month that the SPR receives such crude oil.

III. Procedural Requirements

A. Section 404 of the DOE Act

Pursuant to the requirements of Section 404(a) of the Department of Energy Organization Act (DOE Act, 42 U.S.C. 7101 et seq., Pub. L. 95-91, as amended), we have referred this rule to the Federal Energy Regulatory Commission for a determination as to whether it would significantly affect any matter within the Commission's jurisdiction. Following an opportunity to review this rule, the Commission has declined to determine that it may signficantly affect any of its functions.

B. Section 7 of the FEA Act

Under section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. 787 et seq., Pub. L. 93-275, as amended) the requirements of which remain in effect under section 501(a) of the DOE Act, the delegate of the Secretary of Energy shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

A copy of this notice was sent to the EPA Administrator. The EPA Administrator has informed the ERA that he does not foresee today's amendments as having unfavorable impacts on the quality of the environment as related to the duties and responsibilities of the EPA. The EPA Administrator made this comment in light of our assurance that the original assumptions underlying the Environmental Impact Statement for SPR remain valid. However, the EPA Administrator noted that if at any future time DOE contemplates more frequent use of SPR, then further review of the program under the National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.) would be indicated.

C. National Environmental Policy Act

On October 20, 1980, the Assistant Secretary for Environment determined after consultation with the Office of General Counsel that today's amendments will not significantly affect the quality of the human environment within the meaning of NEPA.

D. Section 501 of the DOE Act

Under section 501(c) of the DOE Act we are not bound by the prior notice and hearing requirements of subsections (b)-(d) with respect to a rule upon our determination that no substantial issue of fact or law exists and that the rule is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Where no such substantial issue or impact is foreseen, the proposed rule may be promulgated in accordance with section 553 of Title 5, U.S.C.

For reasons discussed below, we believe that none of the amendments raise substantial issues of law or fact or have a substantial impact on the Nation's economy or large numbers of

[1] Section 212.53(b) provides that the prices charged for the first sale of imports into U.S. commerce are exempt from the pricing provisions of 10 CFR Part 212.

[2] Subpart I of Part 212 sets forth several reporting requirements for those firms subject to the pricing regulations.

[3] Section 211.67(a)(7)(ii) is the section added by the recent SPR entitlements rule to deal with exchanges and matching purchases and sales for the SPR.

individuals or businesses. Specifically, the amendments deleting the provisions involving the "net return to seller" rule and the "separate inventory for SPR sales" rule and the amendments moving the provisions concerning "first sales into U.S. commerce" and certification requirements only conform the pricing regulations for crude oil acquired for the SPR to changes in our regulations after the adoption of § 212.95. The amendment concerning pricing in matching purchase and sale transactions for crude oil acquired for the SPR only clarifies the regulations. The amendment concerning the time at which crude oil deemed to be retained should be included as a crude receipt represents a technical change in the timing of crude oil receipts with respect to oil delivered to the SPR. This change raises no substantial issue of law or fact and will not have a substantial impact on the Nation's economy or large numbers of individuals or businesses. Therefore, these amendments shall be promulgated in accordance with section 553 of Title 5 U.S.C., pursuant to section 501(c) of the DOE Act.

E. Section 553 of the Administrative Procedure Act

Section 553(b) of the Administrative Procedure Act (APA) requires that general notice of a proposed rulemaking be published in the Federal Register, except in regard to interpretative or procedural rules, or when the agency for good cause finds that notice and public procedure thereon is impracticable, unnecessary, or contrary to the public interest.

As noted previously, the amendments concerning provisions currently set forth in § 212.95 affect those provisions only to the extent necessary to conform with prior changes in our regulations. The amendment concerning treatment of matching purchase and sale transactions and the amendment concerning the time at which crude oil deemed to be retained should be included as a crude oil receipt are necessary immediately to prevent any delay in current negotiations of voluntary exchange agreements to acquire crude oil for the SPR. The prompt arrangement of such exchanges is important to our national security. Moreover, given the minimal impact of the rule on the economy and most businesses, the interests in and the benefits to be derived from prior notice and comment are less than ordinarily is the case. We, therefore, find that the advance notice and public procedures of section 553(b) are impracticable, unnecessary, and contrary to the public interest.

Subsection (d) of section 553 provides that the required publication of a rule be made at least 30 days before the effective date of the rule, unless it either relieves a restriction or is an interpretative rule, or the agency otherwise finds good cause to make a rule effective immediately. As noted previously, certain of these amendments merely bring the pricing provisions for SPR crude oil into conformity with more recent amendments to the Entitlements Program regulations and the price regulations. The other amendments are necessary immediately to facilitate current negotiations concerning exchanges for the SPR. Therefore, we find good cause to make the rule effective on September 24, 1980, so that there will be no question as to the price rules in effect with regard to contracts for oil purchased for the SPR and so that negotiations concerning exchanges of crude oil for the SPR may be concluded promptly.

F. Executive Order 12044

Executive Order 12044 "Improving Government Regulations" (43 FR 12661, March 24, 1978) requires agencies subject to it to publish all proposed "significant" regulations for public comment for a minimum of 60 days. In accordance with the criteria listed in paragraph 6 of DOE Order 2030.1 (44 FR 1032, January 3, 1979), which implements Executive Order 12044, we have determined that the proposed regulation is not "significant". Order 2030 gives as an example of a nonsignificant rule a rule not subject to the public notice requirements of the APA.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, 15 U.S.C. § 787 *et seq.*, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94-163, as amended, Pub. L. 94-385, Pub. L. 95-70, Pub. L. 95-619, and Pub. L. 96-30; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95-91, Pub. L. 95-509, Pub. L. 95-619, Pub. L. 95-620, and Pub. L. 95-621; E.O. 11790, 39 FR 23185; E.O. 12009, FR 46267)

In consideration of the foregoing, Parts 211 and 212 of Chapter II, Title 10 of the Code of Federal Regulations, are amended as set forth below.

Issued in Washington, D.C., October 23, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

PART 211—MANDATORY PETROLEUM ALLOCATION REGULATIONS

1. 10 CFR 211.67(a)(7)(ii) is revised to read as follows:

§ 211.67 Allocation of domestic crude oil.

(a) * * *

(7) * * *

(ii) In any case where the United States Government acquires from a refiner or other firm crude oil for storage in the Strategic Petroleum Reserve pursuant to an exchange or matching purchase and sale transaction, no domestic crude oil shall be deemed to have been transferred by that refiner or other firm in that exchange or transaction and such volume of domestic crude oil deemed to have been retained shall be included in a refiner's crude oil receipts in the month in which such domestic crude oil is delivered to and accepted for delivery to the Strategic Petroleum Reserve, and the United States Government shall be issued entitlements for the month prior to the month in which such domestic crude oil is delivered to and accepted for delivery to the Strategic Petroleum Reserve. The number of entitlements issued shall be calculated in accordance with the provisions of subparagraphs (iii) through (vi) of this paragraph (a)(7) on the basis of the volume of crude oil given up by the Government in any such exchange or transaction. Notwithstanding anything to the contrary in 10 CFR Part 212, in any matching purchase and sale transaction subject to this subparagraph, the United States Government may pay and the seller may receive any price for the crude oil purchased by the United States Government for the Strategic Petroleum Reserve.

* * * * *

PART 212—MANDATORY PETROLEUM PRICE REGULATIONS

2. 10 CFR 212.53(b) is revised to read as follows:

§ 211.53 Exports and imports.

* * * * *

(b) The prices charged for imports, but only the first sale into U.S. commerce, are exempt. For purposes of this subparagraph, any sale of imported crude oil, not already entered into the

United States customs territory, to the Government for storage in the Strategic Petroleum Reserve will be deemed a first sale into U.S. commerce.

* * * * *

§ 212.95 [Deleted]

3. 10 CFR 212.95 is deleted.

4. A new section 10 CFR 212.133 is added to read as follows:

§ 212.133 Certification of SPR Crude Oil.

When proposals are submitted and when crude oil is delivered to the Government for storage in the Strategic Petroleum Reserve, offerors and sellers shall certify what volumes of crude oil are lower tier, upper tier, or imported or domestic uncontrolled crude oil and shall certify the ceiling or other maximum lawful price, if any, applicable to the volumes so classified.

[FR Doc. 80-33849 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 80-EA-49; Amdt. 39-3961]

DeHavilland DHC-7; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment issues a new airworthiness directive applicable to DeHavilland DHC-7 type airplanes. It requires repetitive inspections for cracks and eventual alteration of the rear spar wing attachment to the fuselage frame, and the wing and board nacelle joint. Both areas of possible cracks, if uninspected, could cause structural failure due to fatigue from undetected cracks.

EFFECTIVE DATE: October 31, 1980. Compliance is required as set forth in the AD.

ADDRESSES: DeHavilland Service Bulletins may be acquired from the manufacturer at Downsview, Ontario, Canada M3K 145.

FOR FURTHER INFORMATION CONTACT: C. Birkenholz, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2875.

SUPPLEMENTARY INFORMATION: The manufacturer reported that during fatigue testing, it determined that improved fatigue strength was required of the lower wing outboard nacelle joint and fuselage longeron at the rear spar frame to meet the present approved type design. Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendement

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations, 14 CFR 39.13 is amended, by adding the following new Airworthiness Directive:

DeHavilland: Applies to DHC-7 model airplanes, certificated in all categories.

(a) To prevent structural fatigue failure of the fuselage longeron at the rear spar frame, accomplish the following:

(1) For aircraft serial numbers 1 thru 14, with 2975 hours in service: Within the next 25 hours in service, after the effective date of this AD, unless previously accomplished within the last 975 hours in service, perform a radiographic inspection for cracks at the rear spar wing attachment to the fuselage frame in accordance with the instructions given in Figure 1 and 2 of DeHavilland Service Bulletin 7-53-9 or an approved equivalent. Repeat inspection at intervals not to exceed 1000 hours in service from the last inspection.

(2) If cracks are found, prior to next flight, repair in accordance with an FAA approved repair scheme supplied by DeHavilland and incorporate DeHavilland Modification No. 7/1622, in accordance with the above Bulletin's accomplishment instructions or approved equivalent.

(b) To prevent structural fatigue failure of the lower wing/outboard nacelle joint, accomplish the following:

(1) For aircraft serial number 1 thru 14 and 17, with 4975 hours in service: Within the next 25 hours in service, after the effective date of this AD, unless previously accomplished within the last 975 hours in service, perform a radiographic inspection for cracks at the wing/outboard nacelle joint in accordance with the instructions given in Figure 1 of DeHavilland Service Bulletin 7-57-4 or an approved equivalent. Repeat inspection at intervals not to exceed 1000 hours in service from the last inspection.

(2) If cracks are found, prior to next flight, repair in accordance with an FAA approved repair scheme supplied by DeHavilland and incorporate DeHavilland Modification No. 7/1645 in accordance with the above Bulletin's accomplishment instructions or an approved equivalent.

(c) Inspections in (a)(1) may be discontinued when Modification No. 7/1622 or an approved equivalent is accomplished. Inspections in (b)(1) may be discontinued when Modification No. 7/1645, or an approved equivalent is accomplished.

(d) Equivalent inspections repairs or alterations must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

(e) Compliance times may be increased by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, upon receipt of substantiating data submitted through an FAA maintenance inspector.

Effective Date: This amendment is effective October 31, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, 1423, and 1431(b); Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c) and 14 CFR 11.89).

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044 as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Issued in Jamaica, New York, on October 17, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

[FR Doc. 80-33472 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 80-WE-46-AD; Amdt. 39-3958]

McDonnell Douglas Model DC-6 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amemdment supersedes a currently effective Airworthiness Directive (AD) which requires inspection and rework if necessary on nose gear upper torque link on McDonnell Douglas Model DC-6 and DC-7 series airplanes. This amendment deletes DC-7 applicability and provides additional rework detail. This superseding AD is required because of torque linked failures which have occurred subsequent to the issuance of the previous AD.

DATES: Effective November 3, 1980. Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training C1-750 (54-60).

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591, or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Robert T. Razzeto, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: AD 54-23-02 requires inspection and rework, if necessary, of nose gear upper torque link on McDonnell Douglas Model DC-6 and DC-7 airplanes. After issuing AD 54-23-02 the FAA has determined due to service experience that compliance with AD 54-23-02 has, in two cases which resulted in accidents, not provided the requisite minimum level of safety. The FAA has further determined that the McDonnell Douglas Model DC-7 incorporates a different design nose gear torque link for which no adverse service history exists.

Therefore, the AD is being superseded by a new AD which deletes DC-7 applicability and provides additional inspections land rework detail.

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Section 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new Airworthiness Directive:

McDonnell Douglas: Applies to Model DC-6, DC-6A, DC-6B airplanes certificated in all categories including military models R6D and C-118 eligible for civil certification, incorporating nose landing gear upper torque link assembly P/N 8488A-46.

Compliance is required as indicated unless already accomplished.

To prevent failure of the nose landing grear upper torque link which could result in nose gear collapse accomplish the following:

(a) Within 100 hours' time in service from the effective date of this AD unless already accomplished in the last 200 hours' time in service and thereafter at intervals not to exceed 300 hours' time in service since the last such inspection; inspect the nose landing gear upper torque link P/N 8488A-46-1 for cracks at the shoulder recess corner radius, by dye penetrant methods after removing paint per standard shop practice. Do not use a wood (or other) wedge to preload the lugs.

(b) If cracks are found:

(1) The cracked part may be replaced with a like serviceable part of the same part number provided that the replacement part is dye penetrant inspected for cracks within 300 hours' time in service from installation and thereafter at intervals not to exceed 300 hours' additional time in service since the last such inspection, or

(2) The cracked part may be replaced with a like serviceable part of the same part number, reworked as shown on Figures 2 and 3 of Douglas Aircraft Company Service Bulletin No. 641 dated October 18, 1955, and the repetitive inspection requirements of paragraph (a) of this AD are applicable, or

(3) The cracked part may be replaced by like serviceable P/N 8488A-46A-1 of improved design in which case no additional inspections are required by this AD.

(c) If no cracks are found:

(1) Return P/N 8488A-46-1 part to service provided that it is inspected per paragraph (a) of this AD at intervals not to exceed 300 hours' time in service since the last such inspection.

(2) Return P/N 8488A-46-1 part reworked per Figure 5 or Figure 2 of Douglas Aircraft Service Bulletin No. 461 dated October 13, 1955 to service provided that it is inspected per paragraph (a) of this AD at intervals not to exceed 300 hours' time in service since the last such inspection.

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

(e) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This supersedes AD 54-23-02.

This amendment becomes effective November 3, 1980.

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

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

Issued in Los Angeles, California, on October 15, 1980.

H. G. McClure,

Acting Director, FAA Western Region.

[FR Doc. 80-33530 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-EA-46; Amdt. 39-3960]

Piper Model PA 38-112; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment issues a new airworthiness directive, applicable to Piper PA 38-112 type airplanes. The AD requires an inspection for cracks of the rudder upper hinge and eventual replacement of the aluminum hinge with a steel hinge. This will prolong the life of the hinge which had been the subject of reported failures.

EFFECTIVE DATE: October 31, 1980. Compliance is required as set forth in the AD.

ADDRESS: Piper Service Bulletins may be acquired from the manufactuer at Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745.

FOR FURTHER INFORMATION CONTACT: J. Maher, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2875.

SUPPLEMENTARY INFORMATION: There had been reports of failure of the aluminum upper hinges of the subject aircraft. As a result, an emergency airmail AD dated May 16, 1980, was distributed which established the same requirements as this rule except for the requirement of permanently replacing the aluminum hinge which is required under this rule. The replaced steel hinge will have a life limit of 5000 hours in service. In view of the issuance of the emergency AD, a situation still exists that requires the immediate adoption of this regulation, and, therefore, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations, 14 CFR 39.13 is amended, by adding the following new Airworthiness Directive:

Piper: Applies to model PA-38-112 airplanes, Serial Nos. 38-78A0001 thru 38-80A0099, 38-80A0113, 38-80A0120 and 38-80A0123 thru 38-80A0165, certificated in all categories.

To avoid possible hazards in flight associated with a crack in the rudder upper hinge P/N 77610-02, accomplish the following:

a. Within the next five hours in service unless previously accomplished and thereafter at intervals not to exceed 50 hours in service from the last inspection, remove the rudder upper hinge pin and carefully displace the rudder from the fin aft to expose the surfaces of the rudder upper hinge P/N 77610-02. The rudder upper hinge consists of two brackets, P/N 77610-02. Inspect all the hinge surfaces in the area of the hinge pin hole to the forward edge of the hinge for cracks using a dye check inspection method or an equivalent. Upper hinge bolt is to be installed with a torque of 50 to 70 in. lb.; do not exceed the maximum value.

b. If a cracked fitting is found, before further flight, replace with a part of the same part number or an equivalent, which have been inspect in accordance with (a).

c. Within the next 100 hours in service replace brackets, P/N 77610-02, with two steel rudder hinge brackets, Piper P/N 77610-03 or equivalent in accordance with the instruction section of Piper Service Bulletin No. 686 dated May 23, 1980, or equivalent. Upon compliance with this paragraph, the inspections required in paragraph (a) may be discontinued.

d. The steel upper rudder hinge P/N 77610-03 or equivalent must be replaced within 5000 hours time in service.

e. Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region may adjust the compliance times specified in this AD.

f. Equivalent parts, instructions and inspections must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

g. Report findings of cracked parts to the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, within five days of the inspection: include the time on the part, and aircraft serial No. (Reporting approved by the Office of Management and Budget under OMB No. 04-RO174).

Effective Date: This amendment is effective October 31, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, 1423, and 1431(b); Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c) and 14 CFR 11.89)

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

Issued in Jamaica, New York, on October 17, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

[FR Doc. 80-33473 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-EA-52; Amdt. 39-3963]

Bendix S-20, S-1200 and D-2000 Series Magnetos; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment issues an amendment to AD 78-09-07 applicable to Bendix S-20, S-1200 and D-2000 series magnetos. AD 78-09-07 requires an inspection every 1,000 hours of the impulse coupling cam assembly for wear. Subsequent to publishing AD 78-09-07, a review of reports from the field established cam failures below 1,000 hours in service. Failure of the cam can result in engine failure. This rule lowers the inspection time to 500 hours in service.

EFFECTIVE DATE: November 3, 1980. Compliance is required as set forth in the AD.

ADDRESS: Bendix Service Bulletins may be acquired from the manufacturer at the Electrical Components Division, Sidney, New York 13838.

FOR FURTHER INFORMATION CONTACT: A. T. Farrar, Propulsion Section, AEA-214, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2894.

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations, 14 CFR 39.13 is amended, by amending AD 78-09-07 as follows:

1. In paragraphs a. and b., delete 975 and 1,000 hours where they appear and insert 475 and 500 hours respectively.

2. In paragraph c., delete Bulletin Number 599 and insert Bulletin Number 599A.

Effective date: This amendment is effective November 3, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, 1423, and 1431(b); Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c) and 14 CFR 11.89)

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

Issued in Jamaica, New York, on October 20, 1980.

Lonnie D. Parrish,

Acting Director, Eastern Region.

[FR Doc. 80-33606 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 80-EA-35; Amdt. 39-3962]

Piper Models PA-11 Through PA-22, J3 Through J5, L-4, L-14, L-18, AE-1, and HE-1; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment issues a new airworthiness directive (AD) applicable to Piper PA-11 through PA-22, J3 through J5, L-4, L-14, L-18, AE-1 and HE-1 type airplanes, and requires an inspection for cracks and replacement where necessary of the wing lift fork fitting attaching the wing strut to the fuselage. There have been reports of cracked and broken forks which can and have resulted in accidents.

EFFECTIVE DATE: November 3, 1980. Compliance is required as set forth in the AD.

ADDRESS: Piper Service Bulletins may be acquired from the manufacturer at Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745.

FOR FURTHER INFORMATION CONTACT: C. Kallis, Airframe Section, AEA-212, Engineering and Manufacturing Branch, Federal Building, J.F.K. International Airport, Jamaica, New York 11430; Tel. 212-995-2875.

SUPPLEMENTARY INFORMATION: AD 58-10-02 was issued in 1958 for the purpose of inspecting for cracks the wing lift strut fork fittings used on the subject airplanes.

However, some airplane operator/owners switched forks from one airplane to another making field records questionable. We have had about eight reports of cracked and broken forks since July 1972. An NTSB investigation disclosed that in two accidents the failed forks had machined (cut) threads, and failed in fatigue over about 90-95% of the cross sectional area through the threads. The reports reflect service times which were under the 2,000-hour replacement time for landplanes.

To avoid reliance upon questionable records and with a relatively short repetitive inspection interval to maintain the airworthiness of the lift strut forks with machined (cut) threads, an emergency airmail AD was issued April 17, 1980, amended on April 25, 1980, which revoked AD 58-10-02 and required, within five hours, an inspection of all forks, using magnetic means and replacement of forks with machined (cut) thread with forks with rolled threads.

Because some fleet operators encountered difficulty in meeting the compliance time for the magnetic inspection, a revised emergency AD was issued April 25, 1980, which allowed the use a dye-penetrant method of inspection to be performed within five hours or 25 days from receipt of the AD, with 20-hour repetitive inspections until the magnetic inspection can be accomplished, but not to exceed 50 hours or 180 days.

The AD now proposed differs slightly from the emergency AD in the applicability statement which has been expanded to include all the present models. It has other small clarifying changes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations, 14 CFR 39.13 is amended, by adding the following new Airworthiness Directive:

Applies to the following Piper series aircraft certificated in all categories: PA-22, PA-20, PA-19, PA-18, PA-17, PA-16, PA-15, PA-14, PA-12, PA-11, J5, J4, J3, L-21, L-18, L-14, L-4, AE-1, and HE-1.

(a) For Models PA-12, PA-14, PA-16, PA-18, PA-19, PA-20, PA-22, J5, J4, L-14, L-18, L-21, AE-1 and HE-1.

1. Within the next 50 hours in service or 180 days, whichever occurs first, replace lift strut forks manufactured with machined (cut) threads, with parts of the same part number manufactured with rolled threads, or approved equivalent parts, both of which must be inspected in accordance with (a)(3) and (a)(4).

2. Except as indicated in (a)(4) unless already accomplished, within the next five hours in service or 25 days, whichever occurs first, and thereafter at intervals not to exceed 20 hours in service, remove lift strut forks, clean, strip the paint and inspect for cracks by a dye penetrant method.

3. Except as indicated in (a)(4) within the next 50 hours in service or 180 days, whichever occurs first, unless already accomplished, the inspection in (a)(2) must be accomplished by "magnetic" means or approved equivalent. When accomplished, the inspection in (a)(2) is no longer required except that the "magnetic" inspection must be repeated at intervals not to exceed 500 hours in service.

4. Airplanes with lift strut forks which were obtained from Piper or an FAA approved manufacturer, and which have less than 195 hours in service and have been on the airplane less than three years, must comply with the inspections of (a)(2) and (a)(3) before the accumulation of 200 hours in service, or three years, whichever occurs first. Forks obtained from Piper or an FAA approved manufacturer which have zero hours in service must be inspected by magnetic means or approved equivalent at intervals not to exceed 500 hours in service. Verify that the FAA approved manufacturer produces the forks with rolled threads and inspects each fork by magnetic means or approved equivalent.

5. Replace lift strut forks manufactured with rolled threads prior to the accumulation of 1000 hours in service if used at any time on float equipped aircraft, and prior to the accumulation of 2000 hours in service if used on landplanes. Replacement parts must be parts with the same part number manufactured with rolled threads or approved equivalent, both of which must be inspected in accordance with (a)(3) and (a)(4).

(b) For Models J3, L4, PA-11, PA-15, and PA-17 airplanes, inspect wing lift strut forks in accordance with (a)(3) and (a)(4).

(c) For all Models in paragraphs (a) and (b), unless already accomplished, within the next 50 hours in service inscribe the statement NO STEP in 1" minimum high letters, in a color which contrasts with the airplane color, on each wing lift strut 6" from the bottom of the struts, and in such direction so that the NO STEP caution can be read when looking in a forward direction with respect to the airplane.

(d) Replace cracked parts before further flight with lift strut forks of the same part number, or approved equivalent, both of which meet the requirements of this AD.

(e) Upon submission of substantiating data by an owner or operator through an FAA Maintenance Inspector, the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region may adjust the compliance times specified in this AD.

(f) Equivalent parts and inspections must be approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region.

(g) Airplanes may be ferried to a base in accordance with FAR 21.197 where the AD can be accomplished.

(h) Report findings of cracked parts to the Chief, Engineering and Manufacturing Branch, FAA, Eastern Region, within five days of the inspection: include the time on the part, aircraft model and Serial No. it was used on, float equipped or landplane, machined (cut) or rolled threads, and location of crack. (Reporting approved by the Office of Management and Budget under OMB No. 04-RO174.)

Note (1).—Cracked parts should be given to the local FAA district office for shipment to Chief, Engineering and Manufacturing Branch, FAA, Eastern Region.

Note (2).—The following parts are acceptable for use on the airplanes as indicated:

P/N 13770—J3, L-4, PA-11
P/N 11431—J4
P/N 11281—PA-15, PA-17
P/N 14481—PA-12, PA-14, PA-16, PA-18, PA-19, PA-20, PA-22, J5, L-14, L-18, L-21, AE-1, HE-1

This AD revokes AD 58-10-2.

Effective date: This amendment is effective November 3, 1980.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, 49 U.S.C. 1354(a), 1421, 1423, and 1431(b); Sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c) and 14 CFR 11.89)

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

Issued in Jamaica, New York, on October 20, 1980.

Norbert A. Owens,
Acting Director, Eastern Region.

[FR Doc. 80-33807 Filed 10-29-80; 8:45 am]
BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-WE-41-AD; Amdt. 39-3964]

Lockheed-California Co. Model L-1011-385 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment amends an existing airworthiness directive (AD) applicable to Lockheed-California Company Model L-1011-385 series airplanes by providing alternate means of compliance involving landing gear inspections, including terminating action. This amendment is needed to provide additional safety information which will provide relief for operators affected by the original AD.

DATES: Effective November 6, 1980. Compliance schedule—as prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from: Lockheed-California Company, P.O. Box 551, Burbank, California 91520. Attention: Commercial Support Contracts Department 63-11 U33, B-1.

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591, or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: Amendment 39-3661 (45 FR 2648), AD 80-02-03, requires visual checks and inspections of the main landing gear

forward and aft trunnion pins and replacement of the pins, if necessary, on the main landing gear assemblies of Lockheed-California Company Model L-1011-385 series airplanes. After issuing Amendment 39-3661, the FAA has evaluated additional service instructions prepared by the manufacturer and has determined that these procedures are adequate to provide alternate means of compliance with the inspection requirements of the original AD, including actions which permit termination of the repetitive inspection requirements of the original AD. Therefore, the FAA is amending Amendment 39-3661 to specify inspection and installation of retainers per Service Bulletin 093-32-167, and final inspection per Service Bulletin 093-32-169.

Since this amendment provides an alternative means of compliance and imposes no aditional burden on any person, notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment 39-3661 (45 FR 2648), AD 80-02-03, by revising paragraphs (a), (b), and (c) to read as follows:

* * * * *

(a) Within the next 48 calendar days after January 17, 1980, unless already accomplished:

(1) Visually inspect the main landing gear forward and aft trunnion pins in accordance with the accomplishment instructions of paragraph 2B of Lockheed-California Company Alert Service Bulletin 093-32-A167, Revision 1, March 6, 1980. If a crack(s) or fracture is found, replace the trunnion pin(s) prior to further aircraft operation, or;

(2) Visually inspect the main landing gear forward and aft trunnion pins with retainers removed in accordance with paragraph 2A of Lockheed-California Company Service Bulletin 093-32-167, Revision 1, dated September 18, 1980 and install MLG forward and aft trunnion pin retainers per paragraphs 2B and 2C of Lockheed-California Service Bulletin 093-32-167, Revision 1, dated September 18, 1980. If a crack(s) or fracture is found, replace the trunnion pin(s) prior to further aircraft operation, or;

(3) Remove the MLG forward and aft trunnion pins and retainers, if installed and inspect by visual and magnetic particle methods, and reidentify per paragraphs 2A, 2B, 2C, and 2D of Lockheed-California Service Bulletin 093-32-169, Revision 1 dated September 18, 1980. If a crack(s) or fracture is found, replace the trunnion pin(s) prior to further flight. Defects in chrome plating only may be repaired per paragraphs 2E and 2F of Lockheed-California Service Bulletin 093-32-169, Revision 1, dated September 18, 1980.

Note 1.—The repetitive inspection requirements of paragraph (b) of this AD are not applicable to trunnion pins inspected per paragraph (a)(3).

(b) Repeat the visual inspections of paragraph (a) of this AD as specified:

(1) Within 50 hours' time in service since the last inspection conducted per paragraph (a)(1) of this AD and thereafter at intervals not to exceed 50 hours' additional time in service, repeat the visual inspections required by paragraph (a)(1) of this AD

(2) Within 1500 hours' time in service since the inspection and retainer installation accomplished per paragraph (a)(2) of this AD and thereafter at intervals not to exceed 1500 hours' additional time in service, repeat the visual inspections required by paragraph (a)(2) of this AD.

(c) Once per each day in which the aircraft is operated following the accomplishment of the inspections of paragraph (a)(1) above, and excluding the days on which the inspection of paragraph (b), above, is accomplished, conduct visual check of the main landing gear forward and aft trunnion pins in accordance with the accomplishment instructions of paragraph 2A of Lockheed-California Company Alert Service Bulletin 093-32-A167, Revision 1. If an obvious migration of either or both of the pins exists relative to the normal installation configuration, perform the visual inspections of paragraph (a), above. If a crack(s) or fracture is found, replace the pin(s) prior to further aircraft operation.

Note 2.—The daily check requirements are not applicable if paragraph (a)(2) or (a)(3) of this AD is accomplished.

* * * * *

Note 3.—The FAA has determined that this document involves a final regulation which is not considered to be significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Amendment 39-3661 became effective January 17, 1980.

This amendment becomes effective November 6, 1980.

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

Issued in Los Angeles, California on October 20, 1980.

John D. Mattson,

Director, FAA Western Region.

[FR Doc. 80-33818 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 80-AWE-14]

Alteration of Control Zone; Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of the San Clemente Island, Calif., Control Zone by raising the ceiling from 5,000 feet MSL to 6,000 feet MSL and adding an extension to the control zone. This amendment enhances air safety by providing controlled airspace from Control Area 1177 to the San Clemente Island terminal area.

EFFECTIVE DATE: December 25, 1980.

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

SUPPLEMENTARY INFORMATION: On September 18, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to raise the ceiling of the San Clemente Island, Calif., Control Zone from its current ceiling of 5,000 feet MSL to 6,000 feet MSL and alter the control zone by adding an extension northward to the boundary of Control Area 1177 (45 FR 62091). Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.171 of Part 71 was republished in the Federal Register on January 2, 1980, (45 FR 356).

The Rule

This amendment to Subpart F of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the description of the San Clemente Island, Calif., Control Zone by raising the ceiling from 5,000 feet MSL to 6,000 feet MSL and adds an extension northward to the boundary of Control Area 1177. This action permits aircraft operations at the Naval Auxiliary Landing Field, San Clemente Island to remain under continuous Instrument Flight Rules (IFR).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 356) is amended, effective 0901 GMT, December 25, 1980, as follows:

Under § 71.171

San Clemente Island, Calif., is amended to read as follows:

Within a 5-mile radius of NALF San Clemente (Lat. 33°01'20"N., Long. 118°35'15"W.) extending upward from the surface to and including 6,000 feet MSL and within 3 miles on either side of the San Clemente 334° radial extending from the 5-mile radius to Control Area 1177. The control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time thereafater will be continuously published in the Airport/Facility Directory.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510, Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

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

Issued in Washington, D.C., on October 23, 1980.

B Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33805 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-ANW-6

Establishment of the Newport, Oreg., Control Zone

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a control zone at Newport, Oreg., to provide controlled airspace to protect aircraft executing the instrument approaches to Newport Municipal Airport. Weather observation and reporting is now available at Newport Airport and complete the criteria needed for control zone establishment.

EFFECTIVE DATE: December 25, 1980.

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

SUPPLEMENTARY INFORMATION:

History

On August 14, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a part-time control zone at Newport, Oreg., (45 FR 54073). Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. Three comments were received, two which objected to the proposal. One commenter objected due to the control zone interference with VFR flight. However, VFR pilots are not denied use of controlled airspace. The other objection stated that more controllers would be needed for additional IFR traffic. However, the control zone is being established to accommodate the present traffic which is already being handled by Seattle Air Route Traffic Control Center, which will continue to control this area. This is the same amendment as that proposed in the notice. Section 71.171 of Part 71 was republished in the Federal Register on January 2, 1980, (45 FR 356).

The Rule

This amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes a part-time control zone at Newport, Oreg. This airspace is to protect aircraft executing instrument approach and departure procedures established for Newport Municipal Airport. The action designates an area within a 5-mile radius of the Newport Municipal Airport (Lat. 44°34'48"N., Long. 124°03'25"W.) and within 4 miles each side of the Newport VORTAC 357° radial extending from the 5-mile radius to 9 miles northwest of the VORTAC. The effective time is from 0900 to 1700 local time.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 356) is amended, effective 0901 GMT, December 25, 1980, by adding a control zone at Newport, Oreg., to read as follows:

Newport, Oreg.

Within a 5-mile radius of the Newport Municipal Airport, (Lat. 44°34'48"N., Long. 124°03'25"W.); within 4 miles each side of the Newport VORTAC 357° radial extending from the 5-mile radius to 9 miles northwest of the VORTAC. This control zone is effective from 0900 to 1700 hours, local time daily.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510; Executive Order 10854 (24 FR 9565); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

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

Issued in Washington, D.C., on October 23, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33819 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-ASW-35]

Alteration of Transition Area: West Woodward, Oklahoma; Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is to alter the transition area at West Woodward, Oklahoma. The intended effect of the proposed action is to provide controlled airspace for aircraft executing instrument procedures to the West Woodward Airport. The circumstances which created the need for the action are the realignment of the nondirectional radio beacon (NDB) approach to the West Woodward Airport and renaming the West Woodward transition area to Woodward, Oklahoma.

EFFECTIVE DATE: December 25, 1980.

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

History

On August 21, 1980, a notice of proposed rule making was published in the Federal Register (45 FR 55757) stating that the Federal Aviation Administration proposed to alter the West Woodward, Oklahoma, transition area. Interested persons were invited to participate in this rule making proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes this amendment is that proposed in the notice.

The Rule

This amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR 71) alters the West Woodward, Oklahoma, transition area. This action provides controlled airspace from 700 feet above the ground for the protection of aircraft executing instrument approach procedures to the West Woodward Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) is amended, effective 0901 GMT, December 25, 1980, as follows.

In Subpart G, 71.181 (45 FR 445), the following transition area is altered:

Woodward, Oklahoma

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the West Woodward Airport (latitude 36°26'10"N.; longitude 99°31'35"W.); within 3 miles each side of the NDB facility (latitude 36°26'03"N.; longitude 99°31'25"W.) 008° bearing, extending from the 7-mile radius to 8.5 miles north of the NDB, and within 5 miles either side of the Gage VORTAC 072° radial, extending from the 7-mile radius southwest of Gage VORTAC; excluding the Gage, Oklahoma, control zone and transition area.

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

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

Issued in Forth Worth, Tex., on October 16, 1980.

F. E. Whitfield,

Acting Director, Southwest Region

[FR Doc. 80-33470 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-AWA-11]

Amendment to Victor Airways, Patuxent River, Md.; Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action facilitates simultaneous use of federal airways and adjacent restricted areas in the vicinity of Patuxent River, Md., by excluding those portions of the airways which overlap into the restricted airspace and will result in more efficient utilization of the affected airspace.

DATES: Effective date: December 25, 1980.

Comments must be received by December 25, 1980.

ADDRESSES: Send comments on the rule in triplicate to: Director, FAA Eastern Region, Attention: Chief, Air Traffic Division, Docket No. 80-AWA-11, Federal Aviation Administration, Federal Building, John F. Kennedy International Airport, Jamaica, N.Y. 11430.

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

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

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

SUPPLEMENTARY INFORMATION:

Request For Comments

The purpose of this amendment is to make technically correct the description of federal airways by excluding those portions of V-1, V-16, V-20, V-33, V-157 and V-213 from Restricted Areas R-4005, R-4006, and R-4007A, Patuxent River, Md. The orginal design of the airways and restricted areas using the then existing technology for determining geographic locations provided for adjacent borders which did not overlap, however, more advanced technology now available reveals border overlaps of 1/10 to 3/10 miles. Historically, there is no record of incidents in the affected airspace that would indicate simultaneous operations along the airways and military activity within the restricted areas cannot be safely continued, therefore realignment of the airways and/or restricted areas in lieu of this action is not considered justified or necessary. Because this action is a mere technicality and does not impose additional burden on the public, I find that notice and public procedure are unnecessary, however, comments are invited on the rule. When the comment period ends, the FAA will use the comments received and any other available information to review the regulation.

The Rule

This amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) excludes Federal Airways (1) V-1 from Restricted Area R-4006; (2) V-16 from Restricted Areas R-4005 and R-4006; (3) V-20 and V-33 from Restricted Area R-4007A; and (4) V-157 and V-213 from Restricted Area R-4005 and R-4006. Section 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) was republished in the Federal Register on January 2, 1980 (45 FR 307).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 73 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) is amended, effective 0901 GMT, December 25, 1980, as follows:

In § 71.123:

1. Under V-1, the following is added: "The airspace within R-4006 is excluded."
2. Under V-16, the following is added: "The airspace within R-4005 and R-4006 is excluded."
3. Under V-20, the following is added: "The airspace within R-4007A is excluded."
4. Under V-33, the following is added: "The airspace within R-4007A is excluded."
5. Under V-157, the following is added: "The airspace within R-4007A is excluded."
6. Under V-213, the following is added: "The airspace within R-4005 and R-4006 is excluded."

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

Note.—The FAA has determined that this document involves a regulation which is not

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

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

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33612 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-AGL-29]

Extension of VOR Federal Airway; Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of VOR Federal Airway V-58 by extending the airway 77 miles west to EARED Intersection, thence via Clarion, Pa., to GRACE, Pa., Intersection. This amendment provides a shorter route for aircraft arriving at the greater Pittsburgh, Pa., Metro area.

EFFECTIVE DATE: December 25, 1980.

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

SUPPLEMENTARY INFORMATION:

History

On August 14, 1980, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter VOR Federal Airway V-58 by extending the airway westward 77 miles to EARED Intersection, thence to GRACE Intersection, (45 FR 54075). This extension provides a direct route to the Greater Pittsburgh Airport terminal area. Also, the direct and shorter route saves a significant amount of fuel. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.123 of Part 71 was republished in the Federal Register on January 2, 1980, (45 FR 307).

The Rule

This amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the description of V-58 by extending the airway 77 miles west to EARED Intersection, thence via Clarion, Pa., 228°M radial to GRACE, Pa., Intersection. This amendment improves traffic flow in the Pittsburgh, Pa., terminal area and saves a significant amount of fuel.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307) is amended, effective 0901 GMT, December 25, 1980, as follows:

Under V-58, "From Philipsburg, Pa.;" is deleted and "From INT Franklin, Pa., 175° and Clarion, Pa., 222° radials, via INT Clarion 222° and Philipsburg, Pa., 272° radials; Philipsburg;" is substituted therefor.

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

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

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

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33611 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 79-AEA-10]

Alteration of Airways and Jet Routes; Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points and Establishment of Jet Routes and Area High Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These actions realign six airways and five jet routes as a result of the requirement to relocate Front Royal VORTAC. The Front Royal VORTAC is renamed Shawnee. The relocation is caused by the inability of the FAA to renew the land lease.

EFFECTIVE DATE: December 25, 1980.

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

SUPPLEMENTARY INFORMATION:

History

On July 19, 1979, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to realign six airways and five jet routes and to change the name of Front Royal VORTAC to Shawnee (44 FR 42227). These actions are necessary because the FAA was unable to renew the land lease at the site of the Front Royal VORTAC. Interested persons were invited to participate in the rulemaking proceeding by submitting comments on the proposal to the FAA. The only comments received expressed no objections. Section 71.123, 71.203, 71.207 of Part 71 and § 75.100 of Part 75 were republished in the Federal Register on January 2, 1980 (45 FR 307, 645, 653, 732).

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) realign V-3, V-4, V-39, V-92, V-143, V-174, Airways and J-6, J-30 and J-109 Jet Routes via the direct radials of Shawnee rather than Front Royal. It also realigns J-134 from Falmouth, Ky., via Henderson, W. Va; INT of the Henderson 083° and Shawnee, Va. 262° radials (to overlie Elkins, W. Va.), then to Shawnee; and to use the Shawnee 281° radial in the description of J-162 so that it will continue to overlie the GRAFF INT southeast of Bellaire, Ohio. Restricted Area R-6705 at Juan de Fuca, Wash., has been revoked. For this reason, there is no longer a requirement to exclude it from the description of V-4 Airway.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.123, § 71.203, and § 71.207 of Part 71 and § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Parts 71

and 75) as republished (45 FR 307, 645, 653, 732) and amended (45 FR 41912, 50724) are further amended, effective 0901 GMT, December 25, 1980, as follows:

Under § 71.123

In V-3 "Front Royal" is deleted and "Shawnee" is substituted therefor.

In V-4 "Front Royal" is deleted and "Shawnee" is substituted therefor.

Also all after "Armel, Va." is deleted.

In V-39 "Front Royal" is deleted and "Shawnee" is substituted therefor.

In V-92 "Front Royal" is deleted and "Shawnee" is substituted therefor.

In V-143 "Front Royal" is deleted and "Shawnee" is substituted therefor.

In V-174 "Front Royal" is deleted and "Shawnee" is substituted therefor.

Under § 71.203 "Front Royal, Va." is deleted and "Shawnee, Va." is added.

Under § 71.207 "Front Royal, Va." is deleted and "Shawnee, Va." is added.

Under § 75.100

In Jet Route No. 6 "Front Royal" is deleted and "Shawnee" is substituted therefor.

In Jet Route No. 30 "Front Royal" is deleted and "Shawnee" is substituted therefor.

In Jet Route No. 109 "Front Royal" is deleted and "Shawnee" is substituted therefor.

In Jet Route No. 134 all after "Falmouth, Ky.;" is deleted and "Henderson W. Va.; INT Henderson 083° and Shawnee, Va., 262° radials; to Shawnee." is substituted therefor.

In Jet Route No. 162 all after "Bellaire 142°" is deleted and "Shawnee, Va., 281° radials; to Shawnee." is substituted therefor.

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

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

Issued in Washington, D.C. on October 23, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33620 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 80-ACE-20]

Establishment of Jet Routes and Area High Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes new Jet Route J-182 between Goodland, Kans., and Razorback, Ark., via Wichita, Kans. J-182 improves Air Traffic Control (ATC) efficiency by providing better traffic flow in the Wichita, Kans., area. There will be a fuel savings due to the shortened route.

EFFECTIVE DATE: December 25, 1980.

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

SUPPLEMENTARY INFORMATION: On August 25, 1980, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to establish new Jet Route J-182, from Goodland, Kans., via Wichita, Kans., to Razorback, Ark., (45 FR 56354). All comments received were favorable except for the U.S. Air Force which suggested a minor change in route alignment between Wichita and Razorback to bypass Air Traffic Control Assigned Airspace (ATCAA) used by the military. The new jet route improves departures/arrivals at Wichita, Kans., and permits additional flexibility for maneuvering traffic in the area. Also, a significant savings in fuel consumption would be realized due to the shortened route. This amendment is the same as that proposed in the notice except for a minor change in alignment. Section 75.100 of Part 75 was republished in the Federal Register on January 2, 1980 (45 FR 732).

The Rule

This amendment to § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) establishes new Jet Route J-182 between Goodland, Kans., and Razorback, Ark., via Wichita, Kans. This action improves traffic flow in the Wichita terminal area and saves a significant amount of fuel due to the shortened route.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 75.100 of Part 75 of the Federal Aviation Regulations (14 CFR Part 75) as republished (45 FR 732) is amended, effective 0901 GMT, December 25, 1980, as follows:

"Jet Route No. 182 from Goodland, Kans., via Wichita, Kans., INT Wichita 115° and Razorback 285° radials; Razorback" is added.

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

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

Issued in Washington, D.C., on October 23, 1980.

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33614 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6250]

Fixed Dollar Limitation on Amount of Securities Sold Pursuant to Exemption

AGENCY: Securities and Exchange Commission.

ACTION: Technical rule amendments.

SUMMARY: The Commission is amending Rule 242 promulgated under Section 3(b) of the Securities Act of 1933 to specify a fixed dollar limitation on the amount of securities that can be sold thereunder. Rule 242 provides an exemption from registration for sales of Securities to an unlimited number of "accredited persons" as defined in the Rule, and to 35 additional purchasers. The amendment maintains the present limit of $2,000,000 less the aggregate gross proceeds from all securities sold pursuant to any Section 3(b) exemption, on the aggregate offering price of an issue of securities that can be sold in reliance on the Rule, and is necessitated by recent legislative changes made in that Section.

EFFECTIVE DATE: October 23, 1980.

FOR FURTHER INFORMATION CONTACT: Paula L. Chester, (202) 272-2644, Office of Small Business Policy, Division of

Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: In Securities Act Release No. 6180 (January 17, 1980) (45 FR 6362) the Commission announced that it was adopting Rule 242, a small issue exemptive rule under Section 3(b) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. 77c(b), which allows certain corporate issuers to offer and sell up to $2,000,000 of their securities in a six-month period to an unlimited number of "accredited investors" as defined in the Rule, and to 35 other purchasers. As adopted, the Rule limits the amount of each issue of securities sold pursuant to the Rule to the amount specified in Section 3(b), which at the time of the adoption was $2,000,000.

The Commission notes, however, that the recently enacted Small Business Investment Incentive Act of 1980, among other things, increases from $2,000,000 to $5,000,000 the ceiling on the Commission's authority under Section 3(b) of the Securities Act.[1] Consequently, absent appropriate amendments to the Rule, an issuer could sell up to $5,000,000 in a six-month period. However, the Commission, in adopting Rule 242, intended that offers and sales in reliance on the Rule be limited to $2,000,000 in any six-month period, the maximum amount allowed under Section 3(b) at that time.[2] In addition, the legislative history of the new statute clearly reflects the Commission's position that it intended to carefully evaluate the ceilings on all of the exemptions promulgated pursuant to Section 3(b), before increasing any limits to the new statutory amount. Thus, the Commission is today amending paragraph (c) of the Rule to specify the dollar amount originally intended in order to maintain the *status quo* pending further review of its experience under Rule 242.

The Commission intends to reconsider the limitation on the amount of securities that can be sold under Rule 242 and other ceiling limitations set forth in the exemptive rules promulgated under Section 3(b) in the near future, particularly in light of recent Congressional action in raising the Section 3(b) ceiling. The action today, however, is intended to maintain the Rule 242 limitations as originally intended until such time as the Commission has had reasonable opportunity to evaluate the effectiveness of the Rule and prescribe appropriate limits under the new statutory ceiling.

Procedural Matters

For the reasons stated above, the Commission believes that it is appropriate to adopt these technical amendments to Rule 242 effective immediately to retain the fixed dollar limitations originally intended to apply under that Rule. Accordingly, the Commission, pursuant to Section 553(b) of the Administrative Procedures Act ("APA"), 5 U.S.C. 553(d), finds good cause to adopt the foregoing technical amendments to Rule 242 effective immediately to maintain previously established dollar limits under that Rule.

Text of Amendment

Part 230 of Chapter II of Title 17 of the Code of Federal Regulations is amended by amending paragraph (c) of § 230.242 to read as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

§ 230.242 Exemption of limited offers and sales by qualified issuers.

* * * * *

(c) *Limitation on aggregate offering price of each issue.* The aggregate offering price of an issue of securities of the issuer by a qualified issuer shall not exceed $2,000,000, less the aggregate gross proceeds from all securities sold pursuant to any section 3(b) exemption (other than securities of the issuer sold pursuant to an exemption from registration provided by Regulation A pursuant to any employee plan as defined in paragraph (d)(1) of Rule 16b-3 under the Securities Exchange Act of 1934 which meets the conditions of paragraphs (a) through (c) of that rule) six months prior to the commencement and during the offering of the issue of securities pursuant to this rule.

* * * * *

(Secs. 3(b) and 19(a) of the Securities Act of 1933, Secs. 3(b), 19(a), 48 Stat. 75, 85; sec. 209, 48 Stat. 908; 59 Stat. 167; 84 Stat. 1480; sec. 308(a) (1), (2), (3), 90 Stat. 56, 57; sec. 18, 92 Stat. 275; sec. 2, 92 Stat. 962; 15 U.S.C. 77c(b), 77s(a))

By the Commission.

George A. Fitzsimmons,

Secretary.

October 23, 1980.

[FR Doc. 80-33648 Filed 10-29-80; 8:45 am]

BILLING CODE 8010-01-M

[1] Small Business Incentive Investment Act, section 301 (October 21, 1980).

[2] In the release adopting the Rule, the Commission noted that the purpose of a certain provision in the proposed version of the Rule was to ensure that the combined use of Rule 242 and other Section 3(b) exemptions would not exceed $2,000,000 in any six-month period. The Commission further noted that, "consistent with (that) intent, a revision in the final Rule requires that the issuer must also subtract from the aggregate dollar price ceiling all Section 3(b) sales of securities of the issuer made during the issue, unless effected pursuant to an employee plan under the Regulation A exemption." *See* Securities Act Release No. 6180 (January 17, 1980) (45 FR 6362).

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17 CFR Part 260

[Release Nos. 33-6249; 39-594; File No. S7-859].

Adoption of Interim Rules Under the Trust Indenture Act of 1939

AGENCY: Securities and Exchange Commission.

ACTION: Adoption of interim rules.

SUMMARY: The Commission adopting, on an interim basis, rules under Sections 304(a)(8) and 304(a)(9) of the Trust Indenture Act of 1939 to establish ceiling limitations on the amount of debt securities that can be partially or totally exempt from that Act at $2,000,000 and $5,000,000 respectively. The rules adopted today are in response to recent legislative amendments, the substance of which was submitted to Congress by the Commission. The Commission is also soliciting public comment on whether, and in what form, the interim rules should be adopted as final rules.

EFFECTIVE DATE: October 23, 1980. Comments on the interim rules must be received on or before November 30, 1980.

ADDRESSES: All communications on the matters discussed in the release should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol St., Washington, D.C. 20549. Comments should refer to File No. S7-859 and will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Paula Chester (202/272-2644), Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol St., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced that it is adopting interim rules effective until December 31, 1981, under Sections 304(a)(8) and 304(a)(9) of the Trust Indenture Act of 1939 (the "Trust Indenture Act") [15 U.S.C. 77ddd et seq.] to establish the ceiling limitations at $2,000,000 and $5,000,000 respectively. Sections 304(a)(8) and 304(a)(9) are the small offering exemptions under the Trust

Indenture Act. Presently, offerings of less than $250,000 are completely exempt from the Trust Indenture Act pursuant to Section 304(a)(8) of that Act. In general, offerings greater than $250,000 but less than $1,000,000 are required to utilize an identure; however, an offering of this size is exempt from the qualification provisions of the Trust Identure Act pursuant to Section 304(a)(9) of that Act. The rules adopted today are in response to recent legislative amendments the substance of which was submitted to Congress by the Commission.

Section 302 of the Small Business Investment Incentive Act of 1980 (the "Act") (October 21, 1980) amends Sections 304(a)(8) and 304(a)(9) of the Trust Indenture Act. These amendments affect three distinct areas. First, the $250,000 exemption ceiling included in Section 304(a)(8) has been replaced by a reference to the amount that can be exempted from registration under Section 3(b) of the Securities Act of 1933 [1] (the "Securities Act") [15 U.S.C. 77a et seq.]. Second, the Section 304(a)(9) ceiling of $1,000,000 has been increased to $10,000,000. Third, the Commission is given informal rulemaking authority to establish, from time to time, appropriate amounts beneath the respective ceiling amounts that can be partially or totally exempt from the Trust Indenture Act pursuant to Sections 304(a)(8) and 304(a)(9).

In its legislative proposal to Congress recommending the amendments,[2] the Commission indicated that compliance with the Trust Indenture Act has become a significant burden to small issuers. The Commission noted that, although the burdens under the Trust Indenture Act are generally not as great in those instances where a qualified indenture is not required, the cost of a non-qualified indenture is still significant due to the fixed costs of preparing such a complex document. The Commission further noted that the definitions, exemptions, requirements and procedures for qualification of indentures and trustees under the Trust Indenture Act are closely integrated with the provisions of the Securities Act. However, the alignment of the two Acts has been substantially disrupted as a result of certain amendments to the Securities Act and revisions to the rules and regulations promulgated thereunder, because either a corresponding amendment to the Trust Indenture Act was not considered or the Commission had no rulemaking authority to resolve the problem. Finally, the Commission noted that the Trust Indenture Act small offering exemptions have remained unchanged since 1939 and, thus, do not represent present day purchasing power.

In adopting the proposals submitted by the Commission, Congress has accomplished three important objectives. First, the increase in the Trust Indenture Act small offering exemptions alleviates the lack of coordination between the two Acts by, in effect, updating the Trust Indenture Act. Second, in order to add a degree of flexibility to the administration of the Trust Indenture Act, especially with a view to limiting the regulatory burden on small businesses, rulemaking authority is granted to the Commission to establish, from time to time, appropriate amounts of securities that may be exempted from the Trust Indenture Act in a manner consistent with the protection of investors. Third, by increasing the dollar amounts of debt securities that may be totally or partially exempt from the Trust Indenture Act the amendments reduce the costs normally associated with debt offerings which have traditionally represented an additional impediment to the capital raising process.[3]

In connection with its proposal, the Commission indicated to Congress that, if the amendments were adopted, it believed that appropriate initial ceiling amounts for Sections 304(a)(8) and 304(a)(9) would be $2,000,000 and $5,000,000 respectively. In this regard, the Commission stated that while one of the primary purposes of recommending the amendments was to allow the Section 304(a)(8) exemption to move in tandem with the Securities Act Section 3(b) exemption to prevent future discrepancies between the two Acts, the rulemaking authority granted to the Commission is also designed to add a degree of flexibility to the administration of the Trust Indenture Act by providing for the possibility of a gradual increase in the ceiling.[4]

Accordingly, the Commission is adopting interim rules, effective immediately, pursuant to Sections 304(a)(8) and 304(a)(9). These rules will establish the ceilings under Sections 304(a)(8) and 304(a)(9) at $2,000,000 and $5,000,000 respectively.

The Commission is also soliciting comment on the ceilings established herein before it adopts any final rules. The Commission also intends to evaluate the ceiling limitations set forth in the exemptive rules promulgated under Section 3(b) of the Securities Act, particularly in light of the recent legislative action in raising the Section 3(b) ceiling, [5] and believes that the ceilings established under Sections 304(a)(8) and 304(a)(9) of the Trust Indenture Act should be similarly evaluated. Accordingly, the Commission has adopted Rules 4a–1 and 4a–2 as interim rules to expire on December 31, 1981, absent further action by the Commission. The Commission invites comment on the $2,000,000 and $5,000,000 ceilings under the Trust Indenture Act. Commentators are asked to focus on the prescribed limits established herein as they relate to the exemptive rules promulgated under Section 3(b) of the Securities Act and Form S–18, the simplified registration and reporting form for first time issuers.[6]

Procedural Matters

For the reasons stated above, the Commission believes that it is appropriate to adopt interim Rules 4a–1 and 4a–2, effective until December 31, 1981, in view of the enactment of the Small Business Investment Incentive Act of 1980. Accordingly, the Commission, pursuant to Section 553(b) of the Administrative Procedure Act ("APA"), 5 U.S.C. 553(b), for good cause finds that prior notice and comment are not required, and that to provide for prior notice and comment is impracticable, unnecessary, and contrary to the public interest. In addition, the Commission, pursuant to Section 553(d) of the APA, 5 U.S.C. 553(d), finds good cause to adopt the foregoing interim rules, effective immediately, in view of the recent enactment of the Small Business Investment Incentive Act, and the necessity of providing the Commission with an opportunity to coordinate the levels of exemptions available under the Trust Indenture Act with those available under the Securities Act.

Text of Rules

Part 260 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding §§ 260.4a–1 and 260.4a–2 to read as follows:

[1] As amended by Section 302 of the Act, the ceiling amount of Section 3(b) of the Securities Act is increased to $5,000,000.

[2] Hearings on S. 1533, S. 1940, and S. 2899 Before the Subcommittee on Securities of the Senate Committee on Banking, Housing, and Urban Affairs; 96th Cong., 2d Sess., 521 (1980).

[3] S. Rep. No. 958, 96th Cong., 2d Sess., 13 (1980).

[4] As the Senate Committee report indicates, "By allowing the Commission to set amounts within the prescribed ceiling, an aspect of flexibility that will be added to the Trust Indenture Act, Congress can be assured that its intent will be consistent with its approach to exempting smaller offerings under Section 3(b) of the Securities Act." *Id.* at 13.

[5] Small Business Investment Incentive Act of 1980, § 301 (October 21, 1980).

[6] 17 CFR 239.28.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

§ 260.4a-1 Exempted securities under section 304(a)(8).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security which has been or is to be issued otherwise than under an indenture, but this exemption shall not be applied within a period of twelve consecutive months to more than $2,000,000 aggregate principal amount of any securities of the same issuer.

§ 260.4a-2 Exempted securities under section 304(a)(9).

The provisions of the Trust Indenture Act of 1939 shall not apply to any security which has been or is to be issued under an indenture which limits the aggregate principal amount of securities at any time outstanding thereunder to $5,000,000 or less, but this exemption shall not be applied within a period of thirty-six consecutive months to more than $5,000,000 aggregate principal amount of securities of the same issuer.

(Sections 304(a)(8) and 304(a)(9) of the Trust Indenture Act of 1939, [Sec. 302, Pub. L. 96-477; Secs. 304(a)(8), 304(a)(9), 53 Stat. 1153; 15 U.S.C. 77ddd(a)(8), 77ddd(a)(9)])

By the Commission.

George A. Fitzsimmons,

Secretary.

October 23, 1980.

[FR Doc. 80-33847 Filed 10-29-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76 (Texas-1); Order No. 105]

High-Cost Gas Produced From Tight Formations

October 24, 1980.

AGENCY: The Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

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 for designating areas as tight formations. This final order adopts the recommendation of the Texas Railroad Commission that the Cotton Valley Sandstone, the Bossier Shale, and the Cotton Valley Lime Formations be designated as tight formations.

EFFECTIVE DATE: October 24, 1980.

FOR FURTHER INFORMATION CONTACT:

Leslie Lawner, Federal Energy Regulatory Commission, Room 4308B, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8299, or

William Bushey, Federal Energy Regulatory Commission, Room 6106, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8590.

I. Background

On July 11, 1980, the Texas Railroad Commission (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations, that the Cotton Valley Sandstone Formation, the Bossier Shale Formation, and the Cotton Valley Lime Formation (known collectively as the Cotton Valley Group) be designated as tight formations in the Commission's regulations. On August 15, 1980, a Notice of Proposed Rulemaking was issued by the Director of the Office of Pipeline and Producer Regulation (OPPR) in Docket RM79-76 (Texas-1) (45 FR 56072, August 22, 1980), to determine if Texas' recommendation that the Cotton Valley Group be designated as tight formations should be adopted. The Director of OPPR issued the notice pursuant to the authority delegated to him by Order No. 97, Docket No. RM80-68, issued on August 1, 1980 (45 FR 53456, August 12, 1980).

Interested persons were given until September 29, 1980, to submit written comments and information concerning Texas' recommendation. No party requested a hearing in this matter, and no hearing was held.

II. Discussion

The Commission, on February 20, 1980, issued an Interim Rule in Docket No. RM79-76 establishing a procedure for designating tight formations and for qualifying gas wells completed in those formations for section 107 high cost gas incentive prices. The recommendation filed by Texas was submitted under the Interim Rule. The procedures and requirements delineated in the Interim Rule were not significantly changed in the Final Rule issued by the Commission on August 15, 1980 (Order No. 99). In this rule the Commission delegated the initial responsibility for identifying potentially qualifying tight formations to each jurisdictional agency. The rule requires jurisdictional agencies to establish procedures and conduct their own investigations to identify tight formations within their own jurisdictions that meet the guidelines established by the Commission. The jurisdictional agencies will then submit written recommendations to the Commission that particular formations or portions thereof be designated as tight formations.

On May 20, 1980, Texas held a public hearing in Austin for the purpose of receiving nominations and supporting data regarding formations that might be considered tight formations. At that time ten formations were suggested by participants as meeting the requirements for tight formations. After study of the data submitted at the hearing and collection of additional data, on July 15, 1980, Texas recommended to the Commission that the Cotton Valley Sandstone, the Bossier Shale and the Cotton Valley Lime Formations, comprising the Cotton Valley Group, be designated as tight formations.

A. Summary of the Texas Recommendation

The formations in the Cotton Valley Group are located in the northeastern part of the state of Texas, underlying 48 counties in Railroad Commission Districts 1, 3, 5 and 6.

Northern limits of the recommended formations lie immediately south of the Texas-Oklahoma border through Fannin, Lamar, and Red River Counties and the eastern limit extends to the borders of Arkansas and Louisiana. The southern boundary is determined by the Angelina-Caldwell flexture from Sabin through San Augustine, Angelina, and Trinity Counties. The western boundary is determined by the Mexia-Talco fault zone through Limestone, Navarro and Kaufman Counties.

Within the Cotton Valley Group, the Cotton Valley Sandstone lies above the Bossier Shale with the Cotton Valley Lime immediately below the Bossier Shale. The average depth of the Cotton Valley Sandstone is approximately 7,000' to the north, 8,000' to the east, between 10,000' and 11,000' to the south, and 5,000' to the west. The Cotton Valley Sandstone reaches a maximum thickness of 1,600'. The top of the Bossier Shale is located at depths of approximately 7,700' to the north, 10,720'

to the east, 12,600' to the south and 5,340' to the west. The Bossier Shale ranges from 110' to 580' in thickness and contains laminated sand bodies up to 90' thick. The Cotton Valley Lime can be found at depths of approximately 8,000' to the north, 11,400' to the east, 13,200' to the south, and 5,500' to the west.

Texas' geologic description of the formation in question includes discussions on depositional history, structure, stratigraphy and detailed lithologies. Included in the submission were core samples of the Cotton Valley Sand and the Cotton Valley Lime. Texas enclosed a list of 1,896 wells thought to be deep enough to have penetrated the Cotton Valley Group. These wells are located on county base maps. Additionally, Texas has submitted a list of 900 wells, located in Districts 5 and 6, which have been completed as gas producers in the Cotton Valley Group and indicates that at least 36 of these wells were completed after July 16, 1979, and would thus be eligible for the tight formation gas incentive prices.

Texas briefly describes those federal and state regulations which serve to assure that the development of these formations will not adversely affect the quality of fresh water aquifers. Texas also points out that most Cotton Valley Group wells are completed at a depth of 8,000 feet or greater while the deepest fresh water aquifer in Districts 5 and 6 is approximately 500 feet. This well depth difference of about 7,500 feet helps to protect the integrity of the fresh water aquifers.

B. Comments

Comments on the proposed rule were received from ten parties. All parties expressed support for the recommendation. Exxon also supported the recommendation and requested additional time in which to file additional data on 43 wells which have been drilled in the Cotton Valley Lime. An extension was granted until October 8, 1980.

C. Guidelines for Designation

In § 271.703(c)(2)(i) of the regulations, the Commission has established guidelines which a formation must meet to be designated as a tight formation. These are:

(1) The average *in situ* gas permeability throughout the pay section is expected to be 0.1 millidarcy or less;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production in the formation, without stimulation, is not expected to exceed production rates delineated in the table in § 271.703(c)(2)(i)(B) of the regulations;

(3) No well drilled into the recommended formation is expected to produce, without stimulation, more than five barrels of crude oil per day.

(4) Any formation or portion thereof which has been authorized to be developed by infill drilling prior to the date of recommendation must be excluded from the recommendation, if the jurisdictional agency has information which in its judgment indicates that such formation or portion thereof can be developed absent the incentive price for tight formations.

A summary of the data submitted by Texas confirming that wells completed in the Cotton Valley Group are expected to meet the guidelines is given below. Average permeabilities, average flow rates for oil and gas before stimulation and average depths for the three formations, are given below:

Formation	Number of data wells	Average permeability	Average depth	Average gas rate	Average oil rate
Cotton Valley Sandstone	126	0.042 md.	10,187'	289Mcf/d	0 BPD
Bossier Shale	2	0368 md.	12,291	586Mcf/d	0 BPD
Cotton Valley Lime	73	0321 md.	12,406'	435Mcf/d	0 BPD

The majority of permeability and flow rate data is derived from Harrison, Panola, and Rusk Counties for the Cotton Valley Sandstone. Data for the Bossier Shale and Cotton Valley Lime Formations comes primarily from Freestone and Limestone counties. However, data from areas where information is limited appears to be closely parallel to data determined in counties where the information is more plentiful.

1. *Permeability.* Data provided by Texas describes four methods of determining *in situ* permeability. These are: (1) Pressure build up (PBU) analysis; (2) Side-wall core (SWC) analysis, under atmospheric conditions and at reservoir conditions; (3) Drawdown test data and radial flow equations; and (4) Pressure build up models.

Using PBU analysis, Texas determined that the average permeability in the Cotton Valley Sandstone was 0.0231 md. In side-wall core tests, Texas determined that the core permeability, with overburden pressure applied, was 0.0053 for the Cotton Valley Sandstone. Calculations using the radial flow equations indicated average *in situ* permeabilities of 0.042 md. for the Cotton Valley Sandstone, 0.0368 md. for the Bossier Shale and 0.0514 md. for the Cotton Valley Lime. An average *in situ* permeability of 0.0125 md. for the Cotton Valley Sandstone was calculated using the mathematical model. The above results and the supporting evidence demonstrate that, under several methods used for determining permeability, the vast majority of wells drilled into the Cotton Valley Group have *in situ* permeabilities below 0.1 md.

2. *Stabilized production rates.* Stabilized production rates were calculated from absolute open flow calculations using a ratio of flow equations. Average pre-stimulation flow rates for each formation are as follows: Cotton Valley Sandstone—289/Mdf/D at an average depth of 10,187'; Bossier Shale—586 Mcf/D at an average depth of 12,291; and Cotton Valley Lime—495 Mcf/D at an average depth of 12,406'. Tests results show that 96 percent of all Cotton Valley Sandstone wells for which prestimulation data was available have rated below the maximum permissible rates. Similarly, 95 per cent of the Cotton Valley Lime wells were below the maximum permissible rates. None of the wells completed in the Bossier Shale exceeded the established guidelines.

3. *Oil Production.* Only 30 of the 930 wells completed in the Cotton Valley Group produce oil. According to testimony supplied by Texas, it is apparently accepted by the industry that wells drilled into the Cotton Valley Group will be gas producers with little or no oil. The majority of liquids produced from Cotton Valley Group wells have been shown to be condensate that is in the gaseous phase within the reservoir. Thus, there is little chance that a well completed on the Cotton Valley Group will produce in excess of 5 barrels of oil per day prior to stimulation.

4. *Infill Drilling.* In accordance with § 271.703(c)(2)(i)(D), Texas reports in its recommendation that the Dirgin Field in Rusk County had been drilled consistent with field rules and that a subsequent amendment to the field rules reduced the unit size in this field. Texas states that the request for the reduction in unit size was received subsequent to

publication of the Notice of Proposed Rulemaking for the tight formation incentive price. Texas also states that it has no information that infill drilling would occur in this portion of the recommended formations absent the expectation of the tight formation incentive price.

D. Conclusion

The Commission has reviewed Texas' recommendation and the comments received in support thereof, and finds that the recommendation complies with the requirements of § 271.703(c)(3) of the regulations concerning the contents of the recommendation. The Commission concurs with Texas' assertion, based on the consideration of the record which Texas submitted, that the Cotton Valley Group meets all the requirements for designation as a tight formation set forth in § 271.703(c)(2)(i).

III. Effective Date

The Commission hereby makes this amendment to its regulations effective upon the date of issuance of this order. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis and, therefore, incentive prices for this gas should be made available as soon as possible. Therefore, good cause exists to waive the thirty day notice period preceding the effective date of the rule.

(Department of Energy Organization Act, (42 U.S.C. 7101 *et seq.*); Natural Gas Policy Act of 1978, (15 U.S.C. 3101–3432))

For the reasons stated herein, Part 271 of Subchapter I, Title 18, Code of Federal Regulations, is amended as set forth below, effective immediately.

By the Commission

Kenneth F. Plumb,

Secretary.

1. Section 271.703(d) is revised to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, subindexed as indicated, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

(1) *The Cotton Valley Group in Texas.* The Cotton Valley Group consists of the Cotton Valley Sandstone, the Bossier Shale and the Cotton Valley Lime Formations. RM79–76 (Texas–1).

(i) *Delineation of formations.* The northern boundary of the Cotton Valley Group is the Texas-Oklahoma border extending through Fannin, Lamar, and Red River Counties; the eastern boundary is formed by the Texas-Arkansas and Texas-Louisiana borders; the southern boundary is along the Angelina-Caldwell flexture running through Sabine, San Augustine, Angelina and Trinity Counties; the western boundary is set by the Mexia-Talco fault zone through Limestone, Navarro, and Kaufman Counties.

(ii) *Depth.* Cotton Valley Sandstone is encountered at an average depth of approximately 7,000' to the north, 8,000' to the east, between 10,000' and 11,000' to the south, and 5,000' to the west; Bossier Shale is encountered at 7,700' to the north, 10,720' to the east, 12,600' to the south, and 5,340' to the west; Cotton Valley Lime is encountered at 8,000' to the north, 11,400' to the east, 13,200' to the south, and 5,500' to the west.

(2) [Reserved]

[FR Doc. 80–33834 Filed 10–29–80; 8:45 am]

BILLING CODE 6450–85–M

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18 CFR Part 282

[Docket No. RM80–10]

Natural Gas; Incremental Pricing; Order Denying Rehearing on Revocation of Amendments in Order No. 80

Issued October 2, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying rehearing.

SUMMARY: On August 1, 1980, the Federal Energy Regulatory Commission issued "Order Denying Rehearing And Revoking Amendments Made By Order No. 80", Docket No RM80–10 (45 FR 54741 (August 18, 1980)). Order No. 80 would have expanded the scope of incremental pricing of natural gas from its present coverage of industrial boiler fuel facilities to include all industrial users of natural gas except those specifically exempted. On September 2, 1980, the Federal Energy Regulatory Commission received a petition for rehearing of that order. The Federal Energy Regulatory Commission hereby denies rehearing of its August 1, 1980 order revoking amendments made by Order No. 80.

EFFECTIVE DATE: October 2, 1980.

FOR FURTHER INFORMATION CONTACT:

Thomas P. Gross, Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357–8077.

Stephen R. Melton, Office of the General Counsel, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 357–8427.

On August 1, 1980, the Commission denied a petition for rehearing of Order No. 80 which was filed by the Consumer Energy Council of America, *et al.* ("CECA"). In that order the Commission refused to assume that the legislative review mechanism of section 202(c) of the NGPA was invalid as CECA has urged and, thus, denied rehearing. The order necessarily recognized that the regulations promulgated by Order No. 80 were invalid in light of the specific terms of section 202(c).

In addition, the order went further and addressed CECA's assumption that the specific regulations promulgated in Order No. 80 should, or would, be effective in the event that the legislative review mechanism should prove constitutionally invalid.

The order indicated that the Commission had not independently evaluated a number of major social and economic issues, believing that this evaluation was the responsibility of the Congress. It concluded that the Order No. 80 regulations should not become effective without the benefit of such a reasoned decisionmaking. It was for this reason that the Order No. 80 regulations were revoked.[1]

CECA now, by a petition for rehearing filed September 2, 1980, urges that the revocation of the regulations cannot be accomplished in this manner. While CECA concedes that the Commission has discretion over the form that the Phase II rules should take (Petition at 2), it claims that the decision has been exercised and is final because section 202 requires regulation by a date certain.

As its second argument, CECA claims that the attempted revocation is invalid for failure to comply with the notice and comment procedure of 5 U.S.C. 553.

Discussion

We do not concede that section 202 required the implementation of Phase II regulations is the absence of the validity of section 202(c). We do agree, however, that at least "the Commission has * * * discretion * * * as to the form which such rules should take." (Petition at 2). We have done no more than exercise that discretion by indicating that the Order No. 80 regulations should not become effective without a Commission evaluation of the major social and economic issues raised therein.

[1] As we indicated in the August 1, 1980 order, this revocation is only necessary if section 202(c) is invalid.

As it stands now, Congress and not the Commission, has made an evaluation of the social and economic goals of incremental pricing under section 202(c). If it is ultimately determined that the Congressional review is invalid, the Commission must be the one to evaluate those goals, and the Order No. 80 regulations should not have any operative effect until the Commission makes its own independent evaluation. In the absence of such an evaluation, the Order No. 80 regulations cannot become effective. Simply stated, if Congressional review is impermissible, then reasoned decision-making on our part requires revocation of the Phase II regulations.

CECA's argument that we have no authority to revoke the Order No. 80 regulations overlooks our amendatory authority under sections 201 and 202. In section 201(a), Congress specifically authorized the Commission to "make effective (and * * * from time to time amend) a rule * * *." In section 202(a)(2), Congress indicated that the power extends to "facilities to which the [section 202] amendment applies." The only constraint on this amendatory authority is section 202(c), which CECA argues is invalid. However, CECA cannot be allowed to have it both ways. It should not be heard to argue that the legislative veto in section 202(a) is invalid, yet at the same time, argue that section 202(c) somehow still restrains the Commission's authority to amend the Phase II rule. If section 202(c) is invalid, there is no statutory impediment to the Commission's exercising its amendatory authority. The August 1, 1980, order denying rehearing and revoking Order No. 80 exercised this authority.

Nor do we believe that the notice and comment procedures of 5 U.S.C. § 553 require another result. Because the Commission provided full notice and opportunity to comment prior to issuing Order No. 80, further comment is unnecessary. Notice of Proposed Rulemaking, 44 FR 67170 (November 23, 1979). However, to the extent that 5 U.S.C. 553 would otherwise require it, we find here that for good cause, further notice and public procedure are "unnecessary" in accordance with 5 U.S.C. 553(b).

Further, regardless of the application of those procedures to regulations which become operative, they cannot be required where regulations are revoked because they have not been fully considered.

The Commission orders: The petition for rehearing is denied.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 80-33851 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

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18 CFR Part 282

[Docket No. RM79-47; Order No. 103]

State-Wide Exemptions From Incremental Pricing; Final Rule

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations under Title II of the Natural Gas Policy Act of 1978 (18 CFR Part 282) by adding new §§ 282.104 and 282.208 relating to State or local incremental pricing plans and alternative plans and by revising § 282.504. With respect to State or local incremental pricing plans, new § 282.104 makes clear that nothing in the Commission's incremental pricing regulations precludes a State or local government, or agency thereof, from implementing a State or local incremental pricing plan. Revisions to § 282.504 (e)(2) and (3) relieve some natural gas suppliers from the reporting requirements set forth in those sections. With respect to State or local alternative plans, new § 202.208 establishes procedures for approval of such plans.

EFFECTIVE DATE: October 21, 1980.

FOR FURTHER INFORMATION CONTACT: Barbara K. Christin, Office of the General Counsel, (202) 357-8428.

SUPPLEMENTARY INFORMATION: Final rule.

Issued: October 21, 1980.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its regulations under Title II of the Natural Gas Policy Act of 1978 (18 CFR Part 282) by adding new §§ 282.104 and 282.208 relating to State or local incremental pricing plans and alternative plans and by revising § 282.504. With respect to State or local incremental pricing plans, new § 282.104 makes clear that nothing in the Commission's incremental pricing regulations precludes a State or local government, or agency thereof, from implementing a State or local incremental pricing plan. Revisions to §§282.504(e)(2) and (3) relieve natural gas suppliers subject to a State or local incremental pricing plans from the reporting requirements set forth in those sections. With respect to State or local alternative plans, new § 282.208 establishes procedures for approval of such plans.

Under section 201 of the Natural Gas Policy Act of 1978 (NGPA) (15 U.S.C. 3301-3432), the Commission is required, within certain guidelines, to institute and administer a federal incremental pricing program. The program is designed to pass through, by surcharge, to certain industrial boiler fuel users of natural gas, a portion of the increases in the wellhead prices of natural gas allowed under title I of the NGPA. On September 28, 1979, the Commission issued final regulations implementing section 201 (Dockets Nos. RM79-14 and RM79-21, 44 FR 57726, October 5, 1979).

In the course of developing rules implementing Title II of the NGPA, the Commission identified two types of State ratemaking action that appeared to have some effect on the Commission's incremental pricing program: State incremental pricing plans and State alternative ratemaking plans. On July 3, 1979, the Commission issued a notice in this docket (44 FR 40898, July 13, 1979) requesting comments on whether a rulemaking proceeding should be initiated with respect to the relationship between the Commission's incremental pricing program and these two types of State ratemaking action. In response to the comments, the Commission issued a Notice of Proposed Rulemaking (Notice) in this docket on December 21, 1979 (45 FR 1081, January 4, 1980). On February 5, 1980, the Commission conducted an informal hearing for the presentation of oral comments on the Notice. Written comments in response to the Notice were filed by, among others, State public utility commissions, interstate natural gas companies, local distribution companies, and exempt and non-exempt users of natural gas.

II. Discussion of Issues and Comments

A. *State Incremental Pricing Plans.* Title II of the NGPA states that the surcharge imposed on an industrial facility under the incremental pricing program may not raise the facility's cost of non-exempt volumes of natural gas above the alternative fuel price ceiling set by the Commission. The Commission's regulations refer to this limit as the maximum surcharge absorption capability (MSAC) of the user. The MSAC is generally the difference between the user's alternative fuel price ceiling and the lower, State-established retail rate for natural gas paid by the user.

A State incremental pricing plan is a plan under which a State establishes its retail rate structure so that the retail

price of natural gas to non-exempt users is maintained at, or above, the applicable alternative fuel price ceiling established by the Commission. The effect of such a rate plan is to eliminate any surchage that would otherwise be imposed on those users under the Commission's incremental pricing program. The MSAC within a State would thus become zero.

Validity of State incremental pricing plans. In the Notice, the Commission considered whether the elimination of the federal surcharge resulting from implementation of a State incremental pricing plan is consistent with Title II of the NGPA and the Commission's incremental pricing program. The Commission expressed the preliminary view that State incremental pricing plans are fundamentally consistent with both the NGPA and the Commission's program, and that, as a matter of law, the Commission could not prevent States from raising retail rates for non-exempt users to, or above, the alternative fuel price ceilings. Thus, States would not have to seek either Commission approval or Congressional approval under section 206(d) to implement their own incremental pricing plans.

Although most of the commenters addressing this issue agreed with the Commission's preliminary view, various arguments were raised by the remaining commenters contending that State incremental pricing plans are invalid. Some commenters argued that the elimination of the federal surcharge violates section 205 of the NGPA. Section 205(d) prohibits a State from preventing the passthrough of any portion of the surcharge to a non-exempt user. Section 205(b) prohibits a State from changing the rates charged by a local distribution company to a non-exempt industrial facility, if the change has the effect of creating an offset for any portion of the federal incremental pricing surcharge paid by the local distribution company.

The Commission does not believe that State incremental pricing plans violate section 205. Although section 205 precludes State ratemaking bodies from reducing the impact, or preventing the imposition, of a surcharge on incrementally-priced gas users, that section does not speak to the amount of such surcharge. Section 204(c)(3) governs the amount of the surcharge and generally provides that the amount of the surcharge must not cause the total price for natural gas paid by a non-exempt user to exceed the user's alternative fuel cost. Part of that total price paid by the non-exempt user is the retail rate set by the State ratemaking authority, on which the NGPA sets no limit. In fact, the Statement of Managers stated that:

> The conference agreement does not preclude State regulatory agencies from exercising their authority under State law to regulate local distribution companies. A State regulatory agency could for example, raise prices to be paid by incrementally priced industrial facilities to levels higher than the levels required by this Title. The conferees have not mandated such a practice; nor has it been precluded. State law is not preempted in this case and States may wish to place more of the costs of service onto a particular class of industrial users. The conferees make no judgment as to the advisability of this action. S. Rep. No. 1126, 95th Cong., 2d Sess. 100–101 (1978).

This statement is a clear expression of Congressional intent not to preempt States from raising rates for their industrial gas users to, or above, their alternative fuel costs. Indeed, at one point in the Statement of Managers, the conferees recognized and did not object to the fact that some States may have already taken such action. (*See* S. Rep. No. 1126, quoted at p. 8 *infra*.)

Commenters also argued that State incremental pricing plans are invalid because they frustrate the objectives of incremental pricing. One of the purposes of the incremental pricing program "market ordering," is to prepare the natural gas market for deregulation in 1985. Congress anticipated that, by initially raising the price of gas delivered to large, price-sensitive industrial customers to a level at which further increases would threaten to cause loss of industrial load, pipelines, whose revenues depend upon volumetric throughput, would attempt to minimize further increases in the cost of gas that might occur upon deregulation, for fear that industrial demand would decline. (*See* Order No. 80, Docket No. RM80–10, issued May 7, 1980, pp. 8–9). The commenters contended that State incremental pricing plans frustrate the market ordering purpose of Title II, because non-exempt users in a State with a State incremental pricing plan pay a price for natural gas that is at least as high as the alternative fuel price ceiling, which prevents those users from feeling the impact of the higher gas prices allowed by Title I of the NGPA and paid by their interstate pipeline suppliers. Moreover, the federal surcharge paid by non-exempt users in a State without a State incremental pricing plan generally will bring the users' cost of gas up to the applicable alternative fuel price ceiling, because with a smaller class of non-exempt users to absorb the federal surcharges, it is improbable that the surcharge imposed will be less than the maximum.

Other commenters contended that State incremental pricing plans blunt the other purpose of Title II of the NGPA, the sheltering of residential and other high priority customers from rising gas prices allowed by Title I of the NGPA. They argued that, because a State plan eliminates the MSACs within the State, there remain more incremental gas acquisition costs, determined under section 203 of the NGPA, to be borne ultimately by residential and high priority gas users.

Related to this argument was the suggestion that the Commission modify its incremental pricing plan to prevent a State from improperly eliminating the federal surcharges within its borders. Under the Commission's program, the amount of the surcharges is tied to retail rates established at the State level. The commenters proposed that the surcharge be tied to something other than State retail rates, suggesting, for example, that they be tied to benchmark rates based on the historic relationship between the rates of industrial and high priority users. The Commission does not adopt this proposal, because it would result in some non-exempt users paying an ultimate price for natural gas higher than the alternative fuel price ceiling. This result would violate section 204 of the NGPA.

In addition to the reasons discussed above, the Commission is convinced that any doubt as to the legality of State incremental pricing plans under Title II, due to their effect either on the Commission's program or on the objectives of incremental pricing, is allayed by the clear indications of Congressional intent contained in the Statement of Managers. The Congress anticipated, and did not disapprove, the effect on incremental pricing surcharges of State action to raise industrial retail rates to, or above, alternative fuel price ceilings. In the Statement of Managers, the conferees stated that:

> The Commission is accorded flexibility by the conference agreement to make necessary adjustments in the calculation of the surcharge to be passed through. For examples [sic], in some instances State regulations may already provide some form of incremental pricing which has resulted in the fuel price paid by industrial facilities (which will qualify as incrementally-priced industrial facilities under this Title) already equalling the Btu-equivalent price of alternative fuel. The conferees do not intend the operation of [section 201] to require the surcharge to be passed through to such facilities. S. Rep. No. 1126, 95th Cong., 2d Sess. 96 (1978).

Accordingly, the Commission concludes that it cannot legally preclude

States from implementing their own incremental pricing plans and that such plans are consistent with Title II of the NGPA pursuant to which the Commission's incremental pricing rules were issued. This Commission has attempted to implement the incremental pricing program with minimal interference with the States' ratemaking authority, recognizing that the States' implementation of their own incremental pricing programs is a proper exercise of the States' authority to set retail rates.

The final argument with respect to the validity of State plans is that State incremental pricing plans violate section 4(b) of the Natural Gas Act (NGA), 15 U.S.C. 717 *et seq.* That section prohibits an interstate natural gas pipeline from maintaining any unreasonable difference in rates between localities or between classes of service. If States implement their own incremental pricing plans, natural gas users (both exempt and non-exempt) will experience differing impacts from incremental pricing depending upon the State in which they are located, due to varying State incremental pricing plans and the differing composition of gas users from State to State,[1] as well as differences between the various State plans and the Commission's plan.

The Commission does not agree that State incremental pricing plans violate section 4(b) of the NGA. Section 4(b) forbids only "unreasonable" differences in prices. Differences that arise from the lawful actions of state regulators pursuant to their authority to set rates within their individual States are not unreasonable and therefore do not violate the NGA. Furthermore, the statutory scheme embodied in Title II of the NGPA does not restrict States in the exercise of their ratemaking powers, except in the narrow area where State section is taken to offset or to prevent the passthrough of, a surcharge, as previously discussed.

Moreover, even if the Commission had the authority to intervene, the public interest is better served by minimal federal intervention in the traditional State function of setting retail rates. Each State's retail gas rates reflect that State's response to the unique set of circumstances present within its boundaries. The regulatory scheme of the NGPA contemplates such decision-making by States, and Title II of the NGPA builds upon State ratemaking and does not supplant it. Were the Commission to undertake a State-by-State balancing and an elimination of differences among State plans, the result would be federal involvement in the determination of local retail rates. Such an involvement would have costs and negative impacts far outweighing any potential benefits. A further extension of federal regulation should be based on a clear showing of need and public interest which has not been made here.

Allocation of additional revenues from State plans. The Commission's regulations do not require States to allocate to their residential and other high priority users the additional revenues collected from their non-exempt users whose rates are raised to, or above, the alternative fuel cost ceiling.

Several State commissions argued that the additional revenues must be reallocated so as to lower the rates of residential and other high priority users, because one of the purposes of Title II of the NGPA is to shield those users.

Although the Commission anticipates, as discussed in the Notice, that States with their own incremental pricing plans will endeavor to shield residential and other high priority users from higher gas prices to the extent possible under State law, the Commission cannot legally require States to channel the additional revenues to those high priority users. The incremental pricing program under Title II of the NGPA does not apply to residential and other high priority users of natural gas. Consequently, the traditional State retail ratemaking authority as to those users is undisturbed and the State may establish rates for those users in any manner consistent with State law. The Commission has no authority to require a State to channel to residential and other high priority users any increased revenues collected as a result of that State's implementation of its own incremental pricing plan.

One commenter suggested that any additional revenues reflecting the portion of non-exempt user rates exceeding the alternative fuel price level may be allocated at the discretion of the State regulatory body. The Commission rejects this suggestion insofar as it may imply that such allocation would result in retail rates for some non-exempt users which are lower than the alternative fuel price ceiling. By definition, these State incremental pricing plans establish rates for all non-exempt users at, or above, the user's alternative fuel price ceiling. If the rate charged any non-exempt user falls below the alternative fuel price ceiling, then that user has the ability, and is required, to absorb a surcharge imposed under the Commission's incremental pricing plan, regardless of the makeup of the State plan. Thus, a State plan is not in conformance with Title II of the NGPA and the Commission's incremental pricing regulations if such plan channels to some non-exempt users certain revenues collected from other non-exempt users and in the process causes some non-exempt user rates to fall below the applicable alternative fuel price ceilings.

Users exempted by section 206 of the NGPA. Section 206 of the NGPA exempts from the federal incremental pricing program several categories of gas users, such as small industrial facilities, agricultural users, schools, and hospitals. Related to the preceding discussion of the Commission's lack of authority to require States to channel increased revenues to residential and other high priority users is the issue of whether States with their own incremental pricing plans must preserve the exempt status of those gas users protected under the Commission's plan pursuant to section 206 of the NGPA. For example, may agricultural users of natural gas, who are exempt under section 206(b), be priced at, or above, the alternative fuel price ceiling under a State incremental pricing plan? Many end-users maintained that the exempt status of users under the Commission's plan must be preserved at the State level because to do otherwise is contrary to the mandate of section 206.

As previously discussed, Title II of the NGPA does not preempt State ratemaking authority with respect to exempt users. Specifically, regardless of whether the States implement their own incremental pricing plans or remain under the Commission's plan, there is no requirement in Title II that States must set lower rates for users who are exempt under the Commission's plan. Accordingly, the Commission does not view action by States to raise the rates to users exempt from the Commission's program by section 206 as a circumvention of Title II; rather, the Commission views such action as a valid exercise by the States of their traditional retail ratemaking authority.

"No greater harm" provision. Several commenters recommended that a "no greater harm" provision be included in the final regulations governing State incremental pricing plans. A "no greater harm" provision would allow States under their own incremental pricing plans to set their rates for non-exempt

[1] As comments pointed out, depending on the particulars of a State incremental pricing plan, imbalances may even be from one local distribution company to another within the State. This result may occur because the pertinent ratemaking agency may not have the authority to shift the benefits of its incremental pricing plan from an area served by one local distribution company to an area served by another company.

users below the applicable alternative fuel price ceilings, if the lower rates would have been allowed under the Commission's plan. This situation would arise when the total MSAC on a pipeline's system becomes greater than the amount in the pipeline's incremental gas cost account. Such a provision would allegedly protect non-exempt users from paying more under State incremental pricing plans than what they would pay under the Commission's plan.

The Commission declines to include a "no greater harm" provision in its regulations for several reasons. There is no administratively feasible method for accurately determining the amount of the monthly surcharge a non-exempt user would have paid had such a user been under the Commission's incremental pricing plan instead of a State plan. Moreover, to monitor the rates set by the States, as would be required by such a provision, would result in an additional administrative burden that would far outweigh any overall benefit that may be gained. Finally, a situation to which such a provision would apply would rarely, if ever, occur due, in part, to a recent development in the incremental pricing program. Pursuant to section 202 of the NGPA, the Commission issued a rule (Phase II rule) on May 6, 1980,[2] which, if not disapproved by either House of Congress, would have expanded the application of the incremental pricing program to other industrial uses of natural gas in addition to boiler fuel use. Because the Phase II rule was disapproved by Congress, the scope of the incremental pricing program is limited to natural gas used as boiler fuel.[3] Since the number of users absorbing the surcharges is small, it is highly unlikely that the federal incremental pricing surcharge would ever result in a non-exempt user's rate being lower than the applicable alternative fuel price ceiling.

Benefit of reduced PGA. A major concern raised in the comments arises when an interstate pipeline serves users in a State with a State incremental pricing plan as well as users in a State without such a plan. The pipeline's purchased gas cost account (PGA) is reduced by the amount of the federal incremental pricing surcharges imposed on non-exempt users served by the pipeline in the State without a State incremental pricing plan. All exempt users served by the pipeline, regardless of the State in which they are located, receive the benefit of the pipeline's reduced PGA. Several commenters suggested that the benefit of the reduced PGA be denied to exempt users in States having their own plans, because those users may already receive the benefits of the State plan. They also pointed out that the non-exempt users in States with their own plans pay no federal surcharge and, thus, do not contribute to reducing the PGA.

The Commission does not adopt this suggestion, because such a proposal is administratively infeasible. Elimination of the reduced PGA benefit to exempt users in States having their own incremental pricing plans would require interstate pipelines to maintain separate incremental pricing accounts for each State. The burden that would be placed on pipelines and local distribution companies, in establishing the separate rates resulting from the separate accounts, and on the Commission, in monitoring such rates, would be prohibitive.

B. *State Alternatives to Incremental Pricing.* The second type of State action that appeared to have an effect on the Commission's incremental pricing program is an innovative State ratemaking plan proposed as an alternative to federal incremental pricing in that State. For instance, a State might propose to depart from the manner and method in which the surcharge under the Commission's incremental pricing plan is apportioned among the non-exempt users within the State.

Section 206(d) of the NGPA provides that the Commission may issue a rule, subject to Congressional review, which exempts from incremental pricing any appropriate category of facilities for which there is no specific statutory exemption. In the Notice in this document, the Commission preliminarily concluded that, since, by definition, such a plan would depart from the incremental pricing program mandated by Title II of the NGPA, Commission action approving such a plan would be truly exemptive in nature, and thus would be subject to Congressional review and possible disapproval under section 206(d). The Commission expressed the desire to grant States broad flexibility in seeking exemptions through alternative plans. However, it also indicated that the more an alternative plan departed from the statutory requirements of incremental pricing, the greater the scrutiny that would be applied by the Commission on review. The Notice provided that the standard for Commission approval of an alternative plan would be whether the plan advances the underlying purposes of Title II of the NGPA as well as, or better than, the Commission's incremental pricing program. The Commission proposed to consider these plans on a State-by-State basis.

All but one of the comments which addressed State alternative plans generally supported the Commission's proposal. The comment opposing the proposal argued that the proposed process for obtaining an exemption was burdensome and would result in confusing and inconsistent State proposals and Commission rulemakings.

The Commission does not find this argument persuasive. It believes that States should be given the opportunity to submit innovative ratemaking proposals to the Commission for approval as a basis for obtaining State-wide exemptions from federal incremental pricing. The Commission notes that the Statement of Managers referred to the ability of States "to provide for some form of inverted rate schedules or other ratemaking technique" designed to achieve the purposes of Title II. (S. Rep. No. 1126, 95th Cong. 2d Sess. 101 (1978)). To implement Congressional intent, State ratemaking authorities should be given as much flexibility as possible, within the mandates of Title II, to initiate innovative forms of retail ratemaking as a means to achieve the goals of incremental pricing.

By definition, an alternative plan would be inconsistent with some of the incremental pricing requirements set forth in Title II of the NGPA. For example, an inverted rate design proposal might mean that the actual average delivered price of gas to some non-exempt users at certain times would be below their alternative fuel price ceiling. This result appears to violate section 204(e) of the NGPA, at least in those cases where the surcharge imposed under the Commission's plan would raise non-exempt user rates to the alternative fuel price ceiling. Similarly, a commenter suggested that the determination of whether the price of gas to non-exempt users remained at, or above, their alternative fuel price ceiling be made on the basis of annual average rates charged to the non-exempt users. This proposal appears to violate section 204(a)(3)(A), which requires that the surcharge calculation be related to the calendar period involved, defined by the Commission to be a monthly period. (18 CFR 282.501). As another example, a

[2] *Rule Required Under Section 202 of the Natural Gas Policy Act of 1978.* Docket No. RM80-10, Order No. 80, issued May 6, 1980, 45 FR 31622 (May 13, 1980).

[3] *Order Denying Rehearing and Revoking Amendments Made by Order No. 80,* Docket No. RM80-10, issued August 1, 1980, 45 FR 54741 (August 18, 1980).

commenter proposed that State regulatory agencies be allowed to establish their own alternative fuel price ceilings. This proposal appears to run contrary to section 204(e), which requires the Commission to establish these ceilings.

These proposed alternatives to incremental pricing ostensibly are inconsistent with the requirements of Title II; yet, in fact, they may further the purposes of incremental pricing as well as, or better than, the method prescribed in the Commission's regulations. At this time, the Commission takes no position as to the merits of the proposals used here as examples, but mentions them to emphasize that any State-wide exemption from federal incremental pricing based on an alternative plan would stem from the Commission's authority under section 206(d) of the NGPA.

The final rule provides that, if the Commission finds that the State alternative plan is in the public interest and achieves the underlying purposes of incremental pricing as well as, or better than, the Commission's incremental pricing program, the Commission shall issue a rule under section 206(d) of the NGPA approving the State alternative plan and specifying the extent to which natural gas used as boiler fuel by non-exempt industrial facilities subject to the alternative plan is exempt from incremental pricing. The Commission's rule approving the plan will become effective only if it is not disapproved by Congress.

Several commenters suggested that the Commission establish generic guidelines for approving alternative plans instead of considering such plans on a State-by-State basis. The Commission declines to adopt this suggestion, because the State-by-State approach gives States broader flexibility in designing alternative plans. Any submission by the Commission to the Congress under section 206(d) of the NGPA seeking broad authority to grant exemptions based on State alternative plans would have to include specific guidelines that the Commission would apply in granting exemptions under such plans. Specific guidelines can be expected to narrow the types of alternative plans presented to, and approved by, the Commission, thus reducing the desired flexibility.

Several comments advocated that the Commission limit participation in the proceeding relating to Commission consideration of an alternative plan to those persons with a direct interest in the plan. The Commission does not adopt this proposal because the alternative plan will be considered in a rulemaking proceeding in which all persons are invited to participate. Further, comments made by persons without a direct interest in a specific plan may be useful to the Commission due to the persons' experience with similar plans in other areas of the country.

C. *Miscellaneous. Rate plans of local ratemaking authorities.* One commenter pointed out that the Commission's proposal in the Notice does not provide for the situation in which retail rates are set by local municipalities rather than by the State. The commenter asserted that there is no rational or legal basis for discriminating between State and local ratemaking authorities.

The Commission agrees. Although the discussion in this rulemaking has focused on State ratemaking bodies and their authority over retail rates under Title II of the NGPA, the discussion applies equally to local retail ratemaking authorities.[4] By setting rates for non-exempt users at, or above, the alternative fuel price ceiling levels or by designing innovative rate plans as alternatives to federal incremental pricing, political subdivisions achieve the same results as State ratemaking bodies. Thus, the final regulations treat rate plans of political subdivisions, such as local municipalities, in the same manner as State rate plans.

Relation of State rate plans to Phase II rule. One commenter contended that, unless the comment period in this docket remained open until such time as the Phase II rule was issued and the outcome of the Congressional review process was known, there could be no meaningful comment on the Commission's proposals with respect to State incremental pricing plans and alternative plans. The Commission does not agree. Although the outcome of Phase II was not known prior to the February deadline for the submission of written comments, the comments nevertheless provided the Commission with meaningful guidance in promulgating this rule. In fact, most commenters assumed that a Phase II rule would not go into effect. Furthermore, insofar as the issues discussed in this order relate to the continuing legal authority of State and political subdivisions in the area of retail ratemaking in light of Title II, they are independent of the outcome of the Phase II proposal.

[4] The Commission notes that NGPA section 205(e), which defines "State Commission" refers to political subdivisions.

III. Summary of Final Regulations

The Commission's incremental pricing regulations, set forth in Part 282 of Title 18 of the Code of Federal Regulations, are amended by adding new §§ 282.104 and 282.208 and by amending § 282.504(e) (2) and (3).

New § 282.104 recognizes a State's or local municipality's authority to set retail rates and charges for natural gas to non-exempt users at, or above, the Commission's alternative fuel price ceilings. That section provides that nothing in Part 282 of the Commission's regulations precludes such action by a State or local political subdivision, or agency thereof, having authority to establish retail rates and charges for natural gas service in that State or local political subdivision.

Subparagraphs (2) and (3) of § 282.504(e) are amended to relieve natural gas suppliers of certain reporting requirements set forth in those subparagraphs. Subparagraph (2)(i) requires that a natural gas supplier respond each month to the requests of interstate pipelines, made under subparagraph (1), for the supplier's MSAC. Clause (ii) relieves the supplier of the monthly reporting requirement in clause (i), if: (1) the supplier's total monthly MSAC is zero, due to the supplier being subject to a State or local incremental pricing plan or plans; and (2) the supplier has notified the requesting interstate pipelines that the supplier is subject to such plan or plans. The purpose of the requirement that the supplier's total monthly MSAC is zero is to make clear that each of the non-exempt users served by the supplier is also subject to a State or local incremental pricing plan. If a portion of a supplier's service area is located in a jurisdiction not covered by a State or local plan, then the supplier's total MSAC would not be zero. In that case, the supplier would be required to respond under subparagraph (2)(i). In addition, the requirement that the supplier's total monthly MSAC is zero emphasizes that the supplier is relieved of the monthly reporting requirement only as long as its total monthly MSAC remains zero.

Subparagraph (3) of § 282.504(e) is amended to provide that a natural gas supplier must report the monthly surcharge only to those customers who are required to report under subparagraph (2)(i).

New § 282.208 establishes procedures for approval of an innovative State or local ratemaking plan proposed as an alternative to the Commission's incremental pricing program.

Paragraph (a) of § 282.208 provides that natural gas used as boiler fuel by a non-exempt industrial boiler fuel facility subject to an approved State or local alternative plan shall be exempt, to the extent specified in paragraph (d), from the incremental pricing rule set forth in Part 282.

Paragraph (b) contains definitions applicable to new § 282.208. The paragraph defines the terms "State or local alternative plan," "approved State or local alternative plan," and "purposes of Title II of the NGPA."

Paragraph (c) sets forth the procedures for approval of an alternative plan. Subparagraph (1) establishes the filing requirements and provides that four copies of a request for approval and of the State or local alternative plan must be filed with the Secretary of the Commission.

Clause (i) of § 282.208(c)(2) provides that, upon receipt of the request for approval and the State or local alternative plan, the Commission shall institute a rulemaking proceeding to consider the plan. Clause (ii) states that, if the Commission determines that the alternative plan is in the public interest and carries out the purposes of Title II of the NGPA as well as, or better than, the Commission's incremental pricing program, the Commission shall issue a final rule listing the alternative plan in paragraph (d) and specifying, in paragraph (d), the extent to which natural gas used as boiler fuel by a non-exempt industrial facility subject to the alternative plan is exempt from incremental pricing.

Subparagraph (3) of § 282.208(c) provides that a final rule issued under subparagraph (2) shall be transmitted to Congress for review pursuant to section 206(d)(2) of the NGPA, and will not become effective if either House of Congress passes a Resolution of Disapproval of the rule within the thirty day review period.

Paragraph (d) contains the list of approved State or local alternative plans which is the list of State or local alternative plans approved by Commission rule and not disapproved by Congress, in accordance with paragraph (c). Paragraph (d) also specifies the extent to which facilities subject to the approved plan are exempt from the federal incremental pricing program.

IV. Effective Date

The final rule is effective October 21, 1980, in accordance with 5 U.S.C. 553(d)(1), because it establishes exemptions, and procedures for obtaining exemptions, from the Commission's incremental pricing regulations.

(Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 3350, 15 U.S.C. §§ 3301, *et seq.*)

In consideration of the foregoing, Part 282 of Subchapter I, Chapter I, Title 18, Code of Federal Regulations, is amended, effective October 21, 1980, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. The table of contents of Part 282 is amended by adding in the appropriate numerical order the following section numbers and headings:

282.104 State or local incremental pricing plans.
282.208 State or local alternative plans.

2. Part 282 is amended by adding new § 282.104 to read as follows:

§ 282.104 State or local incremental pricing plans.

(a) *General rule.* Nothing in this part precludes a State or local government, or agency thereof, from implementing a State or local incremental pricing plan.

(b) *Definition.* For purposes of this section, a "State or local incremental pricing plan" means a rate plan of a State or local political subdivision, or agency thereof, having authority to establish retail rates for natural gas service in that State or local political subdivision, which rate plan is in effect and requires that retail rates charged by a natural gas supplier for all natural gas used as boiler fuel by nonexempt industrial boiler fuel facilities (subject to the retail ratemaking authority of the State or local political subdivision, or agency thereof) be at, or above, the applicable alternative fuel price ceilings established by the Commission under Subpart D of this part.

3. Part 282 is amended by adding new § 282.208 to read as follows:

§ 282.208 State or local alternative plans.

(a) *General rule.* Natural gas used as boiler fuel by a non-exempt industrial boiler fuel facility subject to an approved State or local alternative plan is exempt from the incremental pricing regulations of this part to the extent specified in paragraph (d) of this section.

(b) *Definitions.* For purposes of this section, the following definitions apply.

(1) "State or local alternative plan" means a rate plan of a State or local political subdivision, or agency thereof, having authority to establish retail rates and charges for natural gas service in that State or local political subdivision, which rate plan is designed to be an alternative to the application, in whole or in part, of this part.

(2) "Approved State or local alternative plan" means a State or local alternative plan which has been approved in accordance with paragraph (c) of this section and which is listed in paragraph (d) of this section.

(3) "Purposes of Title II of NGPA" means:

(i) shielding residential and high priority gas users from increased wellhead prices for natural gas allowed under Title I of the NGPA; and

(ii) preparing the natural gas acquisition market for an orderly transition from extensive federal regulation to deregulation.

(c) *Procedures for approval.* —(1) *Filing requirements.* A State or local political subdivision, or agency thereof, requesting approval for a State or local alternative plan, must file with the Secretary of the Commission four copies of:

(i) A request for approval of the State or local alternative plan; and

(ii) The State or local alternative plan.

(2) *Commission consideration.* (i) Upon receipt of the request for approval and the State or local alternative plan, in accordance with subparagraph (1) of this paragraph, the Commission shall institute a rulemaking proceeding to consider the State or local alternative plan.

(ii) If the Commission determines that the State or local alternative plan is in the public interest and carries out the purposes of Title II of the NGPA as well as, or better than, the incremental pricing regulations set forth in this part, the Commission shall issue a final rule:

(A) listing the State or local alternative plan as an approved State or local alternative plan in paragraph (d) of this section; and

(B) specifying, in paragraph (d) of this section, the extent to which natural gas used as boiler fuel by a non-exempt industrial boiler fuel facility subject to the State or local alternative plan is exempt from the incremental pricing regulations of this part.

(3) *Congressional review.* A final rule issued by the Commission under subparagraph (2) of this paragraph shall be transmitted to Congress for review pursuant to section 206(d)(2) of the NGPA. The final rule is not effective if either House of Congress passes a Resolution of Disapproval of the rule within the 30-day Congressional review period, determined in accordance with section 507(b) of the NGPA.

(d) *Approved State or local alternative plans.* [Reserved]

4. Section 282.504(e)(2) is revised to read as follows:

§ 282.504 Incremental pricing surcharge.

* * * * *

(e) *Reporting.*

* * * * *

(2) *Pipeline customers to respond.* (i) Except as provided in clause (ii) of this subparagraph, each month each natural gas supplier shall respond to the requests of interstate pipelines for its MSAC.

(ii) A natural gas supplier subject to a State or local incremental pricing plan or plans, as defined in § 282.104, is not required to respond under clause (i) of this subparagraph if:

(A) the supplier's total monthly MSAC is zero; and

(B) the supplier has notified the interstate pipelines making requests under subparagraph (1) of this paragraph that the supplier is subject to a State or local incremental pricing plan or plans.

5. Section 282.504(e)(3) is amended by inserting the phrase, "who are required to report under subparagraph (2)(i) of this paragraph," after the words "sale-for-resale customers".

[FR Doc. 80-33801 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-01-M

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18 CFR Part 292

[Docket No. RM80-62; Order No. 104]

Section 206(d) Exemption for Mechanical Cogeneration Facilities From the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978

Issued: October 23, 1980.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission hereby adopts regulations that implement section 206(d) of the Natural Gas Policy Act of 1978 (NGPA). These rules exempt mechanical cogeneration facilities from the incremental pricing of natural gas under Title II of the NGPA. Prior to taking effect, this rule must be submitted to the Congress for review.

EFFECTIVE DATE: Thirty days after transmittal to Congress, provided that neither House of Congress passes a Resolution of Disapproval, in accordance with section 507(b) of the NGPA.

FOR FURTHER INFORMATION CONTACT: James Liles, Office of Regulatory Analysis, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8158

or

Adam Wenner, Office of the General Counsel, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: On May 30, 1980, the Federal Energy Regulatory Commission (Commission) issued a Notice of Proposed Rulemaking Exempting Mechanical Cogeneration Facilities from all Incremental Pricing Provisions of the Natural Gas Policy Act of 1978 (15 U.S.C. 3301 *et seq.* (NGPA).[1] This rule is intended to make available to mechanical cogeneration facilities the same exemption from incremental pricing of natural gas under Title II of the NGPA that is provided to electric cogeneration facilities.

Background

Title II of the NGPA requires that the natural gas used in certain industrial facilities be subject to incremental pricing by means of surcharges. Section 206 of the NGPA establishes certain exemptions from these incremental pricing surcharges. Section 206(c)(3) provides that incremental pricing shall not apply

* * * to the extent provided by the Commission by rule [to] any qualifying cogenerator (as defined in section 3(18)(B) of the Federal Power Act, as amended by the Public Utility Regulatory Policies Act of 1978) [PURPA].

On September 18, 1979, the Commission issued rules implementing Title II of the NGPA and establishing a mechanism for the incremental pricing program. One provision of these rules implemented section 206(c)(3) of the NGPA for purposes of the incremental pricing program.[2] This provision exempted from the incremental pricing program all gas used for cogeneration by qualifying cogeneration facilities are defined in section 3(18)(B) of the Federal Power Act. However, at that time the Commission had not promulgated rules establishing the criteria for "qualifying cogeneration facilities" under section 3(18)(B) of the Federal Power Act. In order to facilitate the operation of the incremental pricing rules the Commission, on November 9, 1979, issued an interim rule for qualification of gas-fired cogeneration facilities for purposes of the incremental pricing program.[3] This interim rule established an exemption from incremental pricing for certain cogeneration facilities which were in existence and used natural gas as an energy input on or prior to November 1, 1979.[4]

On March 13, 1980, the Commission issued a final rule under section 201 of PURPA establishing requirements for a determination of qualifying status for small power production and cogeneration facilities.[5] This rule maintained the criteria for the exemption from incremental pricing established in the interim rule, and also established additional criteria for other facilities not previously eligible [6] for the exemptions from incremental pricing set forth in 18 CFR 282.202(e).

The application of these exemptions, however, is limited by section 3(18)(B) of the Federal Power Act to cogeneration facilities which produce *electric* energy, and other forms of useful energy. Cogeneration facilities which produce *mechanical* energy and other forms of useful energy are not eligible under the final rule in Docket No. RM79-54 for these exemptions from incremental pricing.

Mechanical cogeneration facilities can produce the same fuel efficiencies as can cogeneration facilities producing electric energy. The proposed rules reflected the Commission's belief that cogeneration facilities which produce mechanical energy should be afforded the same exemption from incremental pricing surcharges as is available to cogeneration facilities which generate electricity. Section 206(d) of the NGPA authorizes the Commission to exempt from incremental pricing "any other industrial facility or category thereof." The proposed rule represented an attempt to utilize this authority to place mechanical and electrical cogeneration on an equal footing vis-a-vis the exemption from incremental pricing. Any rule providing for an exemption by the Commission under section 206(d) is subject to Congressional review before it can become effective.

The Basis for a Section 206(d) Exemption

Cogeneration involves the production of both useful heat and power through the sequential use of energy. Shaft power, compressed air and hydraulic power are all variations of the high-grade energy form known as mechanical power or energy. Production of any of these mechanical energy forms, with

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[1] 45 FR 38080 (June 6, 1980).

[2] 18 CFR 282.202(e), 44 FR 37726 (October 5 1979).

[3] Docket No. RM79-54, issued November 9, 1979, 44 FR 65744 (November 15, 1979).

[4] 18 CFR 292.501-292.503, 44 FR 65744 (November 15, 1979).

[5] Order No. 70, issued March 13, 1980 in Docket No. RM79-54, "Final Rule Establishing Requirements and Procedures for a Determination of Qualifying Status for Small Power Production and Cogeneration Facilities," 45 FR 17959 (March 20, 1980).

[6] 18 CFR 292.205(c).

utilization of the reject heat from a facility, represents energy-efficient cogeneration with an energy conservation potential similar to that available from cogeneration involving the production of electricity.

The incentive provided through the exemption of cogeneration from incremental pricing is intended to promote the efficient use of energy by cogeneration facilities. However, as noted, under the existing rules, only those cogeneration facilities which generate electricity are eligible for the exemption; those producing only mechanical power are excluded. Not only is this distinction inequitable, since energy resources may be conserved absent electrical generation, but it may create a significant incentive for needless capital investment. An industrial company with a need for mechanical power which could be obtained through cogeneration might have an economic incentive through lower natural gas prices to cogenerate electrical instead of mechanical power. This electricity would, in turn, be used to power electric motors, which would be used to drive the machinery. Thus, several intermediate steps would be taken to obtain mechanical power.

The expense of installing the generators and motors would be needlessly incurred, since the cogeneration prime mover could directly supply the required mechanical power. Moreover, the intermediate conversion to electricity would result in energy losses since motors and generators are always less than perfectly efficient. By making mechanical cogeneration facilities eligible for the exemption from incremental pricing, this rule would remove this incentive to install unneeded equipment.

In the proposed rule, the Commission emphasized that this rule will not affect any of the provisions of Order Nos. 69 or 70 which pertain to electrical cogeneration.[7] The final rule does, however, adopt certain terms and criteria similar to those used in Order No. 70 for qualifying electrical cogeneration facilities. In order to ensure that mechanical and electrical cogeneration facilities are afforded similar treatment under the incremental pricing provisions of the NGPA, the efficiency standards adopted are similar to those prescribed for electrical cogeneration facilities in Order No. 70.

[7] Order No. 69, 45 FR 12214 (February 25, 1980), and Order No. 70, 45 FR 17959 (March 20, 1980).

Summary of Comments

The Commission received thirteen comments to the proposed rule.[8] A public hearing, scheduled for July 1, 1980, was cancelled due to lack of public response. All of the thirteen comments expressed general support for the proposed rule; eight comments offered specific recommendations for revisions.

Measurement of Mechanical Power and Related Issues

The proposed rule provided that the useful mechanical power output of a cogeneration facility could be determined at the output of the prime mover—or at some further stage of energy conversion, at the discretion of the cogenerator. Comments were requested as to whether the term "output of the prime mover" is appropriate, and whether the determination of mechanical power output should be permissive in regard to the point of measurement. Comments were also requested on the feasibility of measuring mechanical power output.

Seven commenters addressed the related issue of mechanical power measurement.[9] To varying degrees, these commenters suggested that ongoing measurement of the mechanical power output of an engine is generally infeasible. The commenters requested that the proposed requirement for measurement of mechanical power be replaced with a requirement that mechanical power be estimated. The Commission believes that these requests have merit, and adopts this recommendation.

Since a calculation which is appropriate for one cogeneration facility may be unsuitable for another, the rules do not specify a specific mechanical estimation technique. Rather, calculations are to be based on standard engineering methods, and must reflect the calendar year period specified for the operating and efficiency standards. The location of the estimate is within the discretion of the cogenerator. Calculations may be based on the design characteristics of the prime mover, the equipment driven by the prime mover, or on actual measurements.

[8] American Cyanamid Company, American Paper Institute (API), Chemical Manufacturers Association (CMA), The Dow Chemical Company, Glass Packaging Institute (GPI), Masonite Corporation (Masonite), Monsanto Company, Northern Illinois Gas Company (NI-Gas), Potlatch Corporation (Potlatch), Republic Steel Corporation, The Standard Oil Company (SOHIO), Stauffer Chemical Company, and Sun Petroleum Products Company (Sun Petroleum).

[9] API, CMA, Masonite, NI-Gas, Potlatch, SOHIO, and Sun Petroleum.

NI-Gas requested a more specific definition of the term "prime mover." This commenter believed that the proposed rule was unclear as to whether, for example, a steam turbine or the boiler supplying steam to the turbine is the prime mover. A prime mover is a device which converts other forms of energy (such as thermal energy or chemical energy) into mechanical energy. The Commission is mindful, however, that any simple definition of such a fundamental concept may work to exclude some novel technology or innovation. The Commission has, therefore, decided not to add a definition of "prime mover" to the rules. Instead, the phrase "* * * at the output of the prime mover * * * " has been modified to read "* * * at the output of the steam turbine, combustion turbine, or other prime mover * * *" This change will serve to clarify the intent without running the risk of an overly narrow definition. Thus, in the NI-Gas example, the prime mover is the steam turbine.

Revised Language

Several commenters requested clarification of certain portions of the proposed rules, and offered alternative language. The American Paper Institute [APA] suggested that the statement of the operating and efficiency standards in § 282.211(c) be combined. With regard to rules on electrical cogeneration facilities, an operating standard was adopted for topping-cycle systems to ensure that *bona fide* cogeneration situation exists. Efficiency standards were adopted for topping-cycle systems using oil or gas to ensure efficient use of these scarce fuels. Exemption from incremental pricing is available to electrical cogeneration facilities only if both operating and efficiency standards are met. Since the Commission's sole concern with mechanical cogeneration facilities in this docket is exemption from incremental pricing—and the Commission has decided to afford the exemption to mechanical facilities on the same basis as electrical facilities—both operating and efficiency standards must be met in order for a mechanical cogeneration facility to qualify for an exemption. Since both standards are applicable in all cases, the Commission will accept API's recommendation and simplify the statement of the standards.

Technical Definitions

NI-Gas commented on the definition of mechanical cogeneration facility. The definition in the proposed rule limited the term "useful thermal energy" to energy "used for industrial or commercial heating or cooling purposes * * *" The definition of cogeneration

facility in Order No. 70 is less restrictive. In that definition, the useful thermal energy must be "used for industrial, commercial, heating, or cooling purposes * * *" Each term—industrial, commercial, heating, and cooling—stands alone. Under this definition, the useful thermal energy may be used in an industrial (or commercial) process other than heating or cooling. Process steam, for example, may be used directly in a chemical reaction. Heating or cooling purposes which are neither industrial nor commercial are also permitted under the definition in Order No. 70. Residential heating uses, for example, would be included. NI-Gas recommends that the less restrictive language found in Order No. 70 be used to define a mechanical cogeneration facility. The Commission has adopted this recommendation.

NI-Gas also recommended that the definitions of mechanical cogeneration facility and supplementary firing be modified to indicate that only facilities covered by Phase I of incremental pricing are included. As mandated under Title II of the NGPA, the Commission is required to implement the incremental pricing program in two phases. The Phase I rules apply only to the use of natural gas by large industrial boiler fuel facilities. On May 7, 1980, the Commission issued Phase II rules in Docket No. RM80-10 expanding the scope of the incremental pricing program to other industrial uses of natural gas. This Phase II rule was submitted to Congress for a mandatory review prior to taking effect. On May 20, 1980, the House of Representatives passed a Resolution of Disapproval, and the Commission has since vacated its Phase II Order.[10] Therefore, only natural gas used as boiler fuel by large industrial facilities is now subject to incremental pricing. Both of NI-Gas's recommended modifications would explicitly restrict the definitions of mechanical cogeneration facility and supplementary firing to boiler fuel use of gas which is not otherwise exempt from incremental pricing. NI-Gas proposes these changes as an effort to "avoid needless confusion."

The Commission has decided not to adopt the recommended changes. The Commission believes that these recommendations would be likely to cause confusion at the end-user level. On the one hand, the definitions of basic terms would become strikingly different when applied to electrical or mechanical cogeneration facilities. Many end-users have both types of cogeneration in the same plant. On the other hand, the recommendations would make the definitions contingent upon the status of other exemptions, such as the agricultural use exemption.

Since other exemptions are themselves contingent upon various circumstances (alternative fuel tests or monthly gas consumption, for example) confusion would likely arise concerning the timing for filing for an exemption, and the time when such exemption would become effective. Moreover, future consideration of a second Phase II rule would likely require that the definitions of mechanical cogeneration facility and supplementary firing be substantially modified and expanded. On balance, the Commission does not believe that end-users who are not presently subject to incremental pricing will be confused by promulgation of an exemption in broad inclusive language.

The Glass Packaging Institute (GPI) recommends an expansion of the definition of cogeneration to include facilities in which no mechanical or electrical energy is produced. Certain energy conversion systems, while not producing electrical or mechanical energy, may displace the need for such energy. The example cited by GPI is a system in which reject thermal energy from an industrial process is used in an adsorption refrigeration unit rather than a bottoming-cycle mechanical drive. GPI claims that the absorption system displaces a requirement for electrical or mechanical power and, therefore, the entire system should be considered the functional equivalent of a cogeneration facility.

The Commission recognizes that a facility such as that described by GPI could be highly energy efficient. However, GPI's proposal would be difficult if not impossible to administer. The efficiency of a non-mechanical "cogeneration facility" would have to be determined on the basis of a hypothetical displaced system. Any such evaluation of *what might have been* rather than *what is* leaves room for serious differences of opinion. GPI mentions the possibility that a cogeneration use might be claimed where thermal output from a "bottoming-cycle" is used simply for space heating. GPI states that this situation could be expressly excluded by not allowing the displacement of electric resistance heating. But the owner of such a system could reasonably claim that an electric heat pump was displaced—much the same as GPI's example facility displaces an electric air conditioning unit. There would be no straighforward way to resolve such a dispute. For these reasons, the Commission has decided not to adopt GPI's recommendation. However, it notes that the facility described by GPI would not be subject to incremental pricing under the Phase I rule since it does not use natural gas as boiler fuel.

Efficiency Standards

The Masonite Corporation (Masonite) recommends that lower efficiency standards be used for qualification of mechanical power facilities than were used for electrical cogeneration facilities. Masonite suggests that the proposed 42.5 percent test set forth in § 282.209(b) (§ 282.211(c) in the proposed rule) be reduced to 38.5 percent. No recommendation is made concerning the 45 percent efficiency requirement for cogeneration facilities with less than 15 percent of total energy output in the form of thermal energy.

Masonite states that the Commission is "essentially ignoring the losses which occur between the electrical generator source and the end user." An example is given of two equivalent pump systems, one mechanical and the other driven by an electric motor receiving its power from an electrical cogeneration facility. Masonite explains that the electrical cogeneration facility would have to be sized larger than the mechanical system to account for "electrical transformation and transmission line losses * * * as well as power losses in the electrical motor." In order to adjust for such power losses, lower efficiency standards are recommended for the mechanical system.

Masonite is correct in recognizing that the Commission's rules ignore losses which occur between a generator and ultimate user of electricity. In this regard, in the preamble to the proposed rule, the Commission stated:

> The proposed rule does not require theoretical conversion of mechanical energy to an electrical energy equivalent. A cogenerator developing only mechanical power most probably desires this form of energy for use in his facility. It is appropriate to relate this mechanical energy to an equivalent efficiency standard, rather than to attempt a determination of what quantity of electricity could reasonable be generated from the cogenerator's mechanical power.[11]

The converse is equally true. The rule does not attempt to require determination of the quantity of electricity that would be necessary to serve a mechanical load. A cogenerator is presumed to produce energy in the form desired. The fact that other,

[10] Order Denying Rehearing and Revoking Amendments made by Order No. 80, issued August 1, 1980, in Docket No. RM80-10, 45 FR——(August ——, 1980).

[11] 45 FR 38081 (June 6, 1980).

hypothetical systems may be less efficient should not affect the qualification of an actual system. As a matter of policy, the Commission believes that cogeneration facilities producing either electrical or mechancial power output should be measured against a common standard of efficiency.

Multiple Steam Turbines

Two commenters, Masonite and SOHIO, made similar recommendations concerning the aggregation of cogeneration units at the same site. Masonite points out that turbines used for producing mechanical energy "are quite often smaller and more numerous in use at a site than those turbines driving electrical generators * * *" Both commenters suggest that aggregation of multiple mechanical power turbines at a single site be allowed for purposes of qualifying under the rules. SOHIO recommends that a plant with four or more prime movers or heating loads be permitted to qualify based on an overall plant steam balance.

SOHIO argues that a plant with many individual pieces of equipment "would not have the instrumentation required to measure power production, or the total hearing load." The question of how mechanical energy may be measured has been addressed elsewhere. Meters and gauges are not required. A plant with many small turbines should not incur any extra cost of instrumentation.

Under the Commission's definition of "mechanical cogeneration facility"[12] a group of turbines may be considered as a single unit for purposes of the rule if each draws steam from, and exhausts steam to, common steam headers. In this situation, all of the turbines occupy the same position in the "cascade" of energy through a sequential process.

However, the Commission chooses not to adopt a rule which would allow an entire industrial plant to qualify for exemption on the basis of an overall steam balance. The purpose of this rule is to afford an exemption from incremental pricing to gas-fired cogeneration. The rule is not intended to exempt an entire industrial boiler fuel facility from incremental pricing on the grounds that the plant contains certain cogeneration applications. Only the cogeneration applications are eligible for exemption under this rule.

In the comments, SOHIO provided a diagram of an industrial facility containing a variety of backpressure and extraction steam turbines. This facility also contained an unspecified block of "heating and non-heating loads" served directly from the boiler and not part of any sequential use of energy. Such steam loads were considered by the Commission previously in promulgating rules under section 201 of PURPA.[13] In the preamble to those rules, the Commission stated:

> * * * many industries commonly route steam directly from their boilers to processes without expansion in a turbine. This practice is simply the raising of process steam; it is not cogeneration. The fact that some other steam from the same boiler is routed to cogeneration equipment does not mean that all steam from the boiler is used for cogeneration. The coincident raising of process steam relates to the cogeneration rules in two ways. First, any energy expended in raising such steam should not be entered into any efficiency calculations. Secondly, natural gas used for raising process steam is not rendered exempt from incremental pricing solely because the boiler may also supply steam for cogeneration.

The Commission further wishes to amplify that condensing mechanical drive turbines served directly from a boiler do not comprise cogeneration since there is no sequential use of energy.

Moreover, any topping-cycle mechanical cogeneration facility must meet the five percent useful thermal output standard under § 282.209(b) in order to qualify for exemption from incremental pricing. The standard requires that no less than five percent of the total energy output, during any calendar year period, be in the form of useful thermal energy. Thus a plant containing only mechanical drive and other non-thermal use of steam does not meet the requirement. This holding is analogous to the Commission's treatment of combined-cycle electric generation facilities under Order No. 70.[14]

Congressional Review and Effective Date

The rule set forth below is issued pursuant to section 206(d) of the NGPA. That section requires that such rule be submitted to the Congress for review prior to taking effect. After submission to each House of Congress, the rule may take effect following 30 days of continuous session of Congress (as set forth in subsection 507(b) of the NGPA) unless either House adopts a resolution of disapproval within that 30 day period. Accordingly, this rule will be effective on the day following expiration of the 30-day period for Congressional review.

In consideration of the foregoing, if neither House of Congress passes a Resolution of Disapproval of the regulations transmitted to them in this rulemaking within 30 days of Congressional review, as determined in accordance with section 507(b) of the NGPA, Part 282 of Subchapter I, Chapter 1, Title 18, Code of Federal Regulations, is amended as set forth below, effective on the day following expiration of the 30-day Congressional review period.

(Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 3350, 15 U.S.C. §§ 3301-3434)

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Section 282.203 is amended by deleting the introductory paragraph, and by adding a new paragraph (c) to read as follows:

§ 282.203 Exempt end-uses:

* * * * *

(c) *Exemption for mechanical cogeneration facilities under section 206(d).* Natural gas used in a mechanical cogeneration facility shall be exempt from incremental pricing according to the provisions set forth in § 282.209.

2. The Table of Contents for Sections for Part 282 is amended to add a new § 282.209 entitled *"Exemption for mechanical cogeneration facilities under NGPA section 206(d)."*

3. Part 282 is amended by adding a new § 282.209 to read as follows:

§ 282.209 Exemption for mechanical cogeneration facilities under NGPA section 206(d).

(a) *Definitions and general rules.* For purposes of this section:

(1) "Mechanical cogeneration facility" means equipment used to produce mechanical energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy.

(2) "Topping-cycle mechanical cogeneration facility" means a cogeneration facility in which the energy input to the facility is first used to produce useful mechanical power output, and the reject heat from such power production is then used to provide useful thermal energy.

(3) "Bottoming-cycle mechanical cogeneration facility" means a cogeneration facility in which the energy input to the facility is first applied to a useful thermal energy process, and the reject heat emerging from the process is then used to produce mechanical power output;

[12] Section 282.209(a)(1) (§ 282.211(a)(1) in the proposed rule) defines a "mechanical cogeneration facility" as equipment used to produce mechanical energy and forms of useful thermal energy (such as heat or steam), used for industrial, commercial, heating, or cooling purposes, through the sequential use of energy. . . .

[13] Docket No. RM79-54, Order No. 70, 45 FR 17961.

[14] 45 FR 17959, 17961 (March 20, 1980).

(4) "Supplementary firing" means an energy input to the mechanical cogeneration facility used only in the thermal process of a topping-cycle mechanical cogeneration facility, or only in the mechanical power production process of a bottoming-cycle mechanical cogeneration facility.

(5) "Useful mechanical power output" of a mechanical cogeneration facility means the total mechanical energy made available for use, exclusive of any such energy used in the mechanical energy production process;

(6) "Useful thermal energy output" of a topping-cycle mechanical cogeneration facility means the thermal energy made available for use in any industrial or commercial process, or used in any heating or cooling application;

(7) "Total energy output" of a topping-cycle mechanical cogeneration facility is the sum of the useful mechanical power output and useful thermal energy output;

(8) "Total energy input" means the total energy of all forms supplied from external sources;

(9) "Natural gas" means either natural gas unmixed, or any mixture of natural gas and artificial gas;

(10) "Oil" means crude oil, residual fuel oil, natural gas liquids, or any refined petroleum products;

(11) Energy input in the case of energy in the form of natural gas or oil is to be measured by the lower heating value of natural gas or oil; and

(12) Useful mechanical power output may be estimated at the output of the steam turbine, combustion turbine, or other prime mover or at a subsequent energy conversion point.

(b) *Exemption from incremental pricing for topping-cycle facilities.* Natural gas used in any topping-cycle cogeneration facility, other than gas used for supplementary firing, is eligible for an exemption from incremental pricing under Title II of the Natural Gas Policy Act of 1978 (NGPA) and Part 282 of the Commission's rules if the useful thermal energy output of the facility, during any calendar year period, is 5 percent or more of the total energy output;

(1) for facilities in which the useful thermal energy output is less than 15 percent of total energy output, the useful mechanical energy output of the facility plus one-half the useful thermal energy output, during any calendar year period, is equal to or greater than 45 percent of the total energy input of natural gas and oil to the facility; or

(2) for facilities in which the useful thermal output is 15 percent or more of the total energy output, the useful mechanical energy output of the facility plus one-half the useful thermal energy output, during any calendar year period, is equal to or greater than 42.5 percent of the total energy input of natural gas and oil to the facility.

(c) *Exemption from incremental pricing for bottoming-cycle facilities.*

(1) *General Rule.* Natural gas used in any bottoming-cycle mechanical cogeneration facility, other than gas used for supplementary firing, is eligible for an exemption under Title II of the NGPA and Part 282 of the Commission's rules to the extent that reject heat emerging from the useful thermal energy process is made available for use in mechanical power production.

(2) *Efficiency standard.* For any bottoming-cycle mechanical cogeneration facility using natural gas or oil for supplementary firing, the useful mechanical power output of the facility, during any calendar year period, must be 45 percent or more of the energy input of natural gas and oil for supplementary firing.

(d) *Supplementary firing.* Natural gas used for supplementary firing in any mechanical cogeneration facility is not eligible under this section for exemption from incremental pricing.

(e) *Waiver.* The Commission may waive any of the requirements of paragraphs (b) or (c) of this section upon a showing that the facility will produce significant energy savings.

[FR Doc. 80-33"20 Filed 10-29-80; 8:45 am]
BILLING CODE 6450-85-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

Federal Old-Age, Survivors, and Disability Insurance Benefits; Payment for Medical Evidence of Record

AGENCY: Social Security Administration, HHS.

ACTION: Interim regulations.

SUMMARY: These interim regulations provide that any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician who is not employed by the Federal government, and who supplies medical evidence that we ask for and need for making determinations of disability shall be entitled to payment for the reasonable cost of providing the evidence.

DATES: Effective date: These regulations are effective on an interim basis beginning on December 1, 1980.

COMMENT DATE: Before adopting final regulations, we will consider any comments we receive by December 29, 1980.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203. You may see copies of all comments we receive at the Washington Inquiries Section, Office of Governmental Affairs, Social Security Administration, Department of Health and Human Services, Room 1212, Switzer Building, 330 C Street, S.W., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: William J. Ziegler, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301-594-7415.

SUPPLEMENTARY INFORMATION: Section 309 of Pub. L. 96-265 amends section 223(d)(5) of the Social Security Act to permit us to pay for certain medical evidence which we need to make title II disability determinations. As a result of this change in the law, we will now pay the reasonable cost for existing medical evidence which we ask for and need. However, we will pay only a non-Federal hospital, clinic, laboratory, or other provider of medical service, or a physician who is not employed by the Federal government. This law authorizes us to pay only for evidence which we ask for after November 30, 1980. The date of the request will be the first date that we ask for a medical report and not the date of a later request.

Until December 1, 1980 the claimant is primarily responsible for paying for existing medical evidence submitted to us for making a title II disability determination. The title II law does not allow us to routinely purchase existing medical evidence.

On the other hand, we have always paid for existing medical evidence which we ourselves needed for making disability and blindness determinations under the title XVI Supplemental Security Income Program. Under the title XVI program, a claimant must always have limited income and resources in order to get payments based upon disability or blindness.

To reflect this change in the law, we are amending § 404.1514.

Although the law provides that we pay for existing medical evidence which we require and request, we may in some unusual situations pay for evidence of record which we did not require or which we did not request. From our past experience in paying for medical evidence under the title XVI

Supplemental Security Income Program, we have found that medical evidence of record which we need is sometimes given to us before we request it. As in the title XVI program, we may pay for such evidence in the title II program (under the authority we have in section 205(a) of the Act to efficiently carry out the purposes of that title) if we believe the evidence helps us to assure the correctness of our payments.

We will generally consider as existing medical evidence any medical report prepared on the basis of a prior medical examination, test, or laboratory study. We will pay a reasonable fee to cover any expenses for processing our request for the evidence, including expenses for preparing, copying, and mailing the report. We will not pay for the cost of the actual medical examination, test, or laboratory study unless we schedule it. Therefore, we are also amending § 404.1517 to make it clear that we will not pay for any medical examination arranged by a claimant or his or her representative without our advance approval. This is the same rule which we are already following under the title XVI Supplemental Security Income Program.

The Social Security Administration finds that publication of a Notice of Proposed Rulemaking (NPRM) is "unnecessary" under the Administrative Procedure Act (5 U.S.C. 553(b)(B)). Since these interim regulations only update existing regulations to reflect the Social Security Disability Amendments of 1980 (Section 309 of Pub. L. 96-265), and the policy stated is mandated and not discretionary, an NPRM would serve no useful purpose.

These interim regulations are issued under the authority contained in section 205, 223, and 1102 of the Social Security Act, as amended; 53 Stat. 1368, as amended; 70 Stat. 815, as amended; 49 Stat. 647, as amended; 42 U.S.C. 405, 423, and 1302.

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance)

Dated: September 30, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: October 23, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. Section 404.1514 is revised to read as follows:

§ 404.1514 When we will purchase existing evidence.

We need specific medical evidence to determine whether you are disabled or blind. You are responsible for providing that evidence. However, we will pay physicians not employed by the Federal government and other non-Federal providers of medical services for the reasonable cost of providing us with existing medical evidence that we need and ask for after November 30, 1980.

2. Paragraph (a) of § 404.1517 is revised to read as follows:

§ 404.1517 Consultative examination at our expense.

(a) *Notice of the examination.* If your medical sources cannot give us sufficient medical evidence about your impairment for us to determine whether you are disabled or blind, we may ask you to have one or more physical or mental examinations or tests. We will pay for these examinations. However, we will not pay for any medical examination arranged by you or your representative without our advance approval. If we arrange for the examination or test, we will give you reasonable notice of the date, time, and place the examination or test will be given, and the name of the person who will do it. We will also give the examiner any necessary background information about your condition when your own physician will not be doing the examination or test.

* * * * *

[FR Doc. 80-33812 Filed 10-29-80; 8:45 am]

BILLING CODE 4110-07-M

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20 CFR Part 416

[Reg. No. 16]

Supplemental Security Income for the Aged, Blind, and Disabled; Family Relationships

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We have reorganized and simplified our rules on family relationships under the Supplemental Security Income (SSI) program. These regulations explain who is a spouse, a child, and a parent for SSI purposes. The regulations also states when a person must give us evidence about family relationships and what kinds of evidence we need. These regulations are important because determinations on family relationship questions must be made in order to know:

(1) What limits on income and resources to use in order to determine eligibility,

(2) What income to count in order to determine the benefit amount, and

(3) What benefit amount applies.

The Notice of Proposed Rule Making (NPRM) was published in the Federal Register on March 11, 1980 (45 FR 15566) with a 60-day comment period.

DATES: These amendments are effective October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Cliff Terry, Legal Assistant, Room 4234, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7519.

SUPPLEMENTARY INFORMATION: We have revised and reorganized these rules as part of Operation Common Sense, which is a Department-wide effort to review, simplify, and improve HHS's regulations.

Changes from Prior Regulations

We have summarized below the main changes we have made in revising Subpart J.

1. *Organization of subpart.* The main change we have made in the overall organization of Subpart J is to group the various sections of the subpart into three categories: Who is considered someone's spouse, who is considered a child, and who is considered someone's parent. These categories are necessary because the rules on eligibility and benefit amounts vary depending on the person's situation in each of these areas. Previously, the categories were mixed together and therefore were more likely to cause a person to confuse the rules.

2. *Definitions.* We have deleted several definitions from this subpart. Where possible, we avoid using terms that need to be defined. We define some terms in § 416.1001(c) and some other terms in the sections where we use them.

3. *Evidence of marriage.* In § 416.1026~~(a)~~ we make it clear that we generally accept a person's statement that he or she is not married when he or she is applying for SSI. In the prior regulations this general rule was only implied.

4. *Effect of separation.* In § 416.1030(a)(1) we make it clear that if the members of an eligible couple stop living together, we will normally continue treating them as a couple through the sixth calendar month after the month in which they stopped living together. The prior regulations might have been confusing on this point.

5. *End of marriage.* In § 416.1032 we clarify our policy on when we consider that a marriage ends. We consider a marriage ended when either spouse dies or a divorce or annulment becomes final. The rule we have added, in § 416.1032(c), is that if a marriage exists because a person is a spouse for purposes of husband's or wife's social

security insurance benefits, that marriage could also end if we decide that either person is no longer the spouse of the other for purposes of husband's or wife's social security insurance benefits.

In § 416.1035(b) we explain that we generally accept a person's statement about the end of his or her marriage after the person becomes eligible for SSI if the marriage ends by death, but if the marriage ends by divorce or annulment we must see evidence. If marriage ends for some other reason, we will consider all relevant information to decide if and when the marriage ended. The prior regulation said only that the applicant or beneficiary must give us evidence that the marriage has ended if we ask for it.

6. *Definition of student.* In § 416.1061(c)(1) we clarify our existing policy that we consider a person to be a student regularly attending school, college, or training even when classes are out if the person tells us that he or she intends to resume attending regularly when school opens again, even if he or she does not actually resume attending.

7. *Living in the same household.* We have deleted § 416.1070, which explained when we will consider a child to be living in the same household with his or her parent or stepparent. We have deleted this explanation from Subpart J because it is now in Subpart K (§ 416.1167).

8. *Proof of child's age.* We have deleted § 416.1078, which explained what proof of a child's age is required, because Subpart H explains all requirements for proof of age.

Change in Law Reflected in These Regulations

Section 203 of the Social Security Disability Amendments of 1980, Pub. L. 96-265, enacted June 9, 1980, requires a change in § 416.1051(c) of these regulations. Section 416.1051(c) provides that if a child lives with his or her parent or stepparent who is not eligible for SSI benefits, we will count part of the parent's or stepparent's income and resources as the child's, if the child is under age 21. Section 203 of Pub. L. 96-265 changes that age from 21 to 18, effective October 1980. We have not made that change in § 416.1051(c) because we will publish a separate NPRM on that subject, as soon as possible.

Discussion of Public Comments

We received 8 comments on the NPRM. Six were from legal services or advocacy organizations, one from a State department of health and social services, and one from the U.S. Department of Justice.

Changes in Response to Public Comments

In response to the following comments, we have made revisions in the final regulations.

1. *Information we need when a couple stops living together.* A comment said that proposed § 416.1031(c) should tell why it is important to give us the information described there when a couple stops living together.

We have added an explanation in § 416.1035(a) of the final regulations that the information helps us determine whether there has been a change in either person's living arrangements or income that affects eligibility or amount of benefits.

Another comment said we should make clear that we will not stop a person's benefit just because he or she is unable to answer every question in proposed § 416.1031(c), such as where the other person is living.

We have changed the paragraph (§ 416.1035(a) in the final regulations) to make clear that if the person cannot answer our questions, he or she must only tell us why not and give us whatever information he or she can.

2. *Training to prepare for a paying job.* A commenter said we should revise § 416.1061 (b) and (c) to make it clear, as § 416.1061(a)(3) does, that attending a course of training does not make a person a student for SSI purposes unless the training is to prepare the person for a paying job.

We have clarified this in § 416.1061 (b), (c), and (d).

3. *Evidence that a person is a student.* A comment said that proposed § 416.1061(f) gives the impression that we will always contact a student's school, college, or training agency for information. The commenter reasoned that this is unnecessary if the student shows us good evidence that he or she is a student there, such as a student identification card or tuition receipt. The commenter reasoned further that our unnecessary contact with the school, college, or agency may embarrass the student.

We agree and have changed § 416.1061(f) to make it clear that we will contact the school, college, or training agency only if we need information or evidence the student cannot give us.

Changes We Did Not Make in Response to Public Comments

For the reasons stated below, we did not agree that the final regulations should be revised to include other changes suggested by public comments, and we did not adopt the following suggestions.

1. *Marriage based on people's living together and leading others to believe they are married.* A comment said that proposed § 416.1006(c), which provides that we will consider two people married if they are unrelated, of opposite sexes, living together, and leading people to believe they are husband and wife, is illegal. The commenter reasoned that whether two people are married or not depends entirely on State laws.

This provision is not illegal. In fact, it is specifically required by section 1614(d) of the Social Security Act (the Act). We recognize that State laws govern the matter of whether people are legally married or not. The Act and § 416.1006 do not give rules for deciding whether people are legally married, but give rules only for whether we are to treat them as married for SSI purposes.

2. *Effect of SSI relationship regulations on social security widow's or widower's insurance benefits.* A comment said we should clarify whether proposed §§ 416.1006 and 416.1011 would cause termination of the social security widow's or widower's insurance benefits of someone who, after becoming widowed, married an SSI beneficiary.

As § 416.1006 states, its rules are for SSI purposes; they do not affect social security insurance benefits. The conditions that cause termination of social security widow's and widower's insurance benefits are in 20 CFR 404.337(b). Remarriage may cause termination of those benefits.

3. *Same-sex family units.* A comment said that if two unrelated people of the same sex live together and lead people to believe they are a family unit, we should consider them spouses. The commenter believed that by not doing so we are denying these households SSI benefits.

Our rules in § 416.1006 for deciding whom to treat as husband and wife are governed by the Act. The Act provides that "if a man and woman are found to be holding themselves out to the community in which they reside as husband and wife, they shall be so considered" for SSI purposes. Therefore, we cannot change our rules unless Congress changes the law. However, being married is not a requirement for SSI benefits.

4. *Person's age as a factor in whether we require proof that the person is married or is no longer married.* A comment said a person's age should make no difference in whether we need evidence that the person is married or in

whether we need evidence that the person's marriage has ended. The comment referred to proposed §§ 416.1021(b) and 416.1026(b).

Section 416.1021(b) provides that a person who is applying for or receiving SSI and says he or she is married must show us evidence of marriage if he or she is under age 21 and living with a parent(s) or a stepparent. In this case a person might have reason to tell us he or she is married when it is not true, in order to avoid the application of our deeming rules. We deem some of the parent's or stepparent's income and resources as belonging to the person who is under age 21 and living with the parent or stepparent. We apply the deeming rules, however, only if we consider the person applying to be a child. We do not consider a person who is married to be a child. (As mentioned above, the Social Security Disability Amendments of 1980 change the age in this rule about counting income from 21 to 18, effective October 1980, and we plan to change § 416.1051(c) to agree with the law. We also plan to change the age in § 416.1021(b) from 21 to 18.)

Section 416.1026(b) provides that a person who applies for SSI and says he or she is no longer married must show us evidence of the ending of the marriage if he or she is under age 22. This is because the person might have reason to tell us he or she is not married when it is not true, in order to have us consider him or her a child. In some cases being considered a child can keep us from subtracting some income from his or her SSI benefits, as § 416.1051 (a) and (b) explain.

5. *Different names as evidence that two people do not lead others to believe they are married.* A comment said we should revise proposed § 416.1026(c) to provide that use of different last names is not evidence that two people do not lead others to believe they are married. The commenter reasoned that women now frequently keep their maiden names after marriage.

Since this fact is generally known, and since we have revised § 416.1025(c)(2) to make it clear that no single question in § 416.1026(c)(1) is decisive by itself, we think readers of the section will allow for the possibility that two people lead others to believe they are married even though they use different last names.

6. *Ending of eligible couple status by ceasing to lead others to believe they are married.* Two comments said that if we consider two people married under § 416.1006(c) because they live together and lead others to believe they are married, we should stop considering them an eligible couple as soon as they stop leading others to believe they are married, especially if they separate.

We do not recognize that a marriage under § 416.1006(c) has ended just because a couple separates, unless they separate for 6 full months. We adopted this rule because it is difficult to confirm when a couple has stopped leading others to believe they are married. A 6 months' separation seems to be a reasonable way of demonstrating that change in status.

7. *Proof of divorce after a person becomes eligible for SSI.* A comment said that proposed § 416.1036(c)(2) is unreasonable in calling for a divorced person to show us the decree of divorce to prove that he or she is no longer married. The commenter pointed out that someone can be divorced by his or her spouse without even knowing it.

We recognize that a divorced person may be unable to show us the divorce decree. However, the present wording of the regulation makes it clear that the requirement to do so is by no means absolute, and that a person who cannot show us a decree may give us whatever evidence he or she can. Therefore we have not revised this paragraph.

8. *Ending of eligible couple status by various court actions other than final divorce or annulment.* A comment said we should consider eligible couple status ended by any of various court actions in connection with separation, such as a separate support order, and by starting of divorce or annulment proceedings.

We have not adopted this comment because the court actions mentioned do not end a marriage under State law. The Act requires us to continue considering two people who are legally married to be an eligible couple as long as they remain married under State law unless they have been separated for 6 full months. The only exception we make to this rule is where one of them becomes someone else's spouse for SSI purposes.

9. *Counting stepparent's income and resources as child's.* A comment said we should not count part of an ineligible stepparent's income and resources as belonging to a child under age 21 who lives with the stepparent unless the income and resources are actually available to the child. The commenter said we should make this change in proposed § 416.1051(c) to conform to most States' laws and Federal case law.

The Act, in section 1614(f), specifically requires us to count part of the stepparent's income and resources as the child's regardless of whether they are actually available to the child. (As mentioned above, under a change in the law the age limit for this is age 18 instead of 21, effective October 1980.)

Other Changes We Made

In addition to the changes we made as a result of the public comments, we made other changes in the final regulations for clarity. The more important changes we made are as follows.

1. *Deciding whether people living together lead others to believe they are married.* We have tried to make it clearer that we will not necessarily consider two unrelated people of opposite sexes who are living together to be leading others to believe they are married just because one piece of information indicates they do. We changed § 416.1026(c)(2) to say we base our decision on all the information we have.

2. *Information about marriage before and after becoming eligible.* We have revised the headings of §§ 416.1016 and 416.1026 to clarify that these sections deal with information and evidence about whether a person is married that we need when the person applies for SSI benefits. The new §§ 416.1030, 416.1032, and 416.1035 deal with separation or ending of a marriage after one or both spouses become eligible for benefits.

3. *Separation or end of marriage after becoming eligible.* We have reorganized proposed §§ 416.1031(a) and 416.1036 (a)(1) and (b) into §§ 416.1030 and 416.1032 of the final regulations to make it clear that we will not consider two people an eligible couple after whichever of the events listed there happens first. We have deleted the paragraphs of the proposed regulations which explained the effect of the separation or the end of the marriage of an eligible individual and an ineligible spouse, because §§ 416.1002(d) and 416.1167(a) already explain this. We combined proposed §§ 416.1031(c) and 416.1036(c) into § 416.1035.

4. *Definition of student.* Proposed § 416.1061 provided that if a person is enrolled for one or more courses of study and attends class in a high school for at least 12 hours a week, he or she is a student. To be more specific, we have changed "high school" to "grades 7–12."

The proposed regulations with changes as noted above are adopted as set forth below.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income)

Dated: October 7, 1980.

William J. Driver,

Commissioner of Social Security.

Approved: October 23, 1980.

Patricia Roberts Harris,

Secretary of Health and Human Services.

Subpart J of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is revised to read as follows:

Subpart J—Family Relationships

Sec.
416.1001 Introduction.

Who Is Considered Your Spouse

416.1002 Effects of marriage on eligibility and amount of benefits.
416.1006 Whether your are married and who is your spouse.
416.1011 If more than one person could be considered your spouse.
416.1016 Information we need concerning marriage when you apply for SSI.
416.1021 Showing that you are married.
416.1026 Showing that your are not married when you apply for SSI.
416.1030 When we stop considering you and your spouse an eligible couple.
416.1032 When we consider your marriage ended.
416.1035 Information we need about separation or end of marriage after you become eligible for SSI.

Who Is Considered a Child

416.1051 Effects of being considered a child.
416.1056 Who is considered a child.
416.1061 Deciding whether your are a child: Are you a student?
416.1066 Deciding whether you are a child: Are you the head of a household?

Who Is Considered Your Parent

416.1076 Effects a parent (or parents) can have on the child's benefits.
416.1081 Deciding whether someone is your parent or stepparent.

Authority: Secs. 1102, 1614 (b), (c), and (d), and 1631(d)(1) of the Social Security Act; 49 Stat. 647 as amended, 86 Stat. 1473 and 1476; 42 U.S.C. 1302, 1382c (b), (c), and (d), and 1383(d)(1).

Supart J—Family Relationships

§ 416.1001 Introduction.

(a) *What is in this subpart.* This subpart contains the basic rules for deciding for SSI purposes whether a person is considered married and, if so, to whom; whether a person is considered a child; and whether a person is considered another person's parent. It tells what information and evidence we need to decide these facts.

(b) *Related subparts.* Subpart D discusses how to determine the amount of a person's benefits; Subpart G discusses what changes in a person's situation he or she must report to us; Subpart K discusses how we count income; and Subpart L discusses how we count resources (money and property). The questions of whether a person is married, to whom a person is married, whether a person is a child, and who is a person's parent must be answered in order to know which rules in Subparts D, G, K, and L apply.

(c) *Definitions.* In this subpart—

"Eligible spouse" means a person—

(1) Who is eligible for SSI,

(2) Whom we consider the spouse of another person who is eligible for SSI, and

(3) Who has lived with that other person as husband and wife within the past 6 months.

"Spouse" means a person's husband or wife under the rules of §§ 416.1006 and 416.1011.

"We" and "us" mean the Social Security Administration.

"You" means a person who has applied for or has been receiving SSI benefits, or a person for whom someone else has applied for or has been receiving SSI benefits.

Who Is Considered Your Spouse

§ 416.1002 Effects of marriage on eligibility and amount of benefits.

(a) *If you have an ineligible spouse*—(1) *Counting income.* If you apply for or receive SSI benefits, and your are married to someone who is not eligible for SSI benefits and are living in the same household as that person, we may count part of that person's income as yours. Counting part of that person's income as yours may reduce the amount of your benefits or even make you ineligible. Section 416.410 discusses the amount of benefits and § 416.1163 explains how we count income for an individual with an ineligible spouse.

(2) *Counting resources.* If you are married to someone who is not eligible for SSI benefits and are living in the same household as that person, we will count the value of that person's resources (money and property), minus certain exclusions, as yours when we determine your eligibility. Section 416.1202(a) gives a more detailed statement of how we count resources and § 416.1205(a) gives the limit of resources allowed for eligibility of a person with an ineligible spouse.

(b) *If you have an eligible spouse.* (1) *Counting income.* If you apply for or receive SSI benefits, and you are married to someone who is eligible for SSI benefits and have lived in the same household as that person as husband and wife within the last six months, we will count your combined income and calculate the benefit amount for you as a couple. Section 416.412 gives a more detailed statement of the amount of benefits and Subpart K of this part explains how we count income for an eligible couple.

(2) *Counting resources.* If you are married to someone who is eligible for SSI benefits and have lived in the same household as that person as husband and wife within the past six months, we will count the value of your combined resources (money and property), minus certain exclusions, and use a combined resource limit on that amount when we determine your eligibility. Section 416.1205(b) gives a more detailed statement of the resource limit for an eligible couple.

(c) *If your are married, we do not consider you a child.* The rules for counting income and resources are different for children than for adults. (Section 416.1051 discusses the effects of being considered a child on eligibility and amount of benefits.) Regardless of your age, if your are married we do not consider you to be a child.

(d) *Benefits depend on whether you are married or not married at the beginning of each month.* If you get married, even on the first day of a month, we will treat you as single until the next month. If your marriage ends, even on the first day of a month, we will treat you as married until the next month.

§ 416.1006 Whether you are married and who is your spouse.

We will consider someone to be your spouse (and therefore consider you to be married) for SSI purposes if—

(a) You are legally married under the laws of the State where your and his or her permanent home is (or was when you lived together);

(b) We have decided that either of you is entitled to husband's or wife's social security insurance benefits as the spouse of the other (this decision will not affect your SSI benefits for any month before it is made); or

(c) You and an unrelated person of the opposite sex are living together in the same household at or after the time you apply for SSI benefits, and you both lead people to believe that you are husband and wife.

§ 416.1011 If more than one person could be considered your spouse.

If the rules in § 416.1006 would mean that you have more than one husband or wife for SSI purposes, we will use the following rules to decide which one to consider your spouse:

(a) We will consider the person you are presently living with to be your spouse.

(b) If you are not presently living with any person who could be considered your spouse, but you intend to resume living with a person (within six months after the time you stopped living with

that person) who could be considered your spouse under the rules in § 416.1006, we will consider that person to be your spouse.

(c) If neither paragraph (a) nor (b) of this section applies to you, we will consider the person with whom you lived most recently to be your spouse if you have been separated from that person for less than six months.

(d) If within the past six months you have not been living with any person who could be considered your spouse under the rules of § 416.1006, we will treat you as a single eligible individual in determining your eligibility and benefit amount.

§ 416.1016 Information we need concerning marriage when you apply for SSI.

When you apply for SSI benefits, we will ask whether you are married. If you are married, we will ask whether you are living with your spouse. If you are unmarried or you are married but not living with your spouse, we will ask whether you are living in the same household with anyone of the opposite sex who is not related to you. If you are, we will ask whether you and that person lead other people to believe that you are husband and wife.

§ 416.1021 Showing that you are married.

(a) *If you are at least age 21 or not living with a parent.* (1) Unless we have information to the contrary, we will consider you to be married if you say you are married and you are age 21 or older or are not living with your parent(s) or stepparent. If we have information that you are not married, you must show us your marriage certificate or other evidence described in paragraph (c) of this section.

(2) We will also consider you married, on the basis of your statement, if you say you are living with an unrelated person of the opposite sex and you both lead people to believe that you are married. If we have information contrary to your statement, we will ask you to support your statement with evidence.

(b) *If you are under 21 and living with a parent.* If you are under age 21 and living with your parent(s) or stepparent, you must show us your marriage certificate or other evidence described in paragraph (c) of this section.

(c) *Evidence of marriage.* If paragraph (a) or (b) of this section indicates that you must show us evidence that you are married, you must show us your marriage certificate (which can be the original certificate, a certified copy of the public record of marriage, or a certified copy of the church record) if you can. If you cannot, you must tell us why not and give us whatever evidence you can.

§ 416.1026 Showing that you are not married when you apply for SSI.

(a) *General rule: Proof is unnecessary.* If you do not live with an unrelated person of the opposite sex and you say that you are not married, we will generally accept your statement unless we have information to the contrary.

(b) *Exception: If you are under age 22 and have been married.* If you are under age 22 and have been married, to prove that your marriage has ended you must show us the decree of divorce or annulment or the death certificate if you can. If you cannot, you must tell us why not and give us whatever evidence you can.

(c) *Exception: If you are living with an unrelated person of the opposite sex.* (1) If you are living with an unrelated person of the opposite sex, you and the person you are living with must explain to us what your relationship is and answer questions such as the following:

(i) What names are the two of you known by?

(ii) Do you introduce yourselves as husband and wife? If not, how are you introduced?

(iii) What names are used on mail for each of you?

(iv) Who owns or rents the place where you live?

(v) Do any deeds, leases, time payment papers, tax papers, or any other papers show you as husband and wife?

(2) We will consider you married to the person you live with unless the information we have, including the answers to the questions in paragraph (c)(1) of this section, all considered together, shows that the two of you do not lead people to believe that you are each other's husband and wife.

§ 416.1030 When we stop considering you and your spouse an eligible couple.

We will stop considering you and your spouse an eligible couple, even if you both remain eligible, at the beginning of whichever of these months comes first—

(a) If you stop living with your eligible spouse—

(1) The seventh calendar month after the month you stopped living together; or

(2) The calendar month after the month in which either person can be considered to be the spouse of someone else for SSI purposes; or

(b) The calendar month after the month in which your marriage ends.

§ 416.1032 When we consider your marriage ended.

We consider your marriage ended when—

(a) Your spouse dies;

(b) Your divorce or annulment becomes final;

(c) We decide that either of you is not a spouse of the other for purposes of husband's or wife's social security insurance benefits, if we considered you married only because of § 416.1006(b); or

(d) You and your spouse have been living apart for six full months, if we considered you married only because of § 416.1006(c).

§ 416.1035 Information we need about separation or end of marriage after you become eligible for SSI.

(a) *If you and your spouse stop living together.* If you and your spouse stop living together, you must promptly report that fact to us, so that we can decide whether there has been a change that affects either person's benefits. You must also answer questions such as the following. If you cannot answer our questions you must tell us why not and give us whatever information you can.

(1) When did you stop living together?

(2) Do you expect to live together again?

(3) If so, when?

(4) Where is your husband or wife living?

(5) Is either of you living with someone else as husband and wife?

(b) *Evidence of end of marriage.*—(1) *Death.* We will accept your statement that your husband or wife died unless we have information to the contrary. If we have contrary information, you must show us the death certificate if you can. If you cannot, you must tell us why not and give us whatever evidence you can.

(2) *Divorce or annulment.* If your marriage ends by divorce or annulment, you must show us the decree of divorce or annulment if you can. If you cannot, you must tell us why not and give us whatever evidence you can.

(3) *Other reason.* If your marriage ends for reasons other than death, divorce, or annulment, you must give us any information we ask you to give us about the end of the marriage. If you cannot, you must explain why you cannot. We will consider all of the relevant information to decide if and when your marriage ends.

Who is Considered a Child

§ 416.1051 Effects of being considered a child.

If we consider you to be a child for SSI purposes, the rules in this section apply when we determine your

eligibility for SSI and the amount of your SSI benefits.

(a) If we consider you to be a student, we will not count all of your earned income when we determine your SSI eligibility and benefit amount. Section 416.1110 tells what we mean by earned income. Section 416.1112(c)(2) tells how much of your earned income we will not count.

(b) If you have a parent who does not live with you but who pays money to help support you, we will not count one-third of that money when we count your income. Section 416.1124(c)(9) discusses this rule.

(c) If you are under age 21 and you live with your parent or stepparent who is not eligible for SSI benefits, we will count part of his or her income and resources (money and property) as yours. Sections 416.1165 and 416.1202 discuss these rules.

§ 416.1056 Who is considered a child.

We consider you to be a child if—

(a)(1) You are under 18 years old; or

(2) You are under 22 years old and you are a student regularly attending school or college or training that is designed to prepare you for a paying job;

(b) You are not married; and

(c) You are not the head of a household.

§ 416.1061 Deciding whether you are a child: Are you a student?

(a) *Are you a student?* You are a student regularly attending school or college or training that is designed to prepare you for a paying job if you are enrolled for one or more courses of study and you attend class—

(1) In a college or university for at least 8 hours a week under a semester or quarter system;

(2) In grades 7–12 for at least 12 hours a week;

(3) In a course of training to prepare you for a paying job, and you are attending that training for at least 15 hours a week if the training involves shop practice or 12 hours a week if it does not involve shop practice (this kind of training includes anti-poverty programs, such as the Job Corps, and government-supported courses in self-improvement); or

(4) Less than the amount of time given in paragraph (a) (1), (2), or (3) of this section for reasons you cannot control, such as illness, if the circumstances justify your reduced credit load or attendance.

(b) *If you have to stay home.* You may be a student regularly attending school, college, or training to prepare you for a paying job if—

(1) You have to stay home because of your disability;

(2) You are studying at home a course or courses given by a school (grades 7–12), college, university, or government agency; and

(3) A home visitor or tutor directs your study or training.

(c) *When you are not in school*—(1) *When school is out.* We will consider you to be a student regularly attending school, college, or training to prepare you for a paying job even when classes are out if you actually attend regularly just before the time classes are out and you—

(i) Tell us that you intend to resume attending regularly when school opens again; or

(ii) Actually do resume attending regularly when school opens again.

(2) *Other times.* Your counselor or teacher may believe you need to stay out of class for a short time during the course or between courses to enable you to continue your study or training. That will not stop us from considering you to be a student regularly attending school, college, or training to prepare you for a paying job if you are in—

(i) A course designed to prepare disabled people for work; or

(ii) A course to prepare you for a job that is specially set up for people who cannot work at ordinary jobs.

(d) *Last month of school.* We will consider you to be a student regularly attending school, college, or training to prepare you for a paying job for the month in which you complete or stop your course of study or training.

(e) *When we need evidence that you are a student.* We need evidence that you are a student if—

(1) You are 18 years old or older but under age 22, because we will not consider you to be a child unless we consider you to be a student; or

(2) We consider you to be a child and you expect to earn over $195 in any 3-month period, because we will not count all of your earned income if we consider you to be a student.

(f) *What evidence we need.* If we need evidence that you are a student, you must—

(1) Show us any paper you have that shows you are a student in a school, college, or training program, such as a student identification card or tuition receipt; and

(2) Tell us—

(i) What courses you are taking;

(ii) How many hours a week you spend in classes;

(iii) The name and address of the school or college you attend or the agency training you; and

(iv) The name and telephone number of someone at the school, college, or agency who can tell us more about your courses, in case we need information you cannot give us.

§ 416.1066 Deciding whether you are a child: Are you the head of a household?

(a) *Meaning of head of household.* You are the head of a household if you have left your parental home on a permanent basis and you are responsible for the day-to-day decisions on the operation of your own household. If you live with your parent(s) or stepparents, we will ordinarily assume you are not the head of a household. However, we will consider you to be the head of a household if for some reason (such as your parent's illness) you are the one who makes the day-to-day decisions. You need not have someone living with you to be the head of a household.

(b) *If you share decision-making equally.* If you live with one or more people and everyone has an equal voice in the decision-making (for example, a group of students who share off-campus housing), that group is not a household. Each person who has left the parental home on a permanent basis is the head of his or her own household.

Who Is Considered Your Parent

§ 416.1076 Effects a parent (or parents) can have on the child's benefits.

Section 416.1051 (b) and (c) tells what effects a parent's income and resources can have on his or her child's benefits.

§ 416.1081 Deciding whether someone is your parent or stepparent.

(a) We consider your parent to be—

(1) Your natural mother or father; or

(2) A person who legally adopted you.

(b) We consider your stepparent to be the present husband or wife of your natural or adoptive parent. A person is not your stepparent if your natural or adoptive parent, to whom your stepparent was married, has died, or if your parent and stepparent have been divorced or their marriage has been annulled.

(c) *Necessary evidence.* We will accept your statement on whether or not someone is your parent or stepparent unless we have information to the contrary. If we have contrary information, you must show us, if you can, one or more of the following kinds of evidence that would help to prove whether or not the person is your parent or stepparent: Certificate of birth, baptism, marriage, or death, or decree of adoption, divorce, or annulment. If you cannot, you must tell us why not and show us any other evidence that would

help to show whether or not the person is your parent or stepparent.

[FR Doc. 80-33780 Filed 10-29-80; 8:45 am]
BILLING CODE 4110-07-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 201

[A.I.D. Reg. 1]

Rules and Procedures Applicable to Commodity Transactions Financed by AID; Miscellaneous Amendments

AGENCY: Agency for International Development, IDCA.

ACTION: Final rule.

SUMMARY: The Agency for International Development (AID) is amending its regulations relating to commodity transactions financed by the Agency. Provisions concerning the financing of transportation costs, AID marking requirements, and price provisions are being amended, an explanation of the interest rate charged on claims by AID is being added, and several editorial corrections are being made.

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Kathleen O'Hara, Office of Commodity Management (SER/COM), Agency for International Development, International Development Cooperation Agency, Washington, D.C. 20523, telephone 703-235-2173.

SUPPLEMENTARY INFORMATION: A change in AID regulations regarding eligible transportation costs was published on June 16, 1978 in the Federal Register (43 FR 25997). The language unintentionally restricted AID financing of land transportation costs. This amendment makes it clear that AID normally will finance rail, truck or other land transportation costs to the point of entry in the cooperating country.

Another change to the transportation regulations provides that if Code 941 (Selected Free World) has been authorized for procurement of commodities, AID may authorize use of vessels under flag registry of any country included in Code 941 to obtain broadened competition for shipment of bulk commodities.

Southern Rhodesia is deleted from the list of countries excluded from AID Geographic Code 941 (Selected Free World). AID has determined that Zimbabwe, as Southern Rhodesia is now known, is an eligible source country under Code 941.

AID marking regulations are amended to delete the requirement to use the Alliance for Progress (flaming torch) emblem and to delete the requirement that AID emblems be displayed while loading and unloading vessels whose cargoes consist entirely of AID-financed goods. In addition, this revision shows that the authority for waiving marking requirements has been transferred from the Office of Small Business to the Regional Assistant Administrators.

The price provisions are amended to delete references and definitions relating to a method of commission payment which is no longer used.

A provision concerning interest on AID refund claims is added to explain that interest will be charged from the date of payment to the supplier at the rate established by the Secretary of the Treasury under the Internal Revenue Code, 26 U.S.C. 6621(b).

Other editorial changes have also been made.

Subpart A—Definitions and Scope of this Part

§ 201.01 [Amended]

1. Section 201.01 is amended by deleting the last sentence of paragraph (s).

§ 201.11 [Amended]

2. In § 201.11, paragraph (b)(4), the summary of AID Geographic Code 941 is amended by deleting "Southern Rhodesia".

Subpart B—Conditions Governing the Eligibility of Procurement Transactions for AID Financing

3. Section 201.13, paragraph (b)(1) is revised to read as follows:

§ 201.13 Eligibility of delivery services.

* * * * *

(b) *Conditions and limitations*—(1) *Transportation costs* (i) Unless otherwise authorized, AID will finance air and ocean transportation costs only when such costs meet the requirements of this paragraph (b)(1)(i).

(*a*) When Geographic Code 000 is authorized for the procurement of commodities, AID will finance air and ocean transportation costs only when such costs are incurred on aircraft or ocean vessels of U.S. flag registry.

(*b*) When Geographic Code 941 is authorized for the procurement of commodities, AID will finance air and ocean transportation costs only when such costs are incurred on aircraft or ocean vessels under flag registry of the U.S. or the cooperating country, except as provided in (b)(1)(i)(*c*) of this section.

(*c*) When Geographic Code is 941 authorized for the procurement of commodities, AID may specifically authorize in an implementing document the financing of air and ocean transportation costs incurred on aircraft or ocean vessels under flag registry of the cooperating country or any country included in Geographic Code 941 when there is a general unavailability of U.S. or cooperating country flag aircraft or ocean vessels or broadened competition is required to achieve economical transportation of bulk commodities.

(*d*) AID will finance costs incurred on aircraft or ocean vessels under flag registry of a free world country not authorized in accordance with paragraphs (b)(1)(i)(*a*) through (*c*) of this section if the costs are part of the total cost on a through bill of lading paid to a carrier under flag registry of a country which is so authorized. (ii) Notwithstanding paragraph (b)(1)(i) of this section, unless otherwise authorized, AID will not finance any transportation costs (*a*) For shipment beyond the point of entry in the cooperating country except when intermodal transportation service covering the carriage of cargo from point of origin to destination is used and the point of destination, as stated in the carrier's through bill of lading, is established in the carrier's tariff; or

(*b*) On a transportation medium owned, operated or under the control of any country not included within AID Geographic Code 935; or

(*c*) On any vessel designated by AID as ineligible to carry AID-financed cargo; or

(*d*) Under any ocean or air charter covering full or part cargo (whether for a single voyage, consecutive voyages, or a time period) which has not received prior approval by AID/W (Office of Commodity Management); or

(*e*) Which are attributable to brokerage commissions which exceed the limitations specified in § 201.65(1) or to address commissions, dead freight, or demurrage.

* * * * *

§ 201.13 [Amended]

4. Also in Section 201.13, paragraph (b)(3)(ii) is amended by deleting "Office of the Controller" and inserting "Office of Commodity Management" in its place.

§ 201.15 [Amended]

5. Section 201.15 is amended by deleting "(July 1–June 30)" from paragraph (b) and inserting "(October 1–September 30)" in its place, and by deleting "(Resources Transportation Division)" from the first sentence of

paragraph (c) and inserting "(Office of Commodity Management)" in its place.

Subpart D—Responsibilities of Suppliers

6. In Section 201.31, paragraph (d)(1) is revised as follows:

§ 201.31 Suppliers of commodities.

* * * * *

(d) *Marking of shipping containers and commodities*—(1) *Affixing emblems and identification numbers.* The supplier of commodities shall be responsible for assuring that all export containers, whether shipped from the United States or from any other source country, carry the official AID (clasped hands) emblem. Additionally, except as AID may otherwise prescribe, when the supplier is given notice by the importer that the importer is the government of a cooperating country or any of its subdivisions or instrumentalities, the supplier shall also be responsible for assuring that all commodities carry the AID emblem. The last five digits of the AID financing document number shall be marked on each export shipping container in characters at least equal in height to the shippers marks.

(i) * * *

(ii) * * *

(iii) *Design and color of emblems.* Emblems shall conform in design and color to samples available from AID/W (Office of Commodity Management) and from the USAID.

* * * * *

§ 201.31 [Amended]

7. Section 201.31, paragraph (d)(3) is amended by deleting "(Office of Small Business)" and inserting "(Regional Assistant Administrator or his/her designee)" in its place.

8. Also in § 201.31, paragraph (d)(4) is deleted.

9. Section 201.31, paragraph (g) is amended by deleting "Office of the Controller" and inserting "Office of Financial Management" in its place.

§ 201.32 [Amended]

10. In § 201.32, paragraph (b) is deleted and reserved.

11. Section 201.32 is also amended by deleting "Controller" from paragraph (c) and inserting "Office of Financial Management" in its place and by deleting "Office of the Controller" from paragraph (d) and inserting "Office of Commodity Management" in its place.

Subpart F—Payment and Reimbursement

§ 201.51 [Amended]

12. In § 201.51, paragraph (d)(4) is amended by deleting "(Office of the Controller)" and inserting "(Office of Financial Management)" in its place.

Subpart G—Price Provisions

§ 201.61 [Amended]

13. In § 201.61, paragraphs (p), (s), (u), and (y) are deleted and reserved.

14. In § 201.65, paragraph (i) is revised to read as follows:

§ 201.65 Commissions, service payments, and discounts.

* * * * *

(i) *Commissions and other payments or benefits attributable to AID financing.* Every commission or other payment, credit, allowance, or benefit of any kind paid, made or given in connection with the sale of commodities financed under this part to any person described in paragraphs (h)(1), (2), or (3) of this § 201.65 shall be presumed conclusively to have been paid from AID funds and shall thereby be subject to the requirements of this Part 201.

* * * * *

§ 201.67 [Amended]

15. In § 201.67, paragraph (a)(5)(ii) is amended by deleting the word "Controller" and inserting "Office of Financial Management" in its place.

Subpart H—Rights and Responsibilities of Banks

16. In § 201.72, paragraph (b)(4) is revised to read as follows:

§ 201.72 Making payments.

* * * * *

(b) * * *

(4) *Description.* The documents shall describe and identify the commodities or services in a manner which, according to good commercial practice, is not inconsistent with the description contained in the letter of credit or payment instructions issued under a letter of commitment or a request for the opening of a special letter of credit. The bank shall not be required to determine whether the supplier's invoice meets the detailed requirements of § 201.52(a)(2)(i).

* * * * *

Subpart I—Rights and Remedies of AID, and Waiver Authority

17. Section 201.82 is revised as follows:

§ 201.82 Rights of AID against suppliers

Without limiting the responsibility of the borrower/grantee or other parties, AID may require an appropriate refund to it by a supplier under any transaction which violates the requirements of this part, whenever in AID's opinion the failure of the supplier to comply with the rules and other requirements of this part has contributed to such violation. Any refund requested will include interest from the time of payment to the supplier. Interest will be charged at the rate established by the Secretary of the Treasury in accordance with the Internal Revenue Code, 26 U.S.C. 6621(b).

This amendment is issued pursuant to the authority of Section 621 of the Foreign Assistance Act of 1961, as amended, 75 Stat. 4214; 22 U.S.C. 2381 and 22 CFR 201.85.

Dated: October 17, 1980.

Donald G. MacDonald,

Assistant Administrator for Program and Management Services.

[FR Doc. 80-33735 Filed 10-29-80; 8:45 am]

BILLING CODE 4710-02-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1690

Coordination of Federal Equal Employment Opportunity Programs

Correction

In FR Doc. 80-31930, appearing at pages 68358-68364 in the Tuesday, October 14, 1980 issue of the Federal Register, make the following changes:

1. In § 1690.107—Definitions, in the third line of paragraph (h), delete "to".

2. In the heading for § 1690.305, delete the "or", and insert "of" in its place.

3. In § 1690.307, paragraph (b), the five line should have a period immediately following the word "review" such that the line reads as follows:

"subject to review. EEOC reserves the * * *"

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 164

[CGD 79-148]

Electronic Relative Motion Analyzer; Corrections

AGENCY: Coast Guard, DOT.

ACTION: Correction of final rule.

SUMMARY: On August 14, 1980, at 45 FR 54037, the Coast Guard published a final rule regarding carriage requirements for an electronic relative motion analyzer (ERMA). Three portions of Appendix A to the final rule were unintentionally omitted. This correction document inserts the omitted paragraphs. Additionally, Appendix A, as published, was based on a draft resolution of the Intergovernmental Maritime Consultative Organization (IMCO). The final resolution (IMCO Res. A.422(XI)) contained some non-substantive amendments to the draft wording which are incorporated herein. Finally, an error in the title of the IMCO performance standard is corrected by this document. The final rule also invited interested parties to comment on the inclusion of rigidly intergrated tug-barge combinations in the applicability of the rule. No comments were received, so the applicability will remain as stated in the final rule.

EFFECTIVE DATE: This correction is effective October 30, 1980. The effective date of the final rule remains July 1, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Schwer, Project Manager Office of Marine Environment and Systems (G–WWM–2/11), Room 1608, Department of Transportation. U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202) 426–4958.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) regarding this topic was published on February 21, 1980, at 45 FR 11790. The final rule was published on August 14, 1980, at 45 FR 54037. The Coast Guard intended to make no change to Appendix A as it appeared in the NPRM. However, the following paragraphs were unintentionally omitted from the final rule: 3.6.1.1, 3.6.1.2., 3.8.2 (table), and 3.8.3 (table). These omissions are corrected by this document. Since this correction is necessary in any case, the document is also being used to correct two minor typographical errors and to amend some of the wording in Appendix A to parallel the final IMCO phraseology. Finally, paragraph (b)(2)(ii) of §164.38 referred to the IMCO standard as "Operational Standards for automatic Radar Plotting Devices." The correct title of this standard should read "Performance Standards for Automatic Radar Plotting Aids (ARPA)." In consideration of the foregoing the final rule which was published on August 14, 1980 at 45 FR 54037 is corrected as follows:

1. On page 54039, paragraph 164.38(b)(3)(ii), correct the title of the IMCO document to read "Performance Standards for Automatic Radar Plotting Aids (ARPA)".

2. On page 54039, paragraph 1.1 delete the words. . ."required by Regulation 12, Chapter V, of the 1974 SOLAS Convention, as amended. . ." and the asterisked footnote thereto. The reference is not necessary and has been deleted from the final version of the IMCO resolution.

3. On page 54039, Appendix A, paragraph 1.2, change the bracketed words to read "(IMCO Res. A.281(VII))". This change is made simply for ease of reference.

4. On page 54040, Appendix A, change paragraph 3.4.2 to read:

13.4.2 The design should be such that any malfunction of ARPA parts producing information additional to information to be produced by the radar as required by the performance standards for navigational equipment adopted by IMCO should not affect the integrity of the basic radar presentation. This too is a change in the wording of the final IMCO resolution. It provides a more precise description of the requirement and does not affect the substance of the paragraph.

5. On page 54040, Appendix A, change paragraph 3.4.3 to read:

3.4.3 The display on which ARPA information is presented should have an effective diameter of at least 340 mm. Again, the final resolution was reworded for clarity.

6. On page 54040, Appendix A, paragraph 3.6.1, after the words ". . . in regard to any tracked target," add the following:

1. present range to the target;
2. present bearing of the target;.

7. On page 54040, Appendix A, at the end of paragraph 3.8.2 add the following table:

Scenario/data	Relative course (degress)	Relative speed (Knots)	CPA (n.m.)
1	11	2.8	1.6
2	7	0.6	.....
3	14	2.2	1.8
4	15	1.5	2.0

8. On page 54040, Appendix A, at the end of paragraph 3.8.3, add the following table:

Senario/data	Relative course (degrees)	Relative speed (knots)	C.P.A. (n.m.)	TCPA (mins)	True course (degrees)	True speed (knots)
1	3.0	0.8	0.5	1.0	7.5	1.2
2	2.3	.3	.....	.....	2.9	.8
3	4.4	.9	.7	1.0	3.3	1.0
4	4.6	.8	.7	1.0	2.6	1.2

9. On page 54041, ANNEX 2 to Appendix A, change the title to "— Operational Scenarios" to correct a spelling error.

(92 Stat. 1471 (46 U.S.C. 391a as amended))

W. E. Caldwell,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.
October 22, 1980.

[FR Doc. 80-33468 Filed 10-29-80; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 238

[ER 1165-2-21]

Water Resources Policies and Authorities: Flood Damage Reduction Measures in Urban Areas

AGENCY: U.S. Army Corps of Engineers.

ACTION: Final rule.

SUMMARY: The Chief of Engineers is promulgating a revised regulation for Civil Works elements of the U.S. Army Corps of Engineers to follow in participating in urban flood control projects. This revised regulation provides current policy guidance and procedures when participating with local interests to alleviate existing and future flood damage problems. It establishes criteria to distinguish between flood damage reduction measures and storm sewer systems in urban areas. Provision of urban drainage systems is customarily regarded as storm drainage which, with all appurtenances, is considered a local responsibility. This policy guidance seeks to provide an economically efficient degree of flood protection consistent with safety of life and property and wise land use in urban and urbanizing areas. It further encourages

long range planning for flood damage reduction measures and storm systems in these areas.

EFFECTIVE DATE: October 31, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Howard J. Prante, Office of Policy, Directorate of Civil Works (DAEN-CWR-R) Washington, D.C. 20314, (202) 272-0123.

SUPPLEMENTARY INFORMATION: This regulation was originally published as a final regulation on 8 May 1978 (43 FR 19804). The earlier regulation contained criteria to distinguish between flood damage reduction measures and storm sewer systems in urban areas. As a result of our experiences in utilizing these criteria, it has become apparent that in some circumstances certain exceptions to these criteria are justified. Accordingly, these special cases are now identified and procedures specified for granting justified exceptions. These criteria changes are contained in paragraph 238.7(a). The remainder of the regulation is unchanged from the 8 May 1978 version. This is an interpretive rule providing agency guidance concerning Corps of Engineers participation in urban flood control projects. It is exempt from the Notice of Proposed Rulemaking requirements in 5 U.S.C. 553(6)(3)(A).

Note.—The Corps of Engineers has determined that these regulation revisions do not contain a major proposal requiring the preparation of a regulatory analysis under E.O. 12044, Improving Government Regulations (43 FR 12661, March 24, 1978).

Dated: October 24, 1980.

Approved:

Forrest T. Gay III,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

Part 238 of Title 33 is hereby revised to read as follows:

PART 238—WATER RESOURCES POLICIES AND AUTHORITIES: FLOOD DAMAGE REDUCTION MEASURES IN URBAN AREAS

Sec.

238.1 Purpose.
238.2 Applicability.
238.3 References.
238.4 Definitions.
238.5 Comprehensive planning.
238.6 General policy.
238.7 Decision criteria for participation.
238.8 Other participation.
238.9 Local cooperation.
238.10 Coordination with other federal agencies.

Authority: Pub. L. 738, 74th Congress, 33 U.S.C. 701a.

§ 238.1 Purpose.

This regulation provides policies and guidance for Corps of Engineers participation in urban flood damage reduction projects and establishes criteria to distinguish between improvements to be accomplished by the Corps under its flood control authorities and storm sewer systems to be accomplished by local interests.

§ 238.2 Applicability.

This regulation is applicable to all OCE elements and all field operating acitivities having Civil Works responsibilities.

§ 238.3 References.

(a) Executive Order 11988—Floodplain Management, dated 24 May 1977

(b) U.S. Water Resources Council, Floodplain Management Guidelines, (43FR6030), to February 1978

(c) ER 1105-2-811

(d) ER 1140-2-302

(e) ER 1140-2-303

(f) EP 1165-2-2

§ 238.4 Definitions.

For purposes of this regulation the following definitions apply:

(a) "Urban areas" are cities, towns, or other incorporated or unincorporated political subdivisions of States that:

(1) Provide general local government for specific population concentrations, and,

(2) Occupy an essentially continuous area of developed land, containing such structures as residences, public and commercial buildings, and industrial sites.

(b) "Flood damage reduction works in urban areas" are the adjustments in land use and the facilities (structural and non-structural) designed to reduce flood damages in urban areas from overflow or backwater due to major storms and snowmelt. They include structural and other engineering modifications to natural streams or to previously modified natural waterways. Flood damage reduction works are designed to modify flood behavior typified by temporary conditions of inundation of normally dry land from the overflow of rivers and streams or from abnormally high coastal waters due to sever storms.

(c) "Storm sewer systems" are the facilities in urban areas designed to collect and convey runoff from rainfall or snowmelt in the urban area to natural water courses or to previously modified natural waterways. They include storm drains, inlets, manholes, pipes, culverts, conduits, sewers and sewer appurtenances, on-site storage and detention basins, curbs and gutters, and other small drainageways that remove or help to manage runoff in urban areas. Storm sewer systems are designed to solve storm drainage problems, which are typified by excessive accumulation of runoff in depressions; overland sheet flow resulting from rapid snowmelt or rainfall; and excessive accumulation of water at the facilities listed in this paragraph because of their limited capacity.

§ 238.5 Comprehensive planning.

Coordinated comprehensive planning at the regional or river basin level, or for an urban or metropolitan area, can help to achieve solutions to flood problems that adequately reflect future changes in watershed conditions, and help to avoid short-sighted plans serving only localized situations. This planning is particularly important in areas where significant portions of a watershed are expected to be urbanized in the future. Changes in land use may result in major alterations of the runoff characteristics of the watershed. Hydrologic changes must be projected for the period of analysis. In this effort, responsible local planning organizations should provide information and assist the Corps in development of projected land uses and expected practices for collection and conveyance of runoff over the period of analysis. Conversely, the Corps may be able to provide non-Federal interests with valuable information about water related consequences of alternative land uses and drainage practices.

§ 238.6 General policy.

(a) Satisfactory resolution of water damage problems in urban areas often involves cooperation between local non-Federal interests and the Federal flood control agencies. In urban or urbanizing areas, provision of a basic drainage system to collect and convey the local runoff to a stream is a non-Federal responsibility. This regulation should not be interpreted to extend the flood damage reduction program into a system of pipes traditionally recognized as a storm drainage system. Flood damage reduction works generally address discharges that represent a serious threat to life and property. The decision criteria outlined below therefore exclude from consideration under flood control authorities small streams and ditches with carrying capacities typical of storm sewer pipes. Location of political boundaries will not be used as a basis for specifying project responsibility. Project responsibilities can be specified as follows:

(1) Flood damage reduction works, as defined in this regulation, may be accomplished by the Corps of Engineers.

(2) Construction of storm sewer systems and components thereof will be a non-Federal responsibility. Non-

Federal interests have a responsibility to design storm sewer systems so that residual damages are reduced to an acceptable level.

(b) Consideration will be given to the objectives and requirements of Executive Order 11988 (reference § 238.3(a)) and the general guidelines therefor by the U.S. Water Resources Council (reference § 238.3(b)).

§ 238.7 Decision criteria for participation.

(a) *Urban Flood Control.* (1) Urban water damage problems associated with a natural stream or modified natural waterway may be addressed under the flood control authorities downstream from the point where the flood discharge of such a stream or waterway within an urban area is greater than 800 cubic feet per second for the 10-percent flood (one chance in ten of being equalled or exceeded in any given year) under conditions expected to prevail during the period of analysis. Those drainage areas which lie entirely within the urban area (as established on the basis of future projections, in accordance with § 238.5 above), and which are less than 1.5 square miles in area, shall be assumed to lack adequate discharge to meet the above hydrologic criteria. Those urban streams and waterways which receive runoff from land outside the urban area shall not be evaluated using this 1.5 square mile drainage area criterion.

(2) A number of conditions within a drainage area may limit discharges for the 10-percent flood, without proportionately reducing discharges for larger floods, such as the one-percent flood. Examples include the presence of extremely pervious soils, natural storage (wetlands) or detention basins or diversions with limited capacity. Other conditions could result in a hydrological disparity between the 10- and one-percent flood events.

(3) Division Engineers, except for NED and POD, are authorized to grant exceptions to the 800 cfs, 10-percent flood discharge criterion specified in § 238.7(a)(1) above whenever both of the following criteria are met:

(i) The discharge for the one-percent flood exceeds 1800 cfs; and

(ii) The reason that the 10-percent flood discharge is less than 800 cfs is attributable to a hydrologic disparity similar to those described in § 238.7(a)(2) above.

Requests for exceptions to the hydrologic criterion contained in § 238.7(a)(1) from NED and POD should be submitted to HQDA (DAEN-CWP) WASH DC 20314.

(4) Flood damage reduction works must conform to the definition in § 238.4(b) and must be justified based on Corps of Engineers evaluation procedures in use at the time the evaluation is made. Flood reduction measures, such as dams or diversions, may be located upstream of the particular point where the hydrologic criteria (and area criterion, if appropriate) are met, if economically justified by benefits derived within the stream reach which does qualify for flood control improvement. Similarly, the need to terminate flood control improvements in a safe and economical manner may justify the extension of some portions of the improvements, such as levee tiebacks, into areas upstream of the precise point where Federal flood control authorities become applicable.

(b) *Storm sewer system.* Water damage problems in urban areas not consistent with the above criteria for flood control will be considered to be a part of local storm drainage to be addressed as part of the consideration of an adequate storm sewer system. The purpose of this system is to collect and convey to a natural stream or modified natural waterway the runoff from rainfall or snowmelt in the urbanized area.

(c) *Man-made conveyance structures.* (1) Man-made conveyance structures will be assumed to be a part of storm sewer systems except when: (i) A natural stream has been or is to be conveyed in the man-made structure; or (ii) The man-made structure is a cost-effective alternative to improvement of a natural stream for flood damage reduction purposes or is an environmentally preferable and economically justified alternative. Water damage associated with inadequate carrying capacity of man-made structures should be designated as a flood problem or a local drainage problem in a manner consistent with the structure's classification as flood damage reduction works or a part of a storm sewer system.

(2) Man-made structures that convey sanitary sewage or storm runoff, or a combination of sanitary and storm sewage, to a treatment facility will not be classified as flood damage reduction works. Flows discharged into a natural or previously modified natural waterway for the purpose of conveying the water away from the urbanized area will be assumed to be a part of the flow thereof regardless of quality characteristics.

(d) *Joint Projects.* Certain conditions may exist whereby the Corps of Engineers and the Department of Housing and Urban Development (HUD), or another Federal agency, could jointly undertake a project that would be impractical if one agency were to undertake it alone. The Corps may, for example, under provisions of Section 219 of the Flood Control Act of 1965, design or construct a project that is part of a larger HUD plan for an urban area (see ER 1140-2-302). Such efforts should be undertaken only when requirements cannot be handled better by one agency acting alone. If a joint effort is preferable, then the Corps may participate as required.

(e) *Disagreements.* If a disagreement arises between the Corps and another Federal agency that cannot be resolved at the field level, the matter will be forwarded to HQDA (DAEN-CWR) WASH DC 20314 for guidance.

§ 238.8 Other participation.

In addition to providing flood damage reduction works in urban areas, the Corps may provide related services to State and local governments on a reimbursable basis. Under Title III of the Inter-governmental Cooperation Act of 1968, specialized or technical services for which the Corps has specific expertise may be furnished only when such services cannot be procured reasonably and expeditiously from private firms (see ER 1140-2-303).

§ 238.9 Local cooperation.

(a) Cost sharing and other provisions of local cooperation shall be in conformity with applicable regulations for structural and non-structural flood damage reduction measures.

(b) Responsible non-Federal entities will be required to provide satisfactory assurances that they will adopt, enforce, and adhere to a sound, comprehensive plan for flood plain management for overflow areas of communities involved. To this end, District Engineers will inform HUD, and other concerned Federal and non-Federal planning and governing agencies, of flood plain management services available under Section 206 of the Flood Control Act of 1960, as amended (33 USC 709a).

§ 238.10 Coordination with other Federal agencies.

In conducting flood damage reduction studies, reporting officers shall comply with the 1965 Agreement between the Soil Conservation Service and the Corps (contained in EP 1165-2-2) in determining the responsible Federal agency. Corps personnel should also keep abreast of the public works programs administered by other Federal agencies, such as the Environmental Protection Agency, the Department of Housing and Urban Development, Farmers Home Administration and the

Department of Commerce, in order to coordinate flood control improvements with storm sewer system improvements and to avoid program overlap. Coordination of planning activities with A-95 clearinghouses will help to achieve this objective (see ER 1105-2-811).

[FR Doc. 80-33833 Filed 10-29-80; 8:45 am]

BILLING CODE 3710-92-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA 5942]

Identification and Mapping of Special Hazard Areas; Corrections

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule; Corrections.

SUMMARY: In the Federal Register, Docket No. FEMA 5909 appearing at pages 66016 thru 66167, in the issue of Monday, October 6, 1980, please make the following corrections as indicated below.

Add the latest effective revision dates for the communities listed.

On page 66020: Town of Falmouth, Barnstable Co., MA (Comm. No. 255211), 9-30-77.

On page 66057: City of Northport, Tuscalosa Co., AL (Comm. No. 010202) 3-18-80.

City of Mobile, Mobile Co., AL (Comm. No. 015007) 4-15-80.

On page 66062: City of East Point, Fulton County, GA (Comm. No. 130087) 3-15-77.

City of Garden City, Chatham County, GA (Comm. No. 135161) 3-19-76.

On page 66067: Delete Gilford County, North Carolina from this list, the community is listed correctly as Guilford County, NC.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or toll free line 800-424-8872, Room 5150, 451 Seventh Street SW., Washington, DC 20410.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963).

Issued: October 20, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33793 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket 1-18; Notice 18]

Federal Motor Vehicle Safety Standards; Control and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Interpretative Amendment.

SUMMARY: Standard No. 101-80, *Controls and Displays*, requires various safety-related controls to be identified by specific symbols. The standard requires identification of the turn signal control unless it is the only control on the left hand side of the steering column. In addition to the turn signal control, some vehicles have additional controls, such as a lever to adjust the position of a tilting steering wheel, on the left hand side of the column. This notice clarifies the identification requirement to provide that a turn signal control does not have to be identified if it is the topmost control on the left side of the steering column the traditional position for such controls (i.e., the closest control to the steering wheel).

EFFECTIVE DATE: October 30, 1980.

FOR FURTHER INFORMATION CONTACT: John Carson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-426-2715).

SUPPLEMENTARY INFORMATION: On June 26, 1978, the agency published a final rule establishing Standard No. 101-80, *Controls and Displays* (43 FR 27541). The standard, which went into effect on September 1, 1980, established new identification and illumination requirements for controls and displays in passenger cars, multipurpose passenger vehicles, trucks and buses.

One provision of the standard requires the turn signal control to be identified by a specific symbol, two horizontal arrowheads, placed on or adjacent to the control. American Motors Corporation (AMC) filed a petition for reconsideration arguing that the turn signal identification requirement was unnecessary. AMC said that the location and operation of column-mounted turn signal control levers has been standarized by industry practice and is well known to drivers. In response to the AMC petition, NHTSA amended the standard to delete the identification requirement for vehicles in which the turn signal control is the only lever mounted on the left side of the steering column. The agency explained that it was taking this action because the turn signal control has become standardized at that location and there have been no reported crashes caused by the driver's unfamiliarity with the position and use of the turn signal control (Sept. 27, 1979, 44 FR 55580).

Subsequent to the publication of the response to the AMC petition for reconsideration, General Motors (GM) wrote the agency concerning an interpretation of the modified requirements. GM said that on its vehicles equipped with tilt steering columns, there is a tilt mechanism release lever located on the same side of the steering column as the turn signal control lever. GM said that the tilt release lever is "shorter and significantly farther from the steering wheel than the turn signal lever and consequently is out of the immediate finger tip reach of a hand remaining on the steering wheel." GM said that the tilt wheel mechanism is a customer convenience, not a safety feature.

GM argued that its understanding of the agency's interpretation of the modified identification requirement was that the turn signal control only had to be identified "if it is not located and operated in what has become to be considered the standarized manner or if another functional control lever related to vehicle safety could be easily confused with it." GM said that based on that interpretation, it believed that "the presence or absence of a tilt column release lever does not determine whether the turn signal control must be identified." To assist all interested parties in interpreting the requirement, GM requested the agency to consider revising the language of the standard to clarify the agency's intent.

The purpose of this notice is to make an interpretative amendment to Standard No. 101-80 to clarify the circumstances under which the turn signal control must be identified. As an interpretative amendment, there is no need for notice and comment.

The purpose of the identification requirement is to make it easier for the driver to quickly and correctly locate various safety-related vehicle controls. One of the controls that has been standarized in its location and operation for a number of years is the turn signal control. In every car, that control is mounted on the left hand side of the steering column, is located so that it is the control closest to the rim of the steering wheel, and is operated in a standarized manner, up for right, down for left. Since the turn signal control has been standardized for such a long time,

it is not necessary for the control to include an identifying symbol.

As long as the turn signal control is in its standardized location, it will be instantly recognized by drivers even if there are other controls mounted on the same side of the column, farther away from the rim of the steering wheel. Thus, to clarify the identification requirements, the agency is amending the standard. The amendment provides that if the turn signal control is mounted on the left side of the steering column, in a plane essentially parallel to the steering wheel, it need not be identified if it is the control mounted closest to the rim of the steering wheel.

In consideration of the foregoing, Standard No. 101–80 (49 CRF 571.101–80) is revised to read as follows:

1. Section S5.2.1 is revised to read as follows:

S5.2.1 Vehicle controls shall be identified as follows:

(a) Except as specified in S5.2.1(b), any hand-operated control listed in column 1 of Table 1 that has a symbol designated in column 3 shall be identified by that symbol. Such a control may, in addition, be identified by the word or abbreviation shown in column 2. Any such control for which no symbol is shown in Table 1 shall be identified by the word or abbreviation shown in column 2. Additional words or symbols may be used at the manufacturer's discretion for the purpose of clarity. The identification shall be placed on or adjacent to the control. The identification shall, under the conditions of S6, be visible to the driver and, except as provided in S5.2.1.1 and S5.2.1.2, appear to the driver perceptually upright.

(b) S5.2.1(a) does not apply to a turn signal control which is operated in a plane essentially parallel to the face plane of the steering wheel in its normal driving position and which is located on the left side of the steering column so that it is the control on that side of the column nearest to the steering wheel face plane.

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

Issued on October 22, 1980.

Frank Berndt,

Acting Administrator.

[FR Doc. 80–33556 Filed 10–29–80; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 45, No. 212
Thursday, October 30, 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

Agricultural Marketing Service

7 CFR Part 965

[Docket No. AO-307-A1]

Tomatoes Grown in South Texas; Decision on Proposed Amendment to Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision proposes an amendment of Marketing Order No. 965 regulating the handling of tomatoes grown in South Texas.

The proposal would add a public member to the administrative committee; establish the production area as a single district; authorize a penalty for late assessment payments; and allow the committee to finance production research projects and marketing promotion including paid advertising. The primary intent of the proposal is to improve the program's administration and usefulness.

DATES: Referendum Period November 11–25, 1980.

FOR FURTHER INFORMATION CONTACT: Charles W. Porter, Chief, Vegetable Branch, F&V, AMS, USDA, Washington, D.C. 20250 (202) 447-2615. The Impact Statement relative to this proposed rule is available on request from Mr. Porter.

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

Prior documents in this proceeding: Notice of Hearing—Issued July 9, 1980, and published July 14, 1980 (45 FR 47155). Notice of Recommended Decision—Issued September 19, 1980, and published September 24, 1980 (45 FR 63288).

This proposed amendment was formulated on the record of a public hearing held at McAllen, Texas, July 30, 1980. Notice of the hearing was published in the July 14, 1980, issue of the Federal Register (45 FR 47155). The notice set forth a proposed amendment submitted by the Texas Valley Tomato Committee on behalf of tomato producers and handlers in the production area.

On the basis of the evidence introduced at the hearing and placed in the record, on September 19, 1980, the Deputy Administrator filed a recommended decision with the U.S. Department of Agriculture Hearing Clerk. Notice of such recommended decision was published in the September 24, 1980, issue of the Federal Register (45 FR 63288). In the recommended decision notice was given of the opportunity to file comments by October 9, 1980. None was filed.

The material issues, findings and conclusions, rulings and general findings of the recommended decision are hereby incorporated by reference and made part of this decision, subject to the following corrections:

On page, 63288, first column, fourth paragraph, line 6, change "propoosed" to "proposed"; line 7, change "form" to "from."

On page 63291, first column, § 965.22, paragraph 2, change "producer's" to "producers' "; second column, § 965.22, first line, change "of" to "or."

Marketing order. Annexed and made a part of this decision is a document entitled "Order Amending the Order, Regulating the Handling of Tomatoes Grown in South Texas," which has been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire decision be published in the Federal Register.

Referendum order. It is herby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 *et seq.*), to determine whether the issuance of the annexed order amending the order regulating the handling of tomatoes grown in South Texas is approved or favored by producers, as defined under the terms of the order, who during the representative period were engaged in the production of the regulated commodity for market.

The representative period for the conduct of such referendum is hereby determined to be October 1, 1979, through September 30, 1980.

The agents of the Secretary to conduct such referendum are hereby designated to be David B. Fitz and Anne M. Dec.

Copies of this Decision are being mailed to known interested persons. Others may obtain copies from Mr. Charles W. Porter, Chief, Vegetable Branch, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250, Phone (202) 447-2615, or from David B. Fitz, Marketing Field Office, Fruit and Vegetable Division, 320 North Main, Room A-103, McAllen, Texas 78501, Phone (512) 682-2833.

Signed at Washington, D.C., on October 24, 1980.

Jerry Hill,
Deputy Assistant Secretary for Marketing Services.

Order [1] Amending the Order Regulating the Handling of Tomatoes Grown in South Texas

Findings and determinations. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of Marketing Order No. 965 (7 CFR Part 965), regulating the handling of tomatoes grown in South Texas.

Upon the basis of the record, it is found that:

(1) The order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(2) The order, as hereby amended, regulates the handling of tomatoes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing order upon which hearings have been held;

(3) The order, as hereby amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) The order, as hereby amended, prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the diffferences in the production and marketing of tomatoes grown in the production area; and

(5) All handling of tomatoes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of tomatoes grown in South Texas shall be in conformity to and in compliance with the terms and conditions of the said order, as hereby amended, as follows:

The provisions of the proposed marketing order, amending the order, contained in the recommended decision issued by the Deputy Administrator on September 19, 1980, and published in the Federal Register on September 24, 1980 (45 FR 63288), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

1. Revise paragraphs (a) and (b) of § 965.22 to read:

§ 965.22 Establishment and membership.

(a) The Texas Valley Tomato Committee is hereby established, consisting of 10 members, including six producers, three handlers, and one public member. Each shall have an alternate who shall have the same qualifications as the member.

(b) Each committee member and alternate shall be a resident of the production area. Industry members shall be producers or handlers, or officers or employees of a producer or handler or of a producers' cooperative marketing organization, in the district for which selected. Those representing a producers' marketing cooperative shall be eligible to serve as a handler member or alternate. The public member shall be a person who has no financial interest in the commercial production or marketing of tomatoes except as a consumer, and shall not be a director, officer or employee of any firm so engaged.

2. Revise § 966.24 to read:

§ 965.24 Districts.

For the purpose of determining the basis for selecting committee members and alternates, the entire production area shall be considered a single district. However, the area may be redistricted pursuant to § 965.25.

3. Revise § 965.26 to read:

§ 965.26 Selection.

The Secretary shall select the committee members and alternates to reflect existing representation established pursuant to § § 965.24 or 965.25.

4. Revise paragraphs (a), (c), and (d) of § 965.27 and add new paragraph (f) to read:

§ 965.27 Nomination.

(a) A meeting or meetings of producers and handlers shall be held in each district to nominate members and alternates on the committee. The committee shall hold such meetings or cause them to be held prior to June 15 of each year, or by such other date as may be specified by the Secretary.

* * * * *

(c) Nominations for committee members and alternates shall be supplied to the Secretary in such manner and form as he may prescribe, not later than July 15 of each year, or by such other date as may be specified by the Secretary.

(d) Only producers may participate in designating producer nominees, and only handlers may participate in naming handler nominees. In the event a person is engaged in producing tomatoes in more than one district, such person shall elect the district within which to participate in designating nominees.

* * * * *

(f) The public member and alternate shall be nominated by the commmittee. The committee shall prescribe such additional qualifications, administrative rules and producers for selection and voting for each candidate as it deems necessary and as the Secretary approves.

5. Revise § 965.31 to read:

§ 965.31 Alternate members.

An alternate member of the committee shall act in the place and stead of the member during such member's absence or when designated to do so. In the event both a member of the committee and that member's respective alternate are unable to attend a committee meeting, the member, alternate, or the committee, in that order, may designate another alternate from the same group (producer or handler) to serve in such member's stead. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is selected and has qualified. The committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

6. Revise § 965.32 to read:

§ 965.32 Procedure.

(a) At assembled meetings six members of the committee shall constitute a quorum and six concurring votes shall be required to approve any committee action. Such votes shall be cast in person.

(b) The committee may meet by telephone, telegraph, or other means of communication. The agendas of such meetings shall be limited to nonregulatory provisions and any vote cast shall be promptly confirmed in writing. On such occasions seven concurring votes shall be required to approve any action.

§ 965.35 [Amended]

7. Amend § 965.35(a) by inserting: * * * "or alternates" * * * after "subcommittees of committee members" Add a new paragraph (n) to § 965.35 to read:

* * * * *

(n) To recommend nominees for the public member and alternate.

§ 965.42 [Amended]

8. Amend § 965.42(a) by adding the following sentence to it:

(a) * * * If a handler does not pay the assessment within the time prescribed by the committee, the assessment may be increased by a late payment charge or an interest charge, or both.

Amend the first sentence of § 965.42(b) to read:

(b) Assessments, late payment charges and interest charges shall be levied upon handlers at rates established by the Secretary. * * *

§ 965.43 [Amended]

9. Amend § 965.43(a)(2) by revising the proviso in the first sentence to read as follows:

(a) * * *

(2) * * * *Provided,* That funds already in the reserve do not exceed

approximately two fiscal periods' budgeted expenses. * * *

10. Add a new § 965.44 to read:

§ 965.44 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 965.48. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

11. Revise § 965.48 to read:

§ 965.48 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research and development projects, and marketing promotion including paid advertising designed to assist, improve, or promote the marketing, distribution, and consumption or efficient production of tomatoes. The expenses of such projects shall be paid from funds collected pursuant to § 965.42 or § 965.44.

12. Revise § 965.60(e) to read:

§ 965.60 Inspection and certification.

* * * * *

(e) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of tomatoes by motor vehicle or by other means unless shipment is accompanied by a copy of the inspection certificate issued thereon, or such other documents as may be required by the committee. Such certificates or documents shall be surrendered to proper authorities at such times and in such manner as may be designated by the committee, with the approval of the Secretary.

[FR Doc. 80-34799, Filed 10-29-80; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 31 and 150

NRC's Jurisdiction Over Persons Using Byproduct, Source and Special Nuclear Material in Offshore Waters Beyond Agreement States' Territorial Waters

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering amending its regulations (1) to clarify that it has jurisdiction vis-a-vis Agreement States over persons using byproduct, source, and special nuclear materials in offshore waters beyond Agreement States' territorial waters and within the area of the Outer Continental Shelf and (2) to recognize Agreement State specific licenses in an NRC general license covering activities in these waters.

DATES: Comment period expires December 29, 1980. Comments received after December 29, 1980 will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before December 29, 1980.

ADDRESSES: Interested persons are invited to submit written comments and suggestions on the proposed amendments or the supporting value-impact analysis, or both, to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Single copies of the value-impact analysis may be obtained on request from the Office of Executive Legal Director. Copies of the value-impact analysis and of the comments received by the Commission may be examined in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Thomas F. Dorian, Esq., Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (Telephone: 301-492-8690).

SUPPLEMENTARY INFORMATION: Several recent incidents in the Gulf of Mexico involving actual or potential overexposures to radiographers disclose the need to clarify NRC's jurisdiction vis-a-vis that of coastal Agreement States [1] over offshore radiographic, well-logging, and other operations using byproduct, source, or special nuclear materials. The following discussion addresses the issue of jurisdiction including several concerns raised by Louisiana and Texas with respect to this issue.

Licensing, regulatory, and enforcement problems have arisen because it has been unclear whether a person with a specific license from an Agreement State or from NRC, operating in offshore waters beyond a coastal Agreement State's territorial waters (that is, outside State boundaries which normally extend three miles or three marine leagues from the coastline but within the ares of the Outer Continental Shelf), should be licensed and regulated by the Agreement State or by the Commission.

After examining the issue of jurisdiction, the Commission has concluded that NRC retains jurisdiction vis-a-vis coastal Agreement States over persons using byproduct, source, and special nuclear materials when these materials are used in offshore waters beyond these States' territorial waters. NRC's jurisdiction over persons using these materials begins outside these States' territorial waters off the U.S. Outer Continental Shelf, continues past the Shelf onto the high seas, and, in most instances, stops at waters under another country's jurisdiction. This conclusion is based on several considerations.

The Commission's jurisdiction over persons using byproduct, source, or special nuclerar materials is found in sections 81 and 82 (byproduct material), 62, 63, and 64 (source material), and 53, 54, and 57 (special nuclear material) of the Atomic Energy Act, as amended. These sections grant NRC *in personam* jurisdiction, that is, jurisdiction over a person (when stating, "No person may * * *").

Until the tidelands and submerged lands dispute about the Outer Continental Shelf arose between the Federal Government and certain States, the Atomic Energy Commission (AEC) followed a personal, as opposed to a territorial, approach to offshore jurisdiction. This allowed Agreement States, with AEC's acquiescence, to regulate their own citizens' offshore uses of materials within the purview of an agreement under section 274b. of the Atomic Energy Act (discussed in the footnote); in 1967, in light of the submerged lands controversy, this practice was changed in part because the Federal Government argued that things, such as oil drilling rigs, attached to the Outer Continental Shelf were subject to its exclusive jurisdiction; for the AEC, this meant than an Agreement State did not have jurisdiction to regulate possession and use of byproduct, source or special nuclear

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[1] An Agreement State is a State with which NRC has an agreement under section 274 of the Atomic Energy Act. Section 274 of the Atomic Energy Act was enacted in 1959, to recognize the States interest in atomic energy activities, to clarify the respective responsibilities of the States and the Commission under the Act, and to provide a statutory means by which the Commission can discontinue certain of its regulatory responsibilities with respect to byproduct, source, and special nuclear materials and by which the States can assume these responsibilities. An Agreement made pursuant to section 274b. carries out the basic Congressional intent that either the State or the Commission—but not both—should regulate a given atomic energy activity from the point of view of radiation protection. One of the evils that Congress sought to avoid was "dual regulation." This means that insofar as regulation of these materials by the State and Commission is concerned, the activities discontinued under the agreement will be regulated only by the State, and that the activities retained by the Commission will be regulated only by the Commission.

materials on such things as oil rigs outside an Agreement State's territorial waters.

At the time of the submerged lands controversy, the AEC was negotiating a standard agreement with Louisiana pursuant to section 274b. of the Atomic Energy Act. So as not to compromise the pending litigation between the Federal Government and Louisiana, the AEC and Louisiana also entered into a Memorandum of Understanding and an agreement under section 274i. of the Atomic Energy Act. The Memorandum of Understanding, which is still in effect between NRC and Louisiana, states, in essence, that AEC (now NRC) retains regulatory authority over the disputed area in the Gulf of Mexico and that the agreement made pursuant to section 247b. of the Atomic Energy Act shall not prejudice the position of either the United States or Louisiana in the pending litigation. The agreement under section 274i. of the Act, which is also still in effect, invokes the authority granted to the Commission under section 274i. of the Act to enter into agreements with States "to perform inspections or other functions on a cooperative basis as the Commission deems appropriate." The agreement authorizes Louisiana to perform certain inspections and other functions for and on behalf of the Commission. The proposed rule is not intended to affect either the Memorandum of Understanding or the agreement made under section 274i. of the Act.

The Supreme Court in a series of cases has settled in the Federal Government's favor the Federal-State dispute over the Outer Continental Shelf in the Gulf of Mexico. *United States* v. *Louisiana*, 389 U.S. 155 (1967), 394 U.S. 1 (1969) (cited as the Texas Boundary Case), 394 U.S. 11 (1969) (cited as the Louisiana Boundary Case), and 404 U.S. 388 (1971) (also cited as the Louisiana Boundary Case).

It is now clear that the Outer Continental Shelf Lands Act has made the Outer Continental Shelf part of the United States (43 U.S.C. 1332(a)) under exclusive Federal jurisdiction (43 U.S.C. 1333(a)(1)), extending the laws of the United States to the subsoil and seabed of the Shelf and to all artificial islands and fixed structures erected thereon (43 U.S.C. 1333(a)(1)). It should be noted, however, that for some purposes State law is adopted as a surrogate for Federal law under the Act to the extent that such State law is "applicable and not inconsistent with * * * other Federal laws." 43 U.S.C. 1333(a)(2); *Rodriguez* v. *Aetna Casualty Co.*, 395 U.S. 352, 365 (1969); *Union Oil Company* v. *Oppen*, 501 F.2d 558, 561 (1974); *Oppen* v. *Aetna Insurance Co.* 485 F.2d 252, 255, (1973). It should also be noted that the Act does not apply to the sea above the subsoil and seabed. 43 U.S.C. 1332(b).

It is clear as regards oil drilling rigs, for example, that NRC has jurisdiction over persons in offshore waters beyond an Agreement State's territorial waters using byproduct, source, or special nuclear materials on these rigs, for these rigs are attached to the Outer Continental Shelf.

It is also clear that NRC has jurisdiction over persons in offshore waters beyond an Agreement state's territorial waters and within the area of the Outer Continental Shelf using byproduct, source, or special nuclear materials on free-floating objects, such as lay barges or other vessels, or in offshore diving activities. This view is based on the *in personam* jurisdiction argument described before and supported by another argument.

Sections 274b. and 274d. of the Atomic Energy Act, under which NRC may either retain or discontinue certain parts of its regulatory authority, do not provide for discontinuance of the Commission's regulatory authority over byproduct, source, or special nuclear materials not "within a State". Thus, the Commission retains jurisdiction over persons specifically licensed by the Commission or Agreement States using these materials when these persons are not within an Agreement State. This jurisdiction extends to the high seas but normally stops when it would conflict with another country's jurisdiction in its own waters.

Since the present problem is limited to incidents in offshore waters, and because the Commission has jurisdiction in these waters, it proposes to extend its general licensing scheme to activities of specific licensees of Agreement States in these waters. It would do so by (1) recognizing Agreement State specific licenses in an NRC general license covering activities in these waters, and (2) extending a reporting requirement to these licensees already used by NRC to monitor their activities. NRC specific licensees currently authorized to operate in these offshore waters, of course, would not need to request a license amendment in order to continue to do so.

The Commission believes that the proposed regulation change would remove present ambiguities and provide uniform regulation. It therefore proposes to broaden the scope of Parts 31 and 150 to provide for Commission regulatory authority in the form of general licensing over persons in offshore waters beyond Agreement States' territorial waters and within the area of the Outer Continental Shelf. As presently drafted, §§ 31.6 and 150.20 grant a general license to a person with a specific license from an Agreement State to conduct the licensed activity within non-Agreement States. In addition, § 150.20 authorizes a person to engage in activities in non-Agreement States under NRC's general license for no more than 180 days in any calendar year. At the end of this period, the general license expires and the person would need a specific license from the Commission to continue to engage in these activities in non-Agreement States. The reason for obtaining such a license is the same as that described *In the Matter of Chem-Nuclear Systems, Inc.*, 10 NRC 865 (1979), namely, that long-term field operations should be controlled through specific licensing.

It should be noted that the proposed rule defines "offshore waters" as "those waters beyond Agreement States' territorial waters and within the area of the U.S. Outer Continental Shelf" without specifying for each Agreement State the exact boundaries of these waters and the land area of the Shelf. The definition of offshore waters is designed to keep the proposed rule simple. Aside from the fact that it is not feasible to draw cartographic lines in any regulation, it is unnecessary to do so. The Supreme Court has decided in the Federal Government's favor the Federal-State dispute over the land areas of the Outer Continental Shelf and, as a matter of law, defined the necessary boundary lines. In addition, in the cases of Texas and Louisiana cited before, the Supreme Court defined the necessary boundary lines as a matter of fact. Thus, in the case of Louisiana, for example, its jurisdiction over the seabed of the Shelf extends about three miles from its coast, and, in the case of Texas, for example, as a technical legal matter having to do with its admission as a State of the Union, its jurisdiction over the seabed of the Shelf extends about ten miles from its coast. The definition of territorial waters above the seabed of the Shelf is also clear, coinciding with the U.S. three-mile territorial limit extending from the U.S. coastline. In sum, the definition in the proposed rule is intended to cover, in an understandable and simple fashion, the Commission's jurisdiction over persons using byproduct, source, or special nuclear materials on things, such as oil rigs, attached to the seabed of the Outer Continental Shelf as well as the Commission's jurisdiction over persons using these materials in diving activities or on free-floating objects, such as lay

barges and other vessels, in the waters above the seabed.

Finally, it should be noted that the proposed rule is focused on the Outer Continental Shelf area and not on the high seas. Thus, with respect to the high seas, NRC would continue, as has been the case historically, its licensing authority over certain kinds of persons, such as the Navy using nuclear material on naval vessels, while Agreement States would retain their authority over other kinds of persons, such as, for example, those using nuclear materials on State-chartered research vessels. In other words, the Commission acknowledges its present practice of regarding possession and use of agreement materials on the high seas by the citizens of littoral States, which have entered into agreements with the Commission pursuant to section 274b. of the Atomic Energy Act, as subject to the regulatory authority assumed by such States pursuant to such agreements. However, the Commission reserves the right to alter or amend such practice at any time.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and Section 553 of Title 5 of the United States Code, notice is given hereby that the adoption of the following amendments to 10 CFR Parts 31 and 150 is contemplated.

PART 31—GENERAL DOMESTIC LICENSES FOR BY PRODUCT MATERIAL

1. Section 31.6 is amended to read:

§ 31.6 General license to install devices generally licensed in § 31.5.

Any person who holds a general license issued by an Agreement State authorizing the holder to manufacture, install, or service 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:

* * * * *

PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES AND IN OFFSHORE WATERS UNDER SECTION 274

2. The title of 10 CFR Part 150 is changed to read, "Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274".

3. Section 150.1 is amended to read:

§ 150.1 Purpose.

The regulations in this part provide certain exemptions to persons in Agreement States from the licensing requirements contained in Chapters 6, 7, and 8 of the Act and from the regulations of the Commission imposing requirements upon persons who receive, possess, use or transfer byproduct material, source or special nuclear material in quantities not sufficient to form a critical mass; and to define activities in Agreement States and in offshore waters over which the regulatory authority of the Commission continues. The provisions of the Act, and regulations of the Commission apply to all persons in Agreement States and in offshore waters engaging in activities over which the regulatory authority of the Commission continues.

4. In § 150.3, a new paragraph (f) is added as follows and former paragraph (f) and subsequent paragraphs are relettered:

§ 150.3 Definitions.

As used in this part: * * *

* * * * *

(f) "Offshore waters" means those waters beyond Agreement States' territorial waters and within the area of the U.S. Outer Continental Shelf.

§ 150.5 [Amended]

5. A new heading is added after § 150.5, to read as follows:

Continued Commission Regulatory Authority in Offshore Waters

6. A new § 150.7 is added before the heading "EXEMPTIONS IN AGREEMENT STATES," to read as follows:

§ 150.7 Persons in offshore waters not exempt.

Persons in offshore waters are not exempt from the Commission's licensing and regulatory requirements with respect to byproduct, source, and special nuclear materials.

7. Section 150.20(a) is amended to read:

§ 150.20 Recognition of Agreement State licenses.

(a) Subject to the provisions of paragraph (b) of this section, any person who holds a specific license from an Agreement State where the licensee maintains an office for directing the licensed activity, and at which radiation safety records are normally maintained, is hereby granted a general license to conduct the same activity in non-Agreement States or in offshore waters: Provided, That the specific license does not limit the activity authorized by the license to specified installations or locations.

§ 150.20 [Amended]

8. The first paragraph of § 150.20(b) is amended to read:

* * * * *

(b) Notwithstanding any provision to the contrary in any specific license issued by an Agreement State to a person who engages in activities in a non-Agreement State or in offshore waters under a general license provided in this section, the general license provided in this section is subject to the provisions of §§ 30.14(d), 30.34, 30.41, and 30.51 to 30.63, inclusive, of Part 30 of this chapter; §§ 40.41, 40.51, 40.61 to 40.63 inclusive, 40.71, and 40.81 of Part 40 of this chapter; and §§ 70.32, 70.42, 70.51 to 70.56 inclusive, 70.61, 70.62, and 70.71 of Part 70 of this chapter; and to the provisions of Parts 19, 20, and 71 and Subpart B of Part 34 of this chapter. In addition any person who engages in activities in non-Agreement States or in offshore waters under a general license provided in this section:

* * * * *

§ 150.20 [Amended]

9. In § 150.20(b)(1), the title of Form NRC-241 (revised) is changed to read, "Report of Proposed Activities in Non-Agreement States or in Offshore Waters".

* * * * *

§ 150.20 [Amended]

10. Section 150.20(b)(2) is amended to read:

(b) * * *

(2) Shall not, in any non-Agreement State or in offshore waters, transfer or dispose of radioactive material possessed or used under the general license provided in this section except by transfer to a person (i) specifically licensed by the Commission to receive such material, or (ii) exempt from the requirements for a license for such material under § 30.14 of this chapter;

* * * * *

(Secs. 51, 53, 57, 62, 63, 81, 161o., 222, 223, 274, Pub. L. 83–703, as amended, Pub. L. 91–161, Pub. L. 90–190, 68 Stat. 929, 930, 932, 933, 935, 948, 83 Stat. 444 81 Stat. 575, 73 Stat. 688 (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2111, 2201o., 2272, 2273, 2021); sec. 201, Pub. L. 93–438, 88 Stat. 1242 (42 U.S.C. 5841).)

Dated at Washington, D.C., this 24th day of October, 1980.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 80-3267 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 80-ARM-10]

Establishment of a Federal Airway Between Akron and Denver, Colo.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a low altitude Federal Airway V-383 between Akron, Colo., and Denver, Colo., via Byers intersection. This action would provide a designated airway for pilot navigation to the Denver terminal arrival area, reduce radar vectoring required, and provide more efficient service to the users.

DATES: Comments must be received on or before December 1, 1980.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Rocky Mountain Region, Attention: Chief, Air Traffic Division, Docket No. 80-ARM-10, Federal Aviation Administration, 10455 East 25th Avenue, Aurora, Colo. 80010.

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

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Rocky Mountain region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 10455 25th Avenue, Aurora, Colo. 80010. All communications received on or before December 1, 1980, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

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

The Proposal

The FAA is considering an amendment to § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) that would add an additional airway between Akron, Colo., and Denver, Colo. This airway would be designated via the Akron VORTAC 242°T (229°M) and the Denver 094°T (082°M). The action would provide more efficient service to the users by designating a route from Akron into the Denver terminal arrival area. Section 71.123 of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 307).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 307), by adding a new Federal Airway V-383 to read:

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

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

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

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

B. Keith Potts,

Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc. 80-33613 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 80-ASW-48]

Proposed Alteration of Transition Area: Elk City, Okla.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The nature of the action being taken is to propose alteration of the transition area at Elk City, Oklahoma. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Elk City Municipal Airport. The circumstance which created the need for the action is the proposed Area Navigation (RNAV) approach to Runway 17.

DATES: Comments must be received on or before December 1, 1980.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, Texas 76101.

The official docket may be examined at the following location: Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

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

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

SUPPLEMENTARY INFORMATION: Subpart G 71.181 (45 FR 445) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting Instrument Flight Rules (IFR) activity. Alteration of the transition area at Elk City, Oklahoma, will necessitate an amendment to this subpart.

Comments Invited

Interested persons may submit such written data, views, or arguments as they may desire. Communications

should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before December 1, 1980, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contacting the Chief, Airspace and Procedures Branch. Any data, views, or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at Elk City, Oklahoma. The FAA believes this action will enhance IFR operations at the Elk City Municipal Airport by providing controlled airspace for aircraft executing a proposed instrument approach procedure, RNAV, to runway 17. Subpart G of Part 71 was republished in the Federal Register on January 2, 1980 (45 FR 445).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) by deleting the present description and substituting the following:

Elk City, Oklahoma

That airspace extending upward from 700 feet above the surface within as 8.5-mile radius of the Elk City Municipal Airport (latitude 35°25'30"N, longitude 99°23'35"W).

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

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

Issued in Fort Worth, Tex., on October 16, 1980.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 80-33474 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33-6251; File No. S7-860]

Report of Sales of Securities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is publishing for comment proposed amendments to Rule 463 and related Form SR under the Securities Act of 1933. The proposals, if adopted, would extend the requirement to file Form SR (Report of the Sales of Securities and Use of Proceeds Therefrom) to issuers of securities which will be sold by a direct distribution or by a best efforts underwriting and would reduce the number of reports which must be filed regarding a given offering. The proposals would also change Form SR to a standardized short-answer format, requiring issuers to provide additional identifying information and a more detailed accounting of offering expenses and the use of proceeds. These proposals are intended to provide the Commission and investors with more meaningful information concerning first-time offerings, direct distributions and best efforts underwritings.

DATE: Comments should be submitted on or before December 5, 1980.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-860. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Elizabeth Norsworthy (202) 272-2589, Office of Disclosure Policy, Division of Corporation Finance, or Jeffry L. Davis (202) 272-2850, Directorate of Economic and Policy Analysis, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Rule 463 of Regulation C [17 CFR 230.463] under the Securities Act of 1933 (the "Act") [15 U.S.C. 77a et seq.] and to related Form SR [17 CFR 239.61] pursuant to Section 19(a) of the Act. Rule 463 applies to the first effective registration statement filed under the Act by an issuer and requires such first-time registrants to file reports on Form SR disclosing the progress of the offering and the use of proceeds. Forms SR are required to be filed within ten days after the initial three months of the effective date of the registration statement and at six-month intervals thereafter until the completion or termination of the offering, following which a final report is filed.

As discussed in more detail below, proposed Rule 463 is designed to establish a simplified and standardized reporting framework to provide more meaningful information to the Commission and investors. While the number of issuers required to file Form SR would be increased by including issuers of direct distributions or best-efforts underwritings as well as first-time issuers, the proposal would decrease the number of Forms SR which are currently required to be filed by an issuer subject to the filing requirement.

Form SR currently requires the issuer to report in a narrative format upon the progress of the offering and the use of proceeds. The proposed revision would require issuers to furnish information in a short-answer format so that the data can be easily digested by a data processing system. The proposed Form would also be expanded to require issuers to furnish certain information relating to the offering and the securities registered and to provide a more detailed accounting of the offering expenses and the use of net proceeds.

In order to facilitate the comment process, this release contains background information, a discussion of the purposes for the proposed amendments and a synopsis. While the

synopsis is intended to assist in a better understanding of the proposals, attention is directed to the text of the proposals for a more complete understanding.

A. Background

Rule 463 and Form SR, requiring reports by first-time registrants of sales of registered securities and the use of proceeds therefrom, were adopted nine years ago[1] to enable investors and the Commission to obtain follow-up information about first-time offerings. At that time, the Commission indicated that the following concerns had prompted the requirement for such reports:

(1) In the case of issuers which are not required to file periodic reports,[2] the Commission did not know when an offering had commenced and terminated and consequently was unable to enforce adequately the prospectus delivery and updating requirements of Section 4(3)[3] and Section 10(a)(3) of the Act.[4]

(2) If the Commission and investors were not given follow-up information concerning the actual use of proceeds from the offering, neither the Commission nor investors would be in a position to know whether or not the prospectus adequately and accurately disclosed the intended use of proceeds.[5]

Rule 463 has been amended once since 1971—in 1979, at the time of the adoption of Form S-18 [17 CFR 239.28], a simplified registration statement form for small issuers.[6] At that time, in order to correspond to General Instruction B in Form S-18 permitting filing at a regional office or at the Commission's main office, Rule 463 was amended to provide that Form SR should be filed at the office where the registration statement was filed.

The proposed amendments to Rule 463 and Form SR are intended to facilitate the determination of whether an issuer of a direct distribution or a best efforts underwriting which is not a first-time offering is complying with the prospectus delivery and updating requirements of Sections 4(3)[7] and 10(a)(3) of the Act. Even in the case of issuers which are required to file periodic reports pursuant to Sections 12 or 15(d) of the Exchange Act, information with respect to the progress of the offering may be difficult to obtain in an efficient and timely manner from the financial statements contained in quarterly and annual reports.

The proposals are also intended to provide the Commission and investors with a more understandable and detailed accounting of an issuer's actual use of proceeds in order to better evaluate the manner in which the intended use of proceeds was disclosed in the prospectus.

If adopted, the proposals will also have two tangential effects. They will permit the Commission to: (1) Assemble a data base relating to first-time offerings, direct distributions and best efforts offerings with respect to the cost of such offerings and the manner in which they are conducted in order to determine more accurately the impact of alternative regulatory actions affecting the issuers of such offerings; and (2) provide more complete information with respect to such offerings in the Commission's annual report.

B. Synopsis of Proposals

1. Applicability

Rule 463 currently applies only to first-time issuers. To enable the Commission to monitor compliance with prospectus delivery and updating requirements in direct distributions and best efforts offerings, the proposed amendments would extend the filing requirement to the issuers of such offerings. It should be noted that the Rule would also be revised to make clear that a successor issuer would succeed to the reporting obligation of the prior issuer.

Rule 463 currently excepts registered investment companies, public utility companies filing reports with any State or Federal authority and issuers of American depository receipts for foreign securities. While the proposal would continue to except registered investment companies and issuers of American depository receipts from the filing requirement, public utility companies which are required to file reports with State or Federal authorities would no longer be excepted.

In addition, proposed Rule 463 would exempt from the filing requirement issuers which directly distribute securities in certain specialized offerings, including securities issued in connection with a business combination as defined in Rule 145(a) [17 CFR 230.145(a)]; pursuant to an employee benefit plan; or pursuant to a dividend reinvestment plan.

2. Filing Procedures

Form SR is presently required to be filed within ten days after the end of the first three-month period following the effective date of the registration statement and within ten days after the end of each six-month period following such three-month period. A final report is required to be filed within ten days after completion or termination of the offering.

To minimize possible burdens on issuers and still provide timely and meaningful information to investors and the Commission, proposed Rule 463 would require an issuer to file only an initial report if the offering extends beyond six months after the effective date of the registration statement, a second report after the termination of the offering and a third report if substantially all of the proceeds have not been applied at the time of the termination of the offering. Under the proposed Rule, if an offering terminates within six months after the effective date of the registration statement and substantially all of the offering proceeds are applied prior to or promptly after the termination of the offering, only one report would be required. To permit issuers adequate time to prepare the required information, proposed Rule 463 allows an issuer thirty days to file these reports.

Rule 463 presently refers to the "termination" and "completion" of the offering without defining those terms. In order to clarify the time at which an issuer is required to file the second report, the proposals refer only to "termination" and define that term as the date on which the securities cease to be offered for sale. In order to make clear that the third report should

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

[2] This pertains to issuers which are not subject to the reporting requirements of Sections 12 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. 78a et seq.].

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

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

[5] *See* Securities Act Release No. 5130 (February 8, 1971) [36 FR 3429].

[6] *See* Securities Act Release No. 6049 (April 3, 1979) [44 FR 21562].

[7] Section 4(3) provides that dealers effecting transactions in a previously registered security must deliver a prospectus to prospective customers during a forty-day period following the commencement of the offering.

disclose the final application of the offering proceeds, paragraph (c)(2) provides that the term "application of substantially all the proceeds of the offering" shall not include the temporary investment of proceeds pending final application.

If adopted proposed Rule 463 would no longer follow the automatic reporting framework of the present Rule. Specific comment is requested on whether the timing of the filing requirement should be predicated upon the passage of six-month intervals until the termination of the offering, as currently required by the Rule.

3. *Disclosure Requirements.* In order to provide more meaningful information to investors and the Commission with respect to public offerings by issuers subject to proposed Rule 463, proposed Form SR has been substantially revised both in terms of the format and the information required. Rather than the current narrative format, the proposed Form would establish a short-answer framework. With respect to disclosure, the proposed Form would require: certain identifying and trading market data;[8] information concerning the progress of the offering; and disclosure with respect to the use of proceeds.

Form SR currently requires the issuer to state the date the offering commenced; if the offering did not commence, the reasons why; the date the offering was completed; if the offering was terminated, the reasons why; the total amount of securities registered, sold and still being offered; and the total amount received from the public. In addition to this information, the proposed Form requires the issuer to report (i) the aggregate offering price of the units registered and the aggregate offering price of the units sold; (ii) the total amount of securities sold, but not delivered, as of the most recent practicable date; and (iii) the date on which substantially all of the offering proceeds were applied.

Form SR currently requires the issuer to provide "a reasonably itemized statement" of the use of proceeds (noting in the instructions that expenses paid for underwriting discounts and commissions, finders' fees, and expenses paid to or for the underwriters should be stated separately) and whether the expenses were paid by the issuer or by "others" (i.e., selling shareholders). In order to provide a complete accounting, the revised Form asks the issuer to report the expenses paid by the issuer to certain affiliates [9] and to others in all of the expense categories required to be disclosed in Part II of the registration statement forms.

The present Form requires the reporting of every purpose for which significant amounts—determined by the lesser of $50,000 or 5% of the total proceeds—were used (noting in the instructions that payments to certain affiliates of the issuer should be shown separately), as well as any temporary investments. In order to provide more precise and detailed information concerning the use of proceeds, the revised Form would require that the use of proceeds be stated separately for several categories, e.g., construction, research, and development. These categories reflect the uses of proceeds which are most often disclosed in prospectuses. As in the current Form, the issuer would be required to report, with respect to each category, payments to certain affiliates [10] and to others.

Finally, the present Form asks the issuer to report and explain any deviation in the use of proceeds as set forth in the prospectus. In order to reduce reporting obligations, the revised Form would require the issuer to report only material changes in the use of proceeds described in the prospectus.

Request for Comment

Any interested persons wishing to submit written comments on the proposed amendments, as well as on other matters which might have an impact on the proposals contained herein, are requested to do so. Moreover, commentators are urged to address any alternatives or modifications which may assist the Commission in achieving the objectives set forth in this release.

Text of Proposals

17 CFR Chapter II is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising § 230.463 to read as follows:

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

(a) With respect to any effective registration statement that is the first effective registration statement of the issuer or successor issuer or discloses that the securities will be distributed by the issuer or discloses that the securities will be distributed on a best efforts basis, the issuer or successor issuer shall file at the same office of the Commission where the registration statement was filed five copies of a report on Form SR (§ 239.61 of this chapter) promptly, but not later than thirty days:

(1) After the date which is six months after the effective date of such registration statement unless the offering has terminated prior to the end of such six month period;

(2) After the termination of the offering; and

(3) After the application of substantially all the proceeds from the offering unless such application has been disclosed in a report filed pursuant to paragraph (a)(2) of this section.

(b) Paragraph (a) of this section shall not apply to any effective registration statement for securities to be issued in connection with a business combination as described in Rule 145(a) (§ 230.145(a) of this chapter); pursuant to an employee benefit plan; pursuant to a divided reinvestment plan; as American depository receipts for foreign securities; or by any investment company

[8] Form SR currently requires that the following identifying data be given: the name of the registrant and the name of the managing underwriter, if any.

The proposed Form would require the following additional information:

(a) CUSIP number of the issuer (proposed Item 2);

(b) Standard Industrial Classification (SIC) of the issuer (proposed Item 3);

(c) the effective date of the registration statement (proposed Item 4(a));

(d) the SEC file number assigned to the registration statement (proposed Item 4(b));

(e) whether or not the registration statement is the first effective registration statement of the issuer (proposed Item 4(c));

(f) whether or not the issuer is required to file periodic reports (proposed Item 5(a));

(g) if the issuer is required to file periodic reports, the SEC file number assigned to such reports (proposed Item 5(b));

(h) the method of distribution of the securities (i.e., direct, best efforts, or firm commitment underwriting) (proposed Item 9);

(i) the trading market(s), if any, for the securities (i.e., exchange or over the counter) (proposed Item 10); and

(j) the type of securities (i.e., debt, equity, convertible, limited partnership or other) (proposed Item 12).

[9] These persons include officers, directors or general partners of the issuer or their associates, as well as persons owning 10% or more of any class of equity securities of the issuer and affiliates of the issuer. With the exception of general partners, the persons specified in the proposal are the same as under the current Form.

[10] *Id.*

registered under the Investment Company Act of 1940.

(c) For the purposes of this section:

(1) The term "termination of the offering" shall mean the date on which the securities cease to be offered for sale; and

(2) The term "application of substantially all the proceeds of the offering" shall not include the temporary investment of proceeds pending final application.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

2. By revising § 239.61 to read as follows:

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

SEC Use Only
Filing Date
Day —— Mo ——— Year ———

U.S. Securities and Exchange Commission

Washington, D.C. 20549

Report of Sales of Securities and the use of Proceeds Therefrom

First ☐ Second ☐ Third ☐
For Period From Day —— Mo ———
Year ——— to Day —— Mo ———
Year ———

General Instructions

A. Answer every item by entering the information requested in the boxes or blanks provided. If an item is inapplicable or the answer is in the negative, so state. If additional space is required, continue the answer on the attached sheet. Where the number of boxes provided for an answer exceed the number of digits contained in that answer, zero(es) should be entered in the left-most box(es). For example, if two boxes are provided for entering the month of the year and the 6th month is to be entered, the entry should appear as 0/6.

B. No fee is required to be paid to the Commission in connection with the filing of this report.

C. If the report is filed by a successor issuer, the items should be answered with respect to that successor issuer. For example, in response to Item 3, the SIC code of the successor, not the predecessor, issuer should be given.

1. (a) Name of issuer ———

(b) Name of successor issuer, if any ———

2. (a) Has the issuer been assigned a CUSIP number? Yes ☐ No ☐

(b) If yes, specify the first six (6) digits. ☐☐☐☐☐☐

3. Indicate the issuer's Standard Industrial Classification (SIC) at the 3 digit level. ☐☐☐

4. (a) What was the effective date of the registration statement for which this report is filed? Day —— Mo ——— Year ——

(b) Indicate the SEC file number assigned to that registration statement. 2-☐☐☐☐☐

(c) Was that registration statement the first effective registration statement of the issuer or successor issuer? Yes ☐ No ☐

5. (a) Has the issuer filed any periodic reports pursuant to Section 12 or 15(d) of the Securities Exchange Act of 1934? Yes ☐ No ☐

(b) If yes, indicate the SEC file number assigned to such periodic reports. ☐-☐☐☐☐

6. (a) Date offering commenced. Day —— Mo ——— Year ———

(b) Date offering terminated. Day —— Mo ——— Year ———

(c) Date substantially all of the offering proceeds were applied. Day —— Mo ——— Year ———

7. (a) Did the offering terminate prior to the sale of any securities? Yes ☐ No ☐

(b) If yes, explain briefly ———

Note.—If the offering terminated prior to the sale of any securities, the registration statement should be withdrawn pursuant to Rule 477, and Items 8 through 19 need not be answered.

Items 8 through 19 need not be answered.

8. (a) Did the offering terminate prior to the sale of all of the securities registered? Yes ☐ No ☐

(b) If yes, explain briefly ———

9. Indicate the method of distribution of the securities registered. Directly by Issuer ☐ Best Efforts Underwriting ☐ Firm Commitment Underwriting ☐

10. Name of managing underwriters, if any.

11. (a) Indicate the trading market(s) (if any) for the securities registered: National Securities Exchange ☐ Over-the-Counter ☐ Other ☐

(b) If traded over-the-counter, are the registered securities listed on NASDAQ? Yes ☐ No ☐

(c) If "other" is indicated in response to (a), explain briefly ———

12. (a) Indicate the type of securities registered. Debt ☐ Equity ☐ Convertible ☐ Limited Partnership ☐ Other (e.g. investment contract) ☐

(b) If "convertible" or "other," describe briefly ———

13. Indicate below the number and aggregate offering price of units of securities registered and sold:

	Number of units registered	Aggregate offering price of units registered	Number of units sold	Aggregate offering price of units sold
Debt		$		$
Equity				
Limited Partnership				
Convertible				
Other				
Total				

14. Total amount of secutities sold, but not delivered, as of the most recent practicable date: $———

15. Total amount received from the sale of the securities registered (excluding amount received for the accounts of selling security holders): $———

16. Indicate below the amount of expenses incurred for the account of the issuer for each of the following purposes:

	Direct or indirect payments to officers, directors, general partners of the issuer or their associates; to persons owning 10 percent or more of any class of equity securities of the issuer; and to affiliates of the issuer (A)	Payments to others (B)
a. Underwriting Discounts and Commissions	$	$
b. Finders' Fees		
c. Expenses Paid to or for the Underwriters		
d. Registration Fees		
e. State Taxes and Fees, including Blue Sky Fees		
f. Trustees' and Transfer Agents' Fees		
g. Printing and Engraving Costs		
h. Legal Fees		
i. Accounting Fees		
j. Engineering Fees		
k. Premium (or increase in premium) paid for liability insurance		
l. Other Expenses (identify)		
m		
n		
Total Expenses		

17. Net proceeds to the issuer after above expenses:

18. Indicate below the amount of the net proceeds to the issuer used or to be used for each of the following:

	Direct or indirect payments to officers, directors, general partners of the issuer or their associates; to persons owning 10 percent or more of any class of equity securities of the issuer; and to affiliates of the issuer (A)	Payments to others (B)
a. Construction of plant, building and facilities	$	$
b. Purchase and installation of machiner and equipment		
c. Purchase of real estate		
d. Acquisition of other businesses		
e. Repayment of indebtedness		
f. Salaries and fees		
g. Research and development		
h. Raw materials, inventory and supplies		
i. Exploration		
j. Selling, advertising and other sales promotion		
k. Temporary investment—specify		
l. Organization expenses		
m. Other—specify		
Total	$	$
Balance of cash proceeds on hand		

19. (a) Do the above disbursements represent a material change in the use(s) of proceeds described in the prospectus?
Yes☐ No☐
(b) If yes, explain briefly _____

Signature After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Date) _____
(Signature) _____

The original report shall be signed by an executive officer or general partner of the issuer or his/her authorized representative. If the report is signed on behalf of a person by his/her authorized representative, evidence of the representative's authority to sign on behalf of such person shall be filed with the report. The name and any title of the person who signs the report shall be typed or printed beneath his/her signature.

Attention: Intentional misstatements or omissions of facts constitute Federal criminal violations (*See* 18 U.S.C. 1001).

Form SR Continuation Sheet

Item of Form

Identify Answer

* * * * *

(Sec. 19(a), 48 Stat. 85; Sec. 209, 48 Stat. 908; 15 U.S.C. 77s (a)

These amendments are being proposed pursuant to Section 19(a) of the Securities Act of 1933.

By the Commission.

George A. Fitzsimmons,

Secretary.

October 23, 1980.

[FR Doc. 33846 Filed 10-29-80; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Chapter VII

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Performance Bonding, Subchapter J

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of intent.

SUMMARY: OSM has determined that self-bonding as issued in 30 CFR 806.14 requires amendment and seeks public comments in the evaluation and study of self-bonds. OSM, in the preamble to amended rules issued August 6, 1980 (45 FR 52306), explains that both the self-bonding rules issued March 13, 1979 (44 FR 14901) and those amendments proposed January 24, 1980 (45 FR 6028) were found to be unacceptable and recommends that the subject be studied for further amendment. This notice initiates action in undertaking the study by informing the public of OSM's intent and seeking public participation in resolving the difficulties of self-bonding. This plan of action proposes to reevaluate the basic criteria of self-bonds, analyze financial parameters and develop rules governing self-bonding for proposal. The purpose of this notice is to solicit comments for interpretation of the basic statutory provisions.

DATES: Comments will be accepted through December 15, 1980, or until OSM issues a notice to commence rulemaking and requests comments on specific provisions.

ADDRESSES: Comments and recommendations may be sent to the Administrative Record, Room 153, Department of the Interior, South Building, 1951 Constitution Avenue, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Russell Price, Division of Technical Services, Office of Surface Mining, Department of the Interior, Washington, D.C. 20240; 202-343-4023.

SUPPLEMENTARY INFORMATION: Section 509 of the Surface Mining Control and Reclamation Act of 1977 (the "Act") requires that before a permit to conduct surface coal mining and reclamation is issued the applicant must file a performance bond which is satisfactory to the regulatory authority. Section 509(c) provides that the regulatory authority may accept a bond of the applicant without separate surety. This is commonly referred to as a "self-bond".

On March 13, 1979, OSM published final rules (44 FR 14901 *et seq.*) implementing the permanent regulatory program of Title V of the Act. These rules contained provisions for posting sufficient performance bond coverage with the regulatory authority to assure that reclamation operations would be performed satisfactorily by the operator or upon forfeiture of the bond, to enable the regulatory authority to contract for completion of reclamation operations.

Included within the rules is a provision implementing Section 509(c) of the Act authorizing a regulatory authority to accept a bond from a coal mine operator without the bond of a conventional surety company. The acceptance of the "self-bond", is conditioned upon designation of a suitable agent to receive service of process, a history of financial solvency and continuous operation, as well as, meeting the standards required of other bonds in providing a degree of financial security adequate to provide sufficient funds to perform the required reclamation under conditions of bond forfeiture.

Standards of the rules-governing self-bonding issued March 13, 1979 are as follows:

(1) Designation of a suitable agent to receive service of process in the state where surface coal mine is located.

(2) An indemnity agreement for the amount of the bond.

(3) Net worth to bond amount ratio of (6).

(4) Continuous operation for 10 years.

(5) Security interest in real or personal property collateral in support of the indemnity agreement.

(6) Liability under the indemnity agreement extending to all who execute, with the requirement that personal or business interest having 10 percent ownership interest are required to sign.

(7) Financial statements demonstrating that the operator is and

has been financially solvent for 10 years, and a method of analyse that data presented.

The self-bonding rules are published March 13, 1979, have been criticized by many including the coal industry and the surety industry. Both groups are affected by self-bonding in different ways, but nonetheless find problems in implementation of the rules. Most coal operators allege the self-bonding rules require excessive documentation for financial data, and qualification criteria and personal liability requirements beyond those acceptable to corporate officials.

In the amendments to rules proposed January 24, 1980 self-bonding was proposed as an unsecured security agreement, supported only by financial records, 10 years of continuous operation, and business and personal liability. Surety commenters stressed the need for stringency in self-bonding criteria so that the surety market could serve all operators, not only those not qualifying for self-bonds. Environmental groups and state regulators were concerned that an unsecured self-bond would not provide adequate funds under conditions of forfeiture.

Due to the numerous comments raised on the proposed amendment for self-bonding, OSM has determined that a formal study of the issue is necessary to fully implement self-bonding. The study will examine financial parameters for self-bonding requirements and the risk to the regulatory authority associated with self-bonding. OSM proposes to evaluate the findings of the study, develop qualifying standards for self-bonding and publish the proposed rules for public comment and acceptance.

The study would evaluate financial parameters and develop qualification criteria based on the risk and cash value of an indemnity agreement issued as a self-bond. The study would also determine the degree and quality of collateral or financial support necessary to assure an appropriate cash value to the regulatory authority if the bond is forfeited. OSM in reviewing the criteria stated in the Act for accepting self-bond believes the following three criteria are most essential:

(1) There must be sufficient financial assurance for a third party to complete the reclamation plan if bond is forfeited;

(2) A suitable agent must be designated to receive service of process; and

(3) The applicant for self-bonding must show a history of financial solvency and continuous operation.

OSM invites comments and recommendations regarding provisions of the Act and specific contents of a study for the development of standards and rules for self-bonding which would be useful in accepting credentials to meet these criteria.

Issues of particular interest in this analysis are:

—provisions of an indemnity agreement;
—acceptable financial credentials;
—criteria for continuous operation;
—collateral support of a self-bond;
—extent of business and personal liability under the indemnity agreement;
—ability to perform reclamation;
—economic incentives necessary to comply with reclamation standards;
—administration and implementation of self-bonding.

Public Comments

OSM invites comments and recommendations concerning the proposed study and implementing concepts and procedures for acceptance of self-bonds.

Those comments which would be most helpful should contain a detailed explanation of rationale and supporting justification for use in study scope requirements and in the development of rules.

Dated: October 8, 1980.

Walter N. Heine,

Director, Office of Surface Mining.

[FR Doc. 80-33777 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 900

Surface Coal Mining Reclamation Operations; State or Federal Programs

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining is proposing to establish a new Subchapter T which will contain the final actions of the Secretary of the Interior regarding State of Federal Programs governing surface mining and reclamation operations. This document provides an introductory Part (Part 900) to Subchapter T. This part explains the purpose of Suchapter T and identifies the information that will be published in Parts 901–950 of this title.

DATE: Comments are due December 1, 1980.

ADDRESS: Comments should be submitted to: Boyd Lewis, Program, Assistant, Room 122, Department of the Interior, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240

FOR FURTHER INFORMATION CONTACT: R. Bruce Carroll, Department of the Interior, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240 (202) 343-5351.

SUPPLEMENTARY INFORMATION: Title V or the Surface Mining control and Reclamation Act of 1977 (SMCRA) requires the implementation of permanent programs to regulate coal exploration and surface coal mining and reclamation operations in each State. The Office of Surface Mining and Enforcement (OSM) promulgated national permanent program regulation in 30 CFR Chapter VII which establish the minimum standards for the regulatory programs is each State.

Under Sections 501–503 of the Act and 30 CFR Part 731, the States were provided the opportunity to submit programs for approval by the Secretary and thus achieve primary responsibility for regulating coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands. A deadline of August 3, 1979, was established by 30 CFR 731.12 for submittal of State programs. The deadline for submissions was extended to March 3, 1980, by an opinion on August 22, 1979, of the District Court for the District of Columbia (see *In Re: Permanent Surface Mining Reclamation Litigation*, 13 ERC 1586). By March 3, 1980, 24 of the States with known coal reserves had submitted programs to obtain primary regulatory responsibility.

Under Section 504 of SMCRA and 30 CFR 736.11, OSM must promulgate and implement a Federal program in each State that did not submit a program by March 3, 1980, and in which the Director reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands at any time before June, 1985.

Each State and each Federal program will be codified under Subchapter T, Parts 901–950. For each State program, OSM proposes that the complete text not appear. Rather, a notification of approval of a State program is proposed to be codified as well as the addresses where the State program may be inspected and reviewed. This alternative was chosen because of the burdensome cost that would be imposed on the Federal government to publish the full text of each State program, estimated for all programs to be around $1,500,000. Incorporating the program by reference was not recommended by the Federal Register as problems had arisen when other agencies incorporated by reference their State program approvals. However, OSM is still investigating its chosen alternative, in light of the

possibility that Federal enforcement of the provisions of a State program may be facilitated by incorporation by reference of the program's provisions in the Code of Federal Regulations. OSM requests comments on this alternative from the public and on information it feels may be useful to codify.

For Federal programs, the complete text of the Federal regulations for each program will be codified.

This regulation will not have significant effect on the human environment and an environmental impact statement will therefore not be prepared.

The Director of the Office of Surface Mining has determined that this regulation does not constitute a significant rule set forth in 40 CFR Part 14. The regulation will not impose any recordkeeping and reporting requirements nor will it cause any economic impacts on the nationwide economy or the coal industry in particular.

Dated: October 23, 1980.

Joan M. Davenport,

Assistant Secretary for Energy and Minerals.

A new Subchapter T—Programs For the Conduct of Surface Mining Operations Within Each State, is proposed to be added to Chapter VII of Title 30 of the Code of Federal Regulations, consisting at this time of Part 900, to read as follows:

Subchapter T—Programs for the Conduct of Surface Mining Operations Within Each State

PART 900—INTRODUCTION

Sec.
900.1 Scope.
900.2 Objectives.
900.4 Responsibilities.
900.11 Organization of the subchapter.
900.12 State programs.
900.13 Federal programs.
900.14 Abandoned mine land programs.
900.15 Federal lands program cooperative agreements.

Authority: Secs. 102, 201, 405, 503, 504, and 523 of Pub. L. 95-87 (30 U.S.C. 1202, 1211, 1235, 1253, 1254, and 1273).

§ 900.1 Scope.

This part sets forth the purpose and organization of Parts 901-950 of this subchapter.

§ 900.2 Objectives.

The objective of this part is to provide an introduction to the synopsis of the approved State programs, the Abandoned Mined Lands Reclamation programs, and the full texts of the Federal programs and State and Federal cooperative agreements for regulation of mining on Federal lands. The introduction is to explain the content and authority of the permanent regulatory programs.

§ 900.4 Responsibilities.

(a) Each State that has surface coal mining and reclamation operations or coal exploration activities must have either an approved State program or a promulgated Federal program as required by Title V of the Act and 30 CFR Chapter VII, Subchapter C. Approval of a State program and promulgation of a Federal program are described in the paragraphs below.

(b) Under Section 503 of the Act and 30 CFR Part 731 a State in which there are coal exploration activities and surface mining and reclamation operations must submit a State program to the Secretary for approval if it wishes to assume exclusive regulatory jurisdiction on non-Federal and non-Indian lands. The State programs must meet the requirements of the Act and 30 CFR Chapter VII, Subchapter C.

(c) Pursuant to Section 504 of SMCRA and 30 CFR 736.11, OSM must promulgate and implement a Federal program in each State in which the Director reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands at any time before June, 1985, and either (1) the State does not submit a State program, (2) the Secretary of the Interior finally disapproves the program submitted by the State, or (3) the Secretary of the Interior withdraws approval of the State program.

(d) States with approved program may enter into a cooperative agreement with OSM for the regulation of coal mining on Federal lands, in accordance with 30 CFR Chapter VII, Subchapter D.

§ 900.11 Organization of subchapter.

Parts 901-950 are reserved for each State alphabetically. A part is reserved for each State regardless of whether it is likely there will be surface coal mining and reclamation operations or coal exploration activities in that State. The programs applicable solely within each State will be codified in the applicable Part for that State under this subchapter.

§ 900.12 State programs.

Upon approval of a State program the Secretary will publish a final rule to be codified under the applicable part number assigned to the State. The full text will not appear below. Notification of the approval of the program and the dates on which any amendments were submitted will appear. In addition, the addresses where copies of the approved program are available will appear.

§ 900.13 Federal programs.

The full text of the final rules for each Federal program is codified below under the assigned Part for the particular State.

§ 900.14 Abandoned mine land program.

Programs for reclamation of abandoned mine lands are codified under the applicable part for the State. The date of submittance and approval and the addresses at which copies of the program are available appear in the applicable part for each State below.

§ 900.15 Federal lands program.

The full text of any State and Federal cooperative agreement for the regulation of coal exploration and mining on Federal lands is published below under the applicable part. In addition, these requirements of a State program which are applicable on Federal lands in the State shall be specified.

[FR Doc. 80-33792 Filed 10-29-80; 8:45 am]
BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[SW-4-FRL 1648-8]

Kentucky's Application for Interim Authorization, Phase I, Hazardous Waste Management Program; Cancellation of Public Hearing and Comment Period

AGENCY: Environmental Protection Agency, Region IV.

ACTION: Cancellation of Public Hearing and Public Comment Period.

SUMMARY: On October 2, 1980, (45 FR 65263) a Notice of Public Hearing was published in the Federal Register concerning a public hearing to be held on Kentucky's Application for Interim Authorization, Phase I, under the Resource Conservation and Recovery Act. That notice also announced the availability of the State's application for public review and invited public comment on the application.

EPA has determined that Kentucky's application is incomplete because some of the regulations referenced in the application are still subject to change under Kentucky's rulemaking procedures. EPA regulations implementing RCRA at 40 CFR 123.123 (b) provide that the formal review period cannot begin until all the necessary information for a complete application is received by EPA.

Consequently, the public hearing that was originally scheduled for November 3, 1980 at 7:00 p.m. in Frankfort, Kentucky, will not be held.

When additional information is submitted and EPA determines that the State program submission is complete. another public hearing will be scheduled and the formal review process and public comment period will begin.

FOR FURTHER INFORMATION CONTACT: Betty C. Willis, Hazardous Waste Section, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. Telephone: 404/881-3016.

Dated: October 22, 1980.

Rebecca W. Hanmer,

Regional Administrator.

[FR Doc. 80-33933 Filed 10-29-80; 8:45 am]

BILLING CODE 6560-38-M

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40 CFR Part 256

[SWH-FRL 1619-4]

Guidelines for Development and Implementation of State Solid Waste Management Plans

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing modifications to its guidelines for the development and implementation of State solid waste management plans. The proposed modifications would expand public participation opportunities in the planning process and would provide for expedited approval of certain portions of the State plans. These modifications are being proposed as part of a settlement agreement reached with industrial groups which have challenged the guidelines in Federal Court.

DATE: EPA will accept public comments on the proposed modifications until December 1, 1980.

ADDRESSES: Comments should be addressed to John Skinner, Director, State Programs and Resource Recovery Division, Office of Solid Waste [WH-563], U.S. Environmental Protection Agency, Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 4002."

The public docket for this proposed rulemaking is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Susan Absher, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9145.

SUPPLEMENTARY INFORMATION: On July 31, 1979, EPA published the Guidelines for Development and Implementation of State Solid Waste Management Plans (44 FR 45066) under Section 4002(b) of the Resource Conservation and Recovery Act of 1976, as amended (RCRA or Act), 42 U.S.C. 6942(b). These guidelines contain requirements and recommendations for State planning programs that will be approved and funded under Sections 4007 and 4008 of RCRA. The State plans are to address a range of solid waste management activities, including resource recovery, resource conservation and solid waste disposal.

Among other things, the State plan must provide for the closing or upgrading of existing open dumps. On September 13, 1979, EPA issued Criteria for Classification of Solid Waste Disposal Facilities and Practices (44 FR 53438) under Section 4004(a) of RCRA which, among other things, provide a general definition of "open dump" for purposes of RCRA. As part of the planning process, the States will use these criteria to determine which facilities within their borders are "open dumps." EPA will publish the results of these State determinations in an open dump inventory as required by Section 4005(b) of the Act. The States will use this list in setting planning priorities.

The Chemical Manufacturers Association and certain of its member companies, the American Paper Institute and the National Forest Products Association, the U.S. Chamber of Commerce and the American Mining Congress and certain of its member companies have all sought judicial review of EPA's Section 4002 guidelines. Their concerns focus upon the preparation of and meaning to be given the inventory of open dumps required by Section 4005(b) of the Act.

All of the industry petitioners have argued that EPA has not met alleged legal obligations to ensure that States give owners and operators of such facilities notice and an opportunity for comment before their facilities are classified as open dumps under the State planning program. The petitioners assert that such an opportunity is required by the Constitution, which protects individuals from deprivation of property without due process of law, and Section 7004 of RCRA, which provides for public participation in RCRA programs. In addition, they have expressed concern about the timing of the inventory publication in relation to the issuance of compliance schedules which protect entities from suits for open dumping under Section 4005(c). They have indicated that a time "window" exists because the listing of a facility on the open dump inventory could take place prior to approval of a State plan for the State in which the facility is located. Since they believe that such a listing could subject a facility's owner or operator to a substantial risk of citizen suit for open dumping, they have argued that the opportunity to receive a State-issued compliance schedule as contemplated by Section 4005(c) should be available at the time the inventory is published.

The issues raised by petitioners were, for the most part, carefully considered in the rulemaking proceeding that led to the adoption of the Section 4002 guidelines. The notice and comment issue was given special scrutiny in response to a petition by the National Solid Waste Management Association (NSWMA). The Agency published NSWMA's petition in the Federal Register and received comments on the issues involved (44 FR 28344, May 15, 1979). The NSWMA's petition and the comments submitted on the petition were extensively discussed in the preamble to EPA's final regulations containing the Section 4002 guidelines. (See 44 FR 45066, 45071-75).

I. EPA's Position

Subtitle D of RCRA creates two principal mechanisms for addressing the problems of solid waste management. First, Sections 4002-4008 establish a State planning program which is to address a wide range of management activities. While EPA establishes general guidelines and provides financial assistance for the program, the States are responsible for developing and implementing the solid waste plans under State law. The inventory of open dumps is an adjunct to this State planning program.

Second, Section 4005 prohibits, as a matter of Federal law, any practice which constitutes the open dumping of solid or hazardous waste. Under Section 1008(a)(3) EPA issues criteria to define open dumping. Section 7002 provides an opportunity for citizen suits to enforce requirements of RCRA. These provisions, read together, provide a cause of action in Federal court for citizens who seek to enjoin acts of open dumping, wherever they may occur.

Section 4005(c) does, however, provide a mechanism for insulating from citizen suits those parties who are taking steps to comply with the open dumping prohibition. Under an approved

plan the State may issue to "any entity" a compliance schedule leading to compliance with the open dumping prohibition. To obtain this compliance schedule, a party must demonstrate that he has "considered other public or private alternatives for solid waste management" and "is unable to utilize such alternatives" as a means for compliance. Parties who have received such compliance schedules and are meeting the terms of their schedules are not in violation of the open dumping prohibition.

The inventory, which is part of the State planning program, does not implement the open dumping prohibition. For the reasons set forth in the preamble to the final Section 4002 guidelines, EPA views the inventory as a purely "informational tool." Its publication by the Federal government does not represent a determination that disposal of waste in a facility listed in the inventory constitutes "open dumping." See 44 FR 45071–72. EPA has stressed, *id.*, that a finding by a State that a particular waste disposal facility is an "open dump" does not constitute a determination that a particular individual or firm has engaged in "open dumping." The ultimate issue of whether particular parties have engaged in "open dumping" is, EPA believes, subject to *de novo* review by courts in each case.

The trade associations challenging the Section 4002 regulations have raised the issue whether a determination by a court that a given party was disposing of waste in a facility that had been included on the "open dump" inventory would suffice to support a finding of "open dumping." No such presumption exists under the Act. Open dumping may occur at locations not properly characterized as solid waste management facilities for purposes of the inventory. For example, the spilling of solid waste along a highway may be open dumping, yet the highway is not properly characterized as a solid waste management facility to be evaluated for purposes of the open dump inventory. Likewise the placement of waste into a facility classified as an open dump does not necessarily entail open dumping. For example, a facility may be classified as an open dump because it contains putrescible wastes that present a bird hazard to aircraft. At the same time, a party who places non-putrescible waste into that facility may not be open dumping because such a practice may not violate the criteria.

A determination for purposes of the open dump inventory need not precede an open dumping suit. However, before the results of the inventory may be used to support a legal determination that open dumping has occurred, the court would have to determine that the classification was a correct application of the criteria and that the defendant was responsible for actions violating the criteria. The court would be obliged to review the sufficiency of the State's classification of a facility and not simply defer to the State's decision. EPA intends to make these points clear at the time of publication of any open dump inventory.

Since the inventory is only an informational tool and does not reflect a determination that Federal law has been violated, EPA does not believe that the Constitution requires a formal notice and opportunity for comment for owner and operators of facilities listed in the inventory. EPA also believes that the goals of Section 7004 may be achieved through full public participation in the development of the State plan, the annual State work program, the State regulatory development and facility permits as currently required under the guidelines.

In response to industry concern that there may be a time gap between the publication of the inventory and the development of compliance schedules by the State, EPA is willing to take steps to reduce that possibility as long as the requirements of Section 4005(c) are met. EPA does not believe, however, that a delay in the publication of the inventory is the proper means for addressing that problem. The date for publication of the inventory is not linked to the availability of such compliance schedules under the statute. Moreover, it is inconsistent with EPA's obligation to publish the inventory to delay publication until the States adopt procedures for issuing compliance schedules.

II. The Proposed Modifications

This proposal would make two basic changes to the guidelines. First, the public participation requirements would be expanded to assure that the owner or operator of a facility classified as an open dump would have an opportunity to participate in the State planning process. Second, EPA would expedite the approval process for that portion of the State plan that would provide for schedules leading to compliance with the open dumping prohibition.

In expanding the public participation requirements to specifically include the owner or operator of a facility classified as an open dump, EPA is not suggesting that those parties will necessarily be legally liable for any violations occurring at the facility or that owners or operators have a legal right to receive notice and to comment on the inventory. Instead EPA is merely recognizing that the present owner or operator of a facility will probably be able to provide valuable information about the facility (e.g. the type of waste in the facility) and that the cooperation of the owner or operator will be essential to any effort to close or upgrade a facility. EPA, therefore, proposes to include such owners or operators on the mailing list of parties affected by or interested in the State plan, which the State must maintain under § 256.60(a)(1) of the existing guidelines. Under § 256.60(b) of the existing guidelines, the State must send key pieces of information concerning the plan to all on the mailing list.

The proposed modifications would assure that some minimum public participation precedes the State's submission of any classifications of facilities as open dumps to the Federal government. EPA believes that most States are already planning to extend some opportunity for participation in the inventory process to the regulated community. EPA encourages this effort and does not intend to prescribe rigid procedures for how public participation should be structured. The proposed modifications, therefore, present one mechanism for allowing adequate public participation but allow each State to use any other set of State administrative procedures that provide equivalent public participation. A State may satisfy this requirement with procedures (e.g. public hearings, public meetings) that are more extensive than those provided in the proposed regulation.

The proposed minimum procedure for public participation would require written notice of the availability of inventory results to all parties identified on the mailing list required by § 256.60(a)(1). It is theoretically possible that a party on that list who is an owner or operator of a facility classified as an open dump may not otherwise be aware of the State planning program or of the fact that his facility has been evaluated for purposes of the inventory. Therefore, the notice given to either the owner or operator of a facility classified as an open dump must indicate that his facility has been so classified.

The form of the notice would be a matter of State discretion. EPA expects that the notice would indicate that the information supporting the classifications is generally available and allow any interested parties to make specific inquiries about particular facilities. EPA does not anticipate, however, that the State would actually be distributing a list of facilities

tentatively determined to be open dumps in this initial notice.

In addition, EPA does not anticipate that the State would wait until all facilities are evaluated to provide a single round of notices. The State may, at its discretion, time the notice so as to coordinate with its plan for submitting names of facilities to the Federal government. The only requirement is that the notice be sent out at least thirty days before a list of facilities is submitted to the Federal government. This provides an opportunity for the owner or operator of a potentially affected facility, and any other interested party, to go to one of the depositories of public information on the plan or to the responsible State office and determine the basis for the preliminary State list of open dumps. These parties could then provide comment to State authorities, through written submissions or otherwise, on the classifications.

The petitioners challenging the guidelines have expressed concern that the 30-day time frame may not suffice to allow all parties a reasonable opportunity to comment on the State's classifications. In this regard, it is useful to describe the procedures that EPA intends to follow in preparation of the open dump inventory. States will submit their classifications to the United States Bureau of Census approximately 90 days before the date for publication of the inventory in the Federal Register. The Census Bureau will code the information and return a printout to each State after approximately 60 days. The State will then review this data for completeness and accuracy during the approximately 30 days remaining before the publication date. Thus, all parties will be able to discuss with the State the validity of the classification during this entire period of time. EPA believes that this 90–120 day period should provide an ample opportunity for an interested party to demonstrate that the facility should or should not be classified as an "open dump."

In proposing this basic public participation provision, EPA does not intend to invoke State administrative procedures that would require formal, quasi-judicial procedures under State law. Some State officials have expressed concern that any notice requirement in the guidelines might require them to use formal notice and comment procedures under State law. Certainly EPA does not intent that result. The inventory is a planning tool, and EPA believes that any public participation associated with it (including notice to interested parties) need not include the formal procedures used for other forms of agency action. The Agency would like to have public comment on this issue and would be particularly interested in the comments from appropriate State offices (i.e., attorney general office, agency legal departments) about this concern.

The Agency is proposing to eliminate § 256.64(c) of the guidelines. This recommendation suggested that the State inform all affected parties when a facility is classified as an open dump. Since the proposed modifications include requirements concerning this issue, the recommendation is unnecessary.

In response to the petitioners' concern about the so-called "window" problem, EPA is willing to take reasonable steps to attempt to limit the time between publication of an inventory of facilities classified as "open dumps" and the approval of State plans that will enable facility owners or operators to obtain State-issued compliance schedules leading to compliance with the open dumping prohibition. This responds to the petitioners' concern in that limiting this time period, or "window," will minimize the chances of a facility's owner or operator being subject to a citizen suit for "open dumping" before there is available the statutorily recognized defense of a State compliance schedule.

EPA will attempt to accomplish this objective by expedited approvals of portions of State plans that provide for the issuance of compliance schedules as contemplated by Section 4005(c). States are encouraged to seek such expedited partial approvals as a method of ensuring full and orderly implementation of Subtitle D program, including the establishment of appropriate compliance schedules.

A number of States may already have the general statutory or common law authority to issue the kind of compliance schedules anticipated under Section 4005(c). In these States it may be possible and it is desirable to make such compliance schedules available at the time a facility is classified as an open dump. For a State to seek and receive expedited partial approval of a State plan, it need not have in place detailed regulations and administrative systems for the issuance and enforcement of compliance deadlines. Failure of a State, however, to establish such regulations within a reasonable period of time could be a basis for later withdrawal of Federal approval for all or a portion of a State plan. See 44 FR 45066, 45070 (July 31, 1979). EPA may require an opinion of a State's attorney general regarding the State's general statutory or common law authority to issue compliance schedules leading to compliance with the Criteria before issuing partial plan approvals.

The proposed modifications would require the Administrator to approve the portion of the plan relating to compliance schedules procedures if he made three findings. First, the State compliance schedule procedures must satisfy the requirements of § 256.26, the portion of the guidelines that set forth statutorily-required components of such schedules. Second, the State must have general authority (statutory or common law) to issue and enforce compliance schedules. Third, the State must be developing the other portions of the plan in conformity with the guidelines.

EPA recommends that States, to the maximum degree possible, integrate the inventory and compliance planning processes. EPA urges States, at the time they classify a facility as an "open dump," to make a decision regarding an appropriate timetable or schedule to bring responsible parties into compliance with the open dumping prohibition. In doing so the State should take into account public and private alternatives for solid waste management available to the owner or operator of such a facility. Even States that do not, at the time of conduct of the inventory, have the requisite legal authority to establish and enforce such compliance schedules, are encouraged to make planning judgments regarding appropriate schedules on a facility-by-facility basis when preparing the inventory. These planning judgments could readily be converted to enforceable conditions when the requisite legal authority is put in place and the State's plan receives approval.

In proposing these modifications, EPA is not changing its position that the proper role of the Federal government with respect to the inventory should be limited to publication of information developed by State authorities pursuant to Federal guidelines and criteria. Likewise EPA maintains its position that neither RCRA, the Administrative Procedure Act nor the Constitution requires that a formal notice and opportunity for comment accompany the preparation of a planning tool such as the inventory. EPA has decided, however, that it is in the best interests of the Subtitle D program to consider making certain modifications to the guidelines which will accommodate the concerns of the industry petitioners who have challenged the regulations, without compromising the basic structure of the program.

These modifications are being proposed as part of a settlement agreement with those petitioners. While

EPA anticipates that the finalization of these proposed modifications will provide a basis for settlement of the litigation affecting these guidelines. EPA will consider carefully all public comments on this proposal before making its final decision.

EPA is considering these proposed modifications in order to make the Subtitle D program more effective in its stated purposes. Certainly, in removing the prospect of protracted litigation over the guidelines, these modifications would conserve Agency resources and eliminate uncertainty about the program for the States. In addition these changes should reassure the regulated community that the States and EPA intend to implement the program in a responsible manner, which will foster public support for the program. Such a goal is consistent with Section 4001 of the Act which states that Subtitle D guidelines should be designed to foster "cooperation among Federal, State and local governments and private industry," and it will assist States in obtaining data regarding such facilities.

At the same time EPA recognizes that the goals of the Subtitle D program would not be advanced by procedures which place an undue administrative burden on the States. Complicated procedural requirements may impede the State planning process and delay development and publication of the inventory. In order to alleviate that concern, the proposed modifications have been integrated with the components of the public participation program that are already part of the guidelines. The modifications employ, for example, the depositories of information and the mailing list required under § 256.60(a) of the existing guidelines.

EPA has provided for 30 days of comment on this proposed rule, a period of time which is necessary under these circumstances. The States have been and will be conducting the inventory in the next few months. They will be sending the names of facilities to EPA this fall. It is, therefore, important to quickly resolve the issues surrounding this proposal in order to clarify State responsibilities in the conduct of the inventory. Since the proposed changes are few, and procedural in nature, EPA does not expect that commenters will need substantial time to develop and present technical data. The 30-day time period should be adequate.

Dated: September 24, 1980.

Douglas M. Costle,

Administrator.

Accordingly it is proposed to amend Title 40 CFR as follows:

§ 256.03 [Amended]

1. Section 256.03 is amended by adding paragraph (f) as follows:

* * * * *

(f) States which are developing a complete State plan may submit the portion of the plan designed to satisfy the requirements of § 256.26 prior to submission of the complete plan.

§ 256.04 [Amended]

2. Section 256.04 is amended by adding paragraph (f) as follows:

* * * * *

(f) If a State submits to EPA the portion of the plan by which entities may, pursuant to § 256.26, obtain timetables or schedules of compliance for complying with the open dumping prohibition, the Administrator shall approve such portion of the plan if he determines that:

(1) The portion submitted satisfies the requirements of § 256.26;

(2) The State has the general legal authority to issue and enforce compliance schedules; and

(3) The remainder of the plan is being developed in conformity with these guidelines.

§ 256.60 [Amended]

3. Revise § 256.60(a)(1) as follows:

(a) * * *

(1) Maintain a current list of agencies, organizations, and individuals affected by or interested in the plan, which shall include any parties that request to be on the list, the owner or operator of each facility classified as an open dump and any other parties which the State determines to be affected by or interested in the plan;

§ 256.24 [Amended]

4. Section 256.24 is amended by adding paragraph (d) as follows:

* * * * *

(d) At the time of classification of existing solid waste disposal facilities pursuant to § 256.23, the State should consider developing appropriate timetables or schedules by which any responsible party can be brought into compliance with the open dumping prohibition pursuant to §§256.26 and 256.27.

§ 256.64 [Amended]

5. Delete § 256.64(c).

6. Part 256 is amended by adding § 256.65 as follows:

§ 256.65 Requirements for public participation in the open dump inventory.

(a) The State shall provide an opportunity for public participation prior to submission of any classifications of facilities as open dumps to the Federal government. The State shall accomplish this by providing notice as specified in paragraph (b) of this section or by using other State administrative procedures which provide equivalent public participation.

(b) The State may satisfy the requirement of paragraph (a) of this section by providing written notice of the availability of the results of its classifications to all parties on the list required under § 256.60(a)(1) at least 30 days before initial submission of these classifications to the Federal government. For those parties on the list required under §256.60(a)(1) who are owners or operators of facilities classified as open dumps, such notice shall indicate that the facility has been so classified.

[FR Doc. 80-33860 Filed 10-29-80; 8:45 am]
BILLING CODE 6560-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

Medicaid Program; Deeming of Income Between Spouses

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposal would revise current Medicaid rules for determining financial eligibility and the level of Medicaid payments for institutional care for aged, blind, and disabled individuals, when one spouse is institutionalized and the other spouse is not. The change would affect those States that, as permitted by statute, use more restrictive eligibility criteria than those applied nationally under the Supplemental Security Income (SSI) program. It would also apply in Puerto Rico, Guam, and the Virgin Islands.

The proposal would change the regulations permitting these jurisdictions to consider a portion of the income of a spouse living in the community as available to meet the medical expenses of his or her aged, blind, or disabled institutionalized spouse. This practice is known as "deeming" of income. The change would mandate the use of the same time periods for which income can be deemed available as those used under the SSI program.

This proposed regulation is required by and would implement an order of the United States Court of Appeals for the District of Columbia. That order vacated the existing regulations governing deeming of income in these States. The

Court reasoned that, in adopting those regulations, the Secretary did not sufficiently take into account "relevant factors" bearing on the appropriateness of deeming. The Court ordered the Secretary to issue new regulations after considering these relevant factors.

DATES: To assure consideration, comments should be received by December 1, 1980.

ADDRESSES: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 17076, Baltimore, Maryland 21235.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington D.C., or to Room 789, East High Rise Building, 6401 Security Boulevard, Baltimore, Maryland.

When commenting, please refer to BPP-102-P. Agencies and organizations are requested to submit comments in duplicate.

Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 309-G of the Department's office at 200 Independence Ave. S.W., Washington, D.C., 20201 on Monday through Friday of each week from 8:30 to 5:00 p.m. (202-245-7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

FOR FURTHER INFORMATION CONTACT: Dennis McNown, (301) 594-8221.

SUPPLEMENTARY INFORMATION: On October 8, 1980, Judge Charles Richey in the case of *Gray Panthers* v. *Secretary, Department of Health, Education, and Welfare, et al.*, Civil Action No. 78-0661, in effectuation of the mandate of the Court of Appeals in the case, ordered the Secretary to publish a Notice of Proposed Rule Making concerning the extent to which deeming of income would be permitted under Medicaid, after considering all the factors the Secretary believed relevant to the issue. The NPRM is in response to that court order.

It is proposed that 42 CFR Chapter IV, Subchapter C, be amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES AND THE DISTRICT OF COLUMBIA

A. Part 435 is amended as follows:

1. Section 435.602 is revised to read as follows:

§ 435.602 Limitation on the financial responsibility of relatives.

(a) Except for a spouse of an individual or a parent for a child who is under age 21 or blind or disabled, the agency must not—

(1) Consider income and resources of any relative available to an individual; nor

(2) Collect reimbursement from any relative for amounts paid by the agency for services provided to an individual.

(b) The income and resources of spouses and parents must be considered in determining financial eligibility as provided for the categorically needy in subpart H and the medically needy in subpart I.

2. Section 435.734 is revised to read as follows:

§ 435.734 Financial responsibility of spouses and parents.

(a) Except as provided in paragraph (b) of this section, in determining Medicaid eligibility of an aged, blind, or disabled individual under requirements more restrictive than those used under SSI, the agency must consider the income and resources of spouses and parents as available to the individual in the manner specified in §§ 435.723 and 435.724 or in a more extensive manner, but not more extensive than the requirements in effect under the Medicaid plan on January 1, 1972.

(b) When either an individual or his or her spouse is institutionalized, the agency must consider income of a spouse as available to the individual only for the following time periods:

(1) If both spouses apply or are eligible as aged, blind, or disabled, the agency must consider their income as available to each other for the first 6 months after the month they cease to live together. After this 6-month period, the agency must consider only the income that is actually contributed by one spouse to the other.

(2) If only one spouse in a couple applies or is eligible, the agency must consider only the income of the ineligible spouse that is actually contributed to the eligible spouse after the month in which they cease to live together.

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

B. Part 436 is amended as set forth below:

1. Section 436.602 is revised to read as follows:

§ 436.602 Limitation on the financial responsibility of relatives.

(a) Except for a spouse of an individual or a parent for a child who is under 21 or blind or disabled, the agency must not—

(1) Consider income and resources of any relative available to an individual; nor

(2) Collect reimbursement from any relative for amounts paid by the agency for services provided to an individual.

(b) The income and resources of spouses and parents must be considered in determining financial eligibility as provided for the categorically needy in subpart H and the medically needy in subpart I.

2. Section 436.711 is revised to read as follows:

§ 436.711 Determination of financial eligibility.

In determining eligibility of individuals specified in subparts B and C of this part who are not recipients of cash assistance, the agency must apply the financial eligibility requirements of the State plan for OAA, AFDC, AB, APTD, or AABD that would be used if the individual were applying for cash assistance. This includes requirements on financial responsibility of spouses and parents, except that—(a) In determining eligibility of families and children, the agency must consider parental income and resources as available to a child who is living with the parents until he becomes 21, even if State law confers adult statues below age 21; and

(b) When either an individual or his or her spouse is institutionalized, the agency must consider income of a spouse as available to the individual only for the following time periods:

(1) If both spouses apply or are eligible as aged, blind, or disabled, the agency must consider their income as available to each other for the first 6 months after the month they cease to live together. After this 6-month period, the agency must consider only the income that is actually contributed by one spouse to the other.

(2) If only one spouse in a couple applies or is eligible, the agency must consider only the income of the ineligible spouse that is actually contributed to the eligible spouse after the month in which they cease to live together.

3. Section 436.821 is revised to read as follows:

§ 436.821 Financial responsibility of spouses and parents.

In determining eligibility of medically needy individuals, the agency must use

the rules for determining whether the income of a spouse or parent is available to the individual that would be used if he were applying for OAA, AFDC, AB, APTD or AABD. However—

(a) For families and children, the agency must consider parental income and resources available to a child who is living with the parent until he becomes 21, even if State law confers adult status below age 21; and

(b) When either an individual or his or her spouse is institutionalized, the agency must consider income of a spouse as available to the individual only for the following time periods:

(1) If both spouses apply or are eligible as aged, blind, or disabled, the agency must consider their income as available to each other for the first 6 months after the month they cease to live together. After this 6-month period, the agency must consider only the income that is actually contributed by one spouse to the other.

(2) If only one spouse in a couple applies or is eligible, the agency must consider only the income of the ineligible spouse that is actually contributed to the eligible spouse after the month in which they cease to live together.

(Sec. 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: October 28, 1980.

Howard Newman,

Administrator, Health Care Financing Administration.

Approved: October 28, 1980.

Patricia Roberts Harris,

Secretary.

[FR Doc. 80-34029 Filed 10-28-80; 4:36 pm]

BILLING CODE 4110-35-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-5895]

National Flood Insurance Program, Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Brillion, Calumet County, Wisconsin, previously published at 45 FR 60952 on September 15, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-8872 (in Alaska and Hawaii call Toll Free Line (800) 424-9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the City of Brillion, Calumet County, Wisconsin, previously published at 45 FR 60952 on September 15, 1980, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)).

Under the Source of Flooding of Unnamed Ditch, the elevation described as, "Just upstream of downstream corporate limit," and the corresponding elevation 814 feet has been changed. The location should read, "About 1,600 feet downstream from confluence of Ariens Ditch." The corresponding elevation should be 813 feet.

Under the Source of Flooding of Black Creek the location described as, "About 1.25 miles upstream of State Highway 114" with a corresponding elevation of 824 feet should be added as the last entry.

The Flood Insurance Study (profile) and Flood Insurance Rate Map were correct as printed. The listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wisconsin	(C), Brillion, Calumet County	Unnamed Ditch	About 1,600 feet downstream from confluence of Ariens Ditch	*813
		Black Creek	About 1.25 miles upstream of State Highway 114	*824

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 10, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33800 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5873]

Revision of Proposed Flood Elevation Determinations for City of Tukwila, King County, Wash., Under the National Flood Insurance Program

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the City of Tukwila, Washington.

Due to recent engineering analysis, this proposed rule revises the proposed determinations of base (100-year) flood elevations published in 45 FR 52422 on August 7, 1980 and in *The Record Chronicle*, published on or about July 31, 1980, and August 7, 1980, and hence supersedes those previously published rules.

DATE: The period for comment will be ninety (90) days following the second publication of this notice in a newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the

flood-prone areas and the proposed flood elevations are available for review at City Hall, 6200 Southcenter Boulevard, Tukwila, Washington.

Send comments to: Honorable Frank Todd, 6200 Southcenter Boulevard, Tukwila, Washington 98188.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program, (202) 426-1460 or Toll Free Line (800) 424-88872, In Alaska or Hawaii, call Toll Free Line (800) 424-9080, Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: Proposed base (100-year) flood elevations are listed below for selected locations in the City of Tukwila, Washington, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)).

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations are:

Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)
Green River	100 feet upstream from intersection of river and Interstate Highway 5.	*14
	100 feet upstream from intersection of river and Strander Boulevard.	*25
Springbrook Creek.	Center of South 158th Street approximately 150 feet north of its intersection with the Chicago, Milwaukee, St. Paul and Pacific railroad.	*16
Black River	50 feet upstream of intersection of Chicago, Milwaukee, St. Paul and Pacific Railroad with Black River.	*19

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator, 44 FR 20963)

Issued: October 10, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33781 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-5930]

National Flood Insurance Program; Proposed Base Flood Elevations, Zone Designations and Corporate Limits for the City of Satsuma, Ala.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations, zone designations and corporate limits described below.

The proposed base flood elevations, zone designations and corporate limits will be the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed oulines of the floodprone areas and the proposed elevations, zone designations and corporate limits are available for review at the Mayor's Office, City Hall, Satsuma, Alabama.

Send comments to: The Honorable William A. Winters, Mayor, City of Satsuma, P.O. Box 517, Satsuma, Alabama 36592.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6570 or toll free line (800) 424-8872 or (800) 424-8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevations (100-year flood) zone designations and corporate limits for the City of Satsuma, Alabama in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4 (a) (presently appearing at its former Section, 24 CFR 1917.4 (a)).

The base flood elevations, zone designations and corporate limits together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed elevations, zone designations, and corporate limits will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood elevations and zone designations for selected locations are:

Source of flooding	Location	Elevation (feet)	Zone
Gunnison Creek	Within Corporate limits, east of Vaughn Drive East	11 (NGVD)	A10
Gunnison Creek	Along Northeasternmost Corporate Limits	11 (NGVD)	A10
Hell's Creek	Between Interstate Highway 65 and Westernmost Corporate Limits.		A
Spat Creek	Within corporate limits, between confluence with Steele Creek and Catherine Drive.	11 (NGVD)	A10
Steele Creek	Between U.S. Highway 43 and Easternmost Corporate Limits.	11 (NGVD)	A10
Steele Creek	Upstream of U.S Highway 43	11 (NGVD)	A10
Tributary to Spat Creek	Within Corporate Limits in vicinity of Tajauchs Drive South and Tajauchs East.	11 (NGVD)	A10

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 3, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33791 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5938]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in a newpaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, National Flood Insurance Program (202) 426–1460 or Toll Free Line (800) 424–8872 (In Alaska and Hawaii call Toll Free Line (800) 424–9080), Federal Emergency Management Agency, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed determinations of base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67.4(a).

These elevations, together with the flood plain management measures required by section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or Regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Proposed Base (100-Year) Flood Elevations

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
California	Fountain Valley (City), Orange County.	Santa Ana River	Intersection of San Diego Freeway and Brookhurst Street	#2
			Palm Street	#3
			Azalea Avenue	#3
Maps available for inspection at City Hall, Fountain Valley, California.				
Send comments to Honorable Al Hollinden, 10200 Slater Avenue, Fountain Valley, California 92708.				
California	Huntington Beach (City) Orange County.	Santa Ana River	Intersection of Padua Drive and Misty Lane	*1
			Intersection of Hell Avenue and Rhone Lane	#3
			Intersection of Atlanta Avenue and Magnolia Street	*11
			Intersection of Holburn Lane and Ramsgate Lane	*14
Maps available for inspection at City Hall, Huntington Beach, California.				
Send comments to Honorable Ruth Bailey, 2000 Main Street, Huntington Beach, California 92648.				
California	Westminster (City), Orange County.	Santa Ana River	Carnation Drive	#3
			Parkview Avenue	#3
			Carnegie Avenue	#3
Maps available for inspection at City Hall, Westminster, California.				
Send comments to Honorable Elden F. Gillespie, 8200 Westminster, Westminster, California 92683.				
Louisiana	Unincorporated Areas of Lafourche Parish.	Bayou Folse	Just upstream of Louisiana State Highway 648	*8
			Just upstream of Southern Pacific Railroad Bridge	*7
		Shallow Flooding	At Mathews Pumps 200' north of State Highway 654 and 4,000' East of State Highway 306.	*6
			At 1,000' east of Gheens Church Cemetery	*5
			On State Road 20' 1,000' northeast of its intersection with State Highway 307.	*3
		Gulf of Mexico	At Surgoey Cemetery (southeast of Golden Meadow City)	*10
			At Cheramie Cemetery in Galliano	*9

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			Northeast corner of intersection of State Highway 308 and an Unnamed Road leading to Tidelands Country Club.	*6
			At the intersection of Hospital Bayon and State Highway 24	*7
			On State Highway 657, 3,000' north east from its intersection with State Highway 308.	*7
			At Southern Pacific Station at Valentine	*6
			On State Highway 1 2,000' northwest from bridge over Company Canal (at Lockport Heights).	*5
Maps available at Old Courthouse Building, 2nd Flood, Green and West 3rd Streets, Thibodaux, Louisiana 70301.				
Send comments to Mr. Robert Simmons, Public Works Director, Old Courthouse Building, 2nd Floor, Green and West 3rd Streets, Thibodaux, Louisiana 70301.				
Louisiana	Town of Welsh, Jefferson Davis Parish.	East Bayou Lacassine	Just upstream of U.S. Highway 90 (West Russell Avenue)	*16
			Just downstream of Interstate Highway 10	*18
		Lateral L-1	Just upstream of East South Street	*16
Maps available for inspection at City Hall, 200 Elm Street, Welsh Louisiana 70591.				
Send comments to Mayor Brown or Mrs. Carrie Ardoin, City Clerk, City Hall, P.O. Box 786, Welsh, Louisiana 70591.				
Massachusetts	Ashland, Town, Middlesex County	Sudbury River	Downstream Corporate Limits	*175
			Upstream of Conrail (Downstream crossing)	*180
			Upstream of Front Street	*187
Upstream of Former Lombard Governor Dam				*193
			Upstream of Cordaville Road	*202
			Upstream of Howe Street	*210
			Approximately 600' upstream of Conrail (Upstream crossing)	*218
			Upstream Corporate Limits	*236
		Cold Spring Brook	Confluence with Sudbury River	*181
			Ashland State Park Boundary	*181
			Just Upstream of Spring Street	*221
			Approximately 650' Upstream of Spring Street	*234
			Upstream Corporate Limits	*238
		Tributary to Cold Spring Brook	Confluence with Cold Spring Brook	*181
			Approximately 900' Upstream of Metropolitan Avenue	*189
			Approximately 1,200' Upstream of Metropolitan Avenue	*200
			Approximately 1,750' Upstream of Metropolitan Avenue	*212
			Approximately 2,400' Downstream of Englewood Drive	*225
			Approximately 1,600' Downstream of Englewood Drive	*233
		Beaverdam Brook	Downstream Corporate Limits	*158
			Downstream of Dirt Road	*159
		Tributary to Waushakum Pond	Downstream Corporate Limits	*160
			Upstream of Greenwood Street	*164
			Approximately 400' upstream of Wenzell Road (extended)	*164
Maps available at the Town Clerk's Office, Ashland, Massachusetts.				
Send comments to Honorable Dante DeFazio, Chairman of the Ashland Board of Selectmen, Town Offices, Main Street, Ashland, Massachusetts 01721.				
New Hampshire	Epping, Town, Rockingham County.	Lamprey River	Downstream Corporate Limits	*95
			Upstream side of State Route 87	*103
			Upstream side of State Route 125	*110
			Upstream side of Main Street	*112
			Downstream side of Blake Road	*134
			Upstream side of Blake Road	*138
			Upstream side of Bunker Pond Dam	*148
			Downstream side of State Route 101	*155
			Upstream Corporate Limits	*164
Maps available at the Town Office, Epping, New Hampshire.				
Send comments to Honorable Agapit H. Jeane, Jr., Chairman of the Epping Board of Selectmen, Town Office, Epping, New Hampshire 03042.				
New York	Greene, Town, Chenango County.	Chenango River	400' upstream from State Route 79	*900
			400' upstream from Conrail	*904
			Confluence of Geneganslet Creek	*905
			Jackson Hill Road (Extended)	911
			200' upstream from Hogsback Road	*917
			Confluence on Wheeler Brook	*920
			Cohoon Road (extended)	*924
			400' upstream from Brisben Crossover	*926
			Upstream Corporate Limits	*929
Maps available at Town Hall, 51 Genesee Street, Greene, New York.				
Send comments to Honorable Emerson Barton, Supervisor, Town Hall, 51 Genessee Street, New York 13778.				
North Carolina	Edgecomb County (Unincorporated Areas).	Tar River	Intersection of river and center of State Highway 42	*38
			100 feet upstream from center of Seaboard Coastline Railroad	*46
		Town Creek	100 feet upstream from center of U.S. Highway 258	*49
		Bynum Mill Creek	100 feet upstream from center of Secondary Road 1120	*63
		Bynum Mill Run	100 feet upstream from center of State Highway 124	*74
		Cokey Swamp	100 feet upstream from center of State Highway 43	*82
			100 feet upstream from center of Secondary Road 1002	*109
		Cokey Swamp Tributary	100 feet upstream from center of Secondary Road 1144	*94
		Fishing Creek	100 feet upstream from center of State Highway 97	*58
		Deep Creek	100 feet upstream from center of Secondary Road 1505	*54
		Swift Creek	150 feet upstream from center of Secondary Road 1253	*53
			100 feet upstream from center of Secondary Road 1409	*71
		White Oak Swamp	3,200 feet downstream from Porter Street (within Whitakers)	*118

Proposed Base (100-Year) Flood Elevations—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at Edgecomb County Courthouse, Tarboro, North Carolina.				
Send comments to Honorable Hassell Phiglen, Edgecombe County Courthouse, Tarboro North Carolina 27886				
Oklahoma	Town of Sperry, Tulsa and Osage Counties.	Bird Creek	Approximately 800 feet upstream of Hominy Creek	*614
		Delaware Creek	Just downstream of The Cincinnati Avenue Bridge	*615
Maps available for inspection at City Hall, 116 South Cincinnati, Sperry, Oklahoma 74073				
Send comments to Mayor Orton, City Hall, P.O Box 579, Sperry, Oklahoma 74073				
Texas	City of Brookshire, Waller County	West Fork of Brookshire Creek	Approximately 200 feet downstream of Eleventh Street	*158
		Tributary to Kellener Creek	Just downstream of F M 362 and 559 (Baines Street)	*164
		Brookshire Creek	Just downstream of U S Highway 90	157
			Just downstream of Steller Road	*162
		Brookshire Creek Drainage Ditch	Just upstream of the downstream most crossing of Hereford Drive	*156
Maps available for inspection at City Hall, 814 Velasco Street, Brookshire, Texas 77423				
Send comments to Mayor Lloyd Woods, or Ms. Helen Fishbech, City Secretary, City Hall, P O Box 356 Brookshire, Texas 77423				
Texas	City of Driscoll, Nueces County	Shallow Flooding	Intersection of Main Avenue and 1st Street	*64 5
Maps available for inspection at City Secretary's Office, City Hall, Main Street Driscoll, Texas 78351				
Send comments to Mayor Ainsworth or Mr. Dan Catehcart, City Secretary, P O Box 178, Driscoll, Texas 78351				
Utah	West Bountiful (City), Davis County.	Barton Creek	130 feet upstream from center of 1100 West	*4218
			200 feet upstream from center of northbound land of Interstate 15	*4,279
			200 feet southeast from intersection of 1600 North and Denver and Rio Grande Western Railroad.	#1
		Mill Creek	400 feet upstream from center of 1100 West	*4,240
			Intersection of 500 South and entry ramp to northbound lane of Interstate 15	#1
		Stone Creek	200 feet downstream from center of Pages Lane	4,254
			400 feet upstream from center of Pages Lane	#3
		Duel Creek	100 feet east from intersection of 520 West and 2125 North	#2
Maps available for inspection at City Hall, West Bountiful, Utah 84087				
Send comments to Honorable Grant Secnst, 550 N 8th West West Bountiful, Utah 84087				

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 15, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33782 Filed 10-29-80 8:45 am]

BILLING CODE 6718-03-M

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44 CFR Part 67

[Docket No. FEMA-5932]

National Flood Insurance Program; Proposed Special Flood Hazard Area Determinations for San Bernardino County, Calif.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Techical information or comments are solicited on the proposed Special Flood Hazard Areas as described below.

The proposed Special Flood Hazard Areas are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed Special Flood Hazard Areas are available for review at the San Bernardino Planning Department, 111 East Mill Street, Building 1, San Bernardino, California. Send comments to: Mr. James L. Mayfield, Chairman, Board of Supervisors, 175 West Fifth Street, San Bernardino, California 92415.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation & Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, DC 20410 (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed Special Flood Hazard Areas for San Bernardino County, California, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Public Law 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Public Law 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These Special Flood Hazard Areas, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed Special Flood Hazard Areas will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed Special Flood Hazard Areas, identified as Zone A, for the

annexed areas are located on Panels 8685 and 8705 of 9375 as follows:

Source of flooding	Location
Santa Ana River	Area from Waterman Avenue to the confluence with The Mission Zanja.
	Area south of Hope Street.
	Area approximately 800 feet north of Riverside Street.
San Timoteo Wash	Area downstream from Waterman Avenue for approximately 1,800 feet.
The Mission Zanja	Area south of the Atchison Topeka and Santa Fe Railroad between Tippecanoe Avenue and Interstate 10.
Warm Creek	Area approximately 350 feet west of Washington Avenue.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 20, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33789 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5931]

National Flood Insurance Program; Proposed Zone and Base Flood Elevation Determinations for the City of Fillmore, Ventura County, Calif.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone and base flood elevations as described below.

The proposed zone and base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed zone and base flood elevations are available for review at the Office of the City Clerk, Fillmore City Hall, 524 Sespe Avenue, Fillmore, California.

Send comments to: The Honorable Ernest Morales, Mayor, City of Fillmore, 524 Sespe Avenue, P.O. Box 487, Fillmore, California 93015.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755–6570 or toll free line (800) 424–8872, (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed zone and base flood elevations for the City of Fillmore, California, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968, Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zone and base flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zone and base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation (national geodetic vertical datum)
Sespe Creek	Intersection of Ventura Street with C Street.	412
	Intersection of Sespe Avenue with C Street.	420
	Southwest of Telegraph Road.	432
	Blaine Avenue	440
	Fourth Street	444
	Just south of Sixth Street	456

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 19, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33790 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5933]

National Flood Insurance Program; Proposed Zone and Base Flood Elevation Determinations for the City of Sedgwick, Harvey and Sedgwick Counties, Kans.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zones and base flood elevations as described below.

The proposed zones and base flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATE: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESS: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed zones and base flood elevations are available for review at the Office of the City Clerk, City Hall, 316 Washington Avenue, Sedgwick, Kansas.

Send comments to: The Honorable Donald K. Dehaven, Mayor, City of Sedgwick, City Hall, 316 Washington Avenue, P.O. Box 131, Sedgwick, Kansas 67135.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, DC 20410, (202) 755–6570 or toll free line (800) 424–8872 (in Alaska and Hawaii call toll free (800) 424–9080).

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed zones and base flood elevations for the City of Sedgwick, Kansas, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Public Law 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing

and Urban Development Act of 1968, Public Law 90–448), 42 U.S.C. 4001–4128, and 44 CFR Part 67.

These zones and base flood elevations, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. It should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zones and base flood elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed base (100-year) flood elevations for selected locations are:

Source of flooding	Location	Elevation (national geodetic vertical datum)
Little Arkansas River.	Just north of the southernmost corporate limits.	1376
	Just south of First Street	1377
	Just south of Sixth Street	1378
	Just south of the northwest- emmost corporate limits.	1379
Sedgwick Ditch	First Street	1377
	Just north of Fourth Street	1378

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 19, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33788 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5935]

National Flood Insurance Program; Proposed Base Flood Elevation for the Village of Lindenhurst, N.Y.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevation described below.

The proposed base flood elevation will be the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the floodprone areas and the proposed base flood elevation are available for review at the Mayor's Office, Village Office, Lindenhurst, New York.

Send comments to: The Honorable Thomas Kost, Mayor, Village of Lindenhurst, Village Office, 430 South Wells Street, Lindenhurst, New York 11757.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755–6570 or toll free line, (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevation (100-year flood) for the Village of Lindenhurst, New York, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a) (presently appearing at its former Section, 24 CFR 1917.4(a)).

The base flood elevation, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed base flood elevation will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood elevation for selected locations are:

Source of flooding	Location	Elevation in feet
Great South Bay	South of West Montauk Street.	6 (MSL)

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 29, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33786 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5934]

National Flood Insurance Program; Proposed Flood Insurance Zone Designation for the Town of Islip, N.Y.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designation described below.

The proposed zone designation will be the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the floodprone areas and the proposed zone designation are available for review at the Supervisor's Office, Town Hall, Islip, New York.

Send comments to: Mr. Michael A. LoGrande, Supervisor, Town of Islip, town Hall, 655 Main Street, Islip, New York 11751.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755–6570 or toll free line, (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed zone designation

for the Town of Islip, New York, in accordance with Section 110 of the Flood Disaster Protection act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a) (presently appearing at its former Section, 24 CFR 1917.4(a)).

The zone designation, together with the flood plain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed zone designation for selected locations are:

Source of flooding	Location	Zone
Sampawams Creek.	Along westernmost Corporate Limit, North of the Long Island Railroad.	A

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 19, 1980.

Gloria M. Jimenez

Federal Insurance Administrator.

[FR Doc. 80-33787 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5936]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of Raleigh, N.C.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed elevations and zone designations will be the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the floodprone areas and the proposed elevations and zone designations are available for review at the Mayor's Office, City Hall, Raleigh, North Carolina.

Send comments to: The Honorable G. Smeedes York, Mayor, City of Raleigh, P.O. Box 590, Raleigh, North Carolina 27602.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street SW., Washington, D.C. 20410, (202) 755–6570 or toll free line (800) 424–8872 or (800) 424–8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevations (100-year flood) and zone designations for the City of Raleigh, North Carolina, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001–4128, and 44 CFR 67.4 (a) (presently appearing at its former Section, 24 CFR 1917.4(a)).

The proposed elevations and zone designations together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood elevations and zone designations for selected locations are:

Source of flooding	Location	Elevation (feet)	Zone
Perry Creek	Dam 150 feet Upstream of Hunting Ridge Road	298 (NGVD)	A3
Perry Creek	Aurora Drive	299 (NGVD)	A3
Perry Creek	Dam, Approximately 3,200 feet Upstream of Aurora Drive	356 (NGVD)	A3
Tributary to East Fork of Mine Brook.	Wood Bend Drive	342 (NGVD)	
Tributary to East Fork of Mine Brook.	Corporate Limits	345 (NGVD)	
Richland Creek	Flood Control Dam Approximately 9,875 Feet Upstream of Confluence with Crabtree Creek.	324 (NGVD)	A19
Richland Creek	Between Flood Control Dam and Confluence with Crabtree Creek.		A6
Marsh Creek	Storybrook Road	210 (NGVD)	
Marsh Creek	Northern Boulevard, U.S. Route 1, 401	216 (NGVD)	
Marsh Creek	Ingram Drive	229 (NGVD)	
Marsh Creek	Millbrook Road	255 (NGVD)	
Millbrook Tributary to Marsh Creek	Brockton Road Dam	252 (NGVD)	
Millbrook Tributary to Marsh Creek	Millbrook Road	268 (NGVD)	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: October 3, 1980

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33785 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-5937]

National Flood Insurance Program; Proposed Zone Designations for the City of Philadelphia, Philadelphia County, Pa.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed zone designations described below.

The proposed zone designations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Maps and other information showing the detailed outlines of the flood-prone areas and the proposed zone designations are available for review at Room 1620, Municipal Service Building, 15th and Arch Street, Philadelphia, Pennsylvania.

Send comments to: Mr. Wilson Goode, City Managing Director, Room 1620, Municipal Service Building, 15th and Arch Street, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-6570 or toll free line (800) 424-8872.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed zone designations for the City of Philadelphia, Pennsylvania, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

Zone designations and base (100-year) flood elevations, together with the flood plain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their flood plain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. The proposed zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed zone designations are:

Within the area bounded on the north by the Benjamin Franklin Parkway, on the east by 20th Street, on the south by Market Street, and on the west by 23rd Street; portions of the Zone A14 change to Zone B and portions of the Zone B change to Zone A14 and Zone C.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator.

Issued: September 19, 1980.

Gloria M. Jimenez,

Federal Insurance Administrator.

[FR Doc. 80-33784 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA 5938]

National Flood Insurance Program; Proposed Base Flood Elevations and Zone Designations for the City of Brentwood, Tenn.

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed base flood elevations and zone designations described below.

The proposed base flood elevations and zone designations will be the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The period for comment will be ninety (90) days following the second publication of this proposed rule in the newspaper of local circulation in the above-named community.

ADDRESSES: Map and other information showing the detailed outlines of the flood-prone areas and the proposed base flood elevations and zone designations are available for review at the Mayor's Office, City Hall, Brentwood, Tennessee.

Send comments to: The Honorable Thomas H. Bain, Mayor, City of Brentwood, City Hall, Post Office Box 244, Brentwood, Tennessee 37027.

FOR FURTHER INFORMATION CONTACT: Mr. Robert G. Chappell, Acting Assistant Administrator, Program Implementation and Engineering Office, National Flood Insurance Program, 451 Seventh Street, S.W., (202) 755-6570 or toll free line, (800) 424-8872 or (800) 424-8873.

SUPPLEMENTARY INFORMATION: The Federal Insurance Administrator gives notice of the proposed base flood elevations (100-year flood) and zone designations for the City of Brentwood, Tennessee, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4 (a) (presently appearing at its former Section, 24 CFR 1917.4 (a)).

The base flood elevation and zone designation, together with the floodplain management measures required by Section 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities. The proposed elevations and zone designations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.

The proposed 100-year flood elevations and zone designations for selected locations are:

Source of flooding	Location	Elevation (feet)	Zone
Little Harpeth River	Northwesternmost Corporate Limit	825 (NGVD)	A5
	Granny White Pike	836 (NGVD)	A5
	Franklin Pike (U S Highway 31)	656 (NGVD)	A5
	L & N Railroad	666 (NGVD)	A5
	Interstate Route 65	668 (NGVD)	A5

Source of flooding	Location	Elevation (feet)	Zone
	Concord Road	676 (NGVD)	A5
	Santa Anna Drive	702 (NGVD)	A5
	Upstream of Moore's Lane		A

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968); effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator)

Issued: September 29, 1980.

Gloria M. Jiminez,

Federal Insurance Administrator.

[FR Doc. 80-33783 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 1-18; Notice 17]

Federal Motor Vehicle Safety Standards; Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Grant of petition and notice of proposed rulemaking.

SUMMARY: In June 1978, NHTSA issued Standard No. 101–80, *Controls and Displays,* which establishes new requirements for the identification and illumination of vehicle controls and displays. The standard, which is scheduled to go into effect on September 1, 1980, requires the light indicating the actuation of the headlamp high beam to be blue or blue-green. In response to a petition for rulemaking from Volkswagen, the agency is proposing to allow the use of the color green as an alternative to blue or blue-green. The purpose of this proposed change is to allow the use of light emitting diode technology, which at present time cannot produce the color blue or blue-green.

DATE: Comments must be submitted by December 15, 1980. Proposed effective date is the date of publication of a final rule in the Federal Register.

ADDRESS: Comments should refer to the docket and notice number and be submitted to: Docket Section, Room 5108, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours 8 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. John Carson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–2670).

SUPPLEMENTARY INFORMATION: On June 26, 1978, the agency published in the Federal Register a notice establishing Safety Standard No. 101–80, *Controls and Displays* (43 FR 27541). The standard specifies new requirements for the identification and illumination of controls and displays in passenger cars, multipurpose passenger vehicles, trucks and buses. The standard is scheduled to go into effect on September 1, 1980, although manufacturers have the option of complying with this new standard prior to the effective date in lieu of complying with current Standard No. 101, *Control Location, Identification and Illumination.*

Among its requirements, Standard No. 101–80 specifies colors for various vehicle displays. In the case of the headlamp high beam tell-tale (i.e., the light indicating that the high beams of the headlamps have been activated), the standard specifies the color blue or blue-green. The primary reason for selecting that color was to promote the international harmonization of standards regulating vehicle controls and displays.

The agency's high beam tell-tale color requirement is the same as that adopted by the International Standards Organization, the Economic Commission for Europe and the European Economic Community.

Volkswagen (VW) has recently filed a petition for rulemaking with the agency seeking to allow the use of the color green for the high beam tell-tale as an alternative to blue or blue-green. VW stated that its testing has demonstrated that light emitting diodes (LED's) are more reliable that incandescent bulbs when used as high beam tell-tales and are, thus, very desirable. At present, however, LED's are not produced in either blue or white (which could be used with a filter to produce blue). VW said that its LED, which is green, is "the only color akin to blue-green, which LED technology is capable of producing."

In order to obtain public comments on all aspects of VW's argument as quickly as possible, the VW petition is set out verbatim as an appendix to this notice. The agency has placed the technical paper appended to the Volkswagen petition in the docket for public review. The agency emphasizes that the arguments in the VW petition are not necessarily shared by the agency. They are being set forth in full merely to facilitate and expedite the comment process. The agency will continue to investigate the desirability of the petition during the comment period and make a final decision following an analysis of all comments and other available information. To expedite the rulemaking process, the agency is also establishing a 30 day comment period.

To assist in the evaluation of the proposed change, the agency is interested in obtaining answers to the following questions:

1. What is the current status of efforts to develop blue or white light emitting diodes? Although such LED's are apparently not commercially available at the present time, what is the time frame needed to develop such LED's?

2. If the agency decides to permit the use of green as an alternative color, should such green be permitted indefinitely or only for an interim period until blue or white LED's are commercially available?

3. Are there safety or other considerations that make it inadvisable to permit the use of green as an alternative color for high-beam indicators, even for a limited time period?

The agency has assessed the economic and other impacts of the proposed change to the high beam tell-tale requirement and determined that they are not significant within the meaning of Executive Order 12044 and the Department of Transportation's policies and procedures for implementing that order. Based on that assessment, the agency concludes also that the economic and other consequences of this proposal are so minimal as not to require preparation of a regulatory evaluation. The impact is minimal since the amendment does not impose new requirements and does not affect compliance costs. Instead, it permits manufacturers to use an alternative color for the high beam tell-tale.

If on the basis of the agency's evaluation of the petition for rulemaking and the comments received on this notice, the agency decides to adopt VW's proposed change, Column 2 of

Table 2 of Standard No. 101-80 (49 CFR 571.101-80) would be revised to add the color green to the permitted tell-tale colors for the high beam tell-tale.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. Any claim of confidentiality must be supported by a statement demonstrating that the information falls within 5 U.S.C. section 552(b)(4), and that disclosure of the information is likely to result in substantial competitive damage; specifically the period during which the information must be withheld to avoid that damage; and showing that earlier disclosure would result in that damage. In addition, the commenter or, in the case of a corporation, a responsible corporate official authorized to speak for the corporation must certify in writing that each item for which confidential treatment is requested is in fact confidential within the meaning of section 552(b) (4) and that a diligent search has been conducted by the commenter or its employees to assure that none of the specified items has previously been disclosed or otherwise become available to the public.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 17, 1980.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

Appendix A—Petition for Rulemaking Concerning FMVSS 101-80, Controls and Displays

In response to recommendtions made by the National Highway Traffic Safety Administration ("NHTSA"), Volkswagenwerk AG, Audi NSU Auto Union AG, and Volkswagen of America ("Volkswagen") hereby petition the NHTSA to amend the requirements of S5.3.2 of FMVSS 101-80 Controls and Displays, 49 CFR 571.101-80, effective September 1, 1980, to expressly permit the color green produced by LED technology for use as the high beam indicator.

Although Volkswagen believes that its LED high beam telltale complies with S5.3.2, it has now been informed by the NHTSA that the term "blue-green" referred to in Table 2 of FMVSS 101-80 is not broad enought to encompass the only color akin to blue-green, which LED technology is capable of producing.

On October 21, 1976, the NHTSA published a notice of proposed rulemaking in 41 FR 46460 et seq. announcing that it intended to update the then existing Control and Display standard by consolidating all existing requirements into one standard and by proposing certain new requirements. The notice of proposal specified that the high beam indicator light must display the color blue. The final rule published by the NHTSA in 43 FR 27542 of June 26, 1978, added the term "blue-green" to the originally proposed requirement for the color blue. The NHTSA's rationale for adding the additional terminology led Volkswagen to believe that use of LED technology would henceforth be permissible. The preamble of Notice 13, in relevant part, states the following:

> Several commenters mentioned that *because of the technology of light emitting diodes, telltales are technologically feasible only in yellow, green or red.* One commenter noted that neon gas discharge displays emit a characteristic neon red-orange light, rather than red. *These displays rate high in intensity, durability, and reliability and are low in cost. Because of these factors, the final rule has been amended so that a designation of* the color red can be either red or red-orange and *the color blue may be either blue or "blue-green."* (Emphasis added).

Because the NHTSA's conclusion to the effect that "the color blue may be either blue or blue-green" obviously flows from the preposition that LED telltales are "technologically feasible only in yellow, green or red," we fail to understand why LED units are not allowable under FMVSS 101-80 as currently constituted.

On September 13, 1979, Volkswagen met with representatives of the NHTSA and presented a display sample of a prototype LED unit as well as data sheets and graphs. These materials show that the LED color displayed in high bean indicator position was the closest commercially available to the color blue-green. These facts are more specifically set forth in Volkswagen's submission to the NHTSA's Office of Chief Counsel dated September 6, 1979. Subsequent telephone calls placed with representatives of the NHTSA resulted in a favorable response and the promise of a written communication affirming the permissibility of the use of the color green produced by Volkswagen's LED unit at least on an interim basis. With a critical tooling release deadline of November 1, 1979, and acting in good faith, major tooling commitments were made by Volkswagen. Manufacture of most model year 1981 Rabbit Convertible, Jetta, Scirocco, Dasher and Vanagon vehicles is scheduled to commence during the first or second week of August, 1980.

We believe that the cost impact combined with the physical inability for Volkswagen to revert to an incandescent lamp prior to introduction of 1981 models makes it impossible for us to consider extending use of incandescent lamps. We further believe that any delay in introduction of 1981 models is not likely to be offset by any measurable safety benefit. To achieve the transition to diodes, 30 months of design, development, testing, tooling and preproduction have been expended by suppliers and subsuppliers. Two suppliers of instrument clusters each have invested approximately $1.2 million in this endeavor, and alteration of the instrument cluster to accommodate a bulb for a blue high beam indacator is impractical at this time.

Volkswagen has been committed to LED technology since obtaining test results in 1975. The production of the pilot model Dasher, which since August 1977 is equipped with red LED in compliance with S4.5.2 of FMVSS 108, 49 CFR 571.108, showed a failure rate in the

field of less than 0.01 percent, while bulbs have about a 10 percent failure rate in filaments and contacts. We believe that these test results warrant favorable consideration and ought not to be ignored simply because 20 years ago, for reasons no longer evident, preference was given to the color blue.

Volkswagen is continuing its efforts within the International Standards Organization (ISO), as well as within the European Economic Commission (EEC) and the Economic Council of Europe of the United Nations Organization (ECE), to the effect a change in the high beam indicator color. Members of the appropriate committees and working groups have been provided with supportive data for their study and evaluation. Volkswagen will continue within this frame work to aggressively pursue the adoption of one color internationally which will not exclude LED technology. Volkswagen is hopeful that its efforts will be rewarded with favorable action on the part of ISO, EEC and ECE.

At a recent Society of Automotive Engineers ("SAE") Vehicle Lighting Committee meeting, held at the NHTSA headquarters, it was disclosed that the National Bureau of Standards ("NBS") and the General Services Administration ("GSA") no longer recognize the color blue as an acceptable class 1 warning signal, the SAE Lighting Committee supported the NBS and GSA positions on the color blue and subsequently approved removal of the color from the warning lamp standards, since they agreed that this color is not considered an effective color as a warning device. (See NBS Publication Supplement 95). This position is also supported by the "Expertise" of Dr. Behrens, an internationally recognized expert on lighting devices, who is a member of WP 29-GRE. In 1977, Dr. Behrens conducted tests at the German Vehicle Lighting Equipment Test Laboratory at the university of Karlsruhe, which is authorized by all EEC and ECE member countries. That test report was attached to Volkswagen's petition to the NHTSA filed in 1978 and is, for convenient reference, again attached hereto.

The clarification sought by this petition will allow Volkswagen and others utilizing LED technology to continue in the progression of this technology. An unfavorable response to the petition would create for Volkswagen extreme cost delay in scheduled introduction of 1981 models.

[FR Doc. 80-33557 Filed 10-29-80; 8:45 am]
BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 80-16; Notice 1]

Federal Motor Vehicle Safety Standards; Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes several minor changes to Federal Motor Vehicle Safety Standard 120, *Tire selection and rims for motor vehicles other than passenger cars.* This proposal would require that the tire and rim selection information appearing on a placard in the vehicle be of certain specified dimensions and be written in the English language; narrow the provision permitting the purchaser of a new motor vehicle other than a passenger car to have the vehicle manufacturer install the purchaser's used tires on the vehicle and also permit the purchaser to specify the use of retreaded tires on the vehicle; change one of the rim labeling examples listed in the Standard; and correct the names of two standardization organizations listed in the Standard.

DATES:

Comment closing date: December 15, 1980.

Proposed effective date: 180 days after publication of a final rule in the Federal Register.

ADDRESS: Comments on this notice should refer to Docket No. 80-16 and be submitted to Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 8 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Arturo Casanova, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-426-1714).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard 120, *Tire selection and rims for motor vehicles other than passenger cars.* (49 CFR 571,120), specifies tire and rims selection requirements and rim marking requirements for motor vehicles such as trucks, buses, and motorcycles. This standard was initially published at 41 FR 3478; January 23, 1976. In the course of reviewing the requirements of the standard, the National Highway Traffic Safety Administration (NHTSA) noted some minor errors in the standard, as well as some portions of the standard which need clarification. This notice proposes to correct those errors and make those clarifications.

The current labeling requirements for tire and loading information are set forth in section S5.3 of Standard 120. The provisions of that section specify that the information may be incorporated in the vehicle certification label required by 49 CFR Part 567, or may be placed on a separate label affixed to the vehicle in the same manner, form and location as the certification label is. However, the information required to appear on the certification labels by Part 567 must be of certain specified dimensions and must be written in the English language. There are no similar requirements applicable to the information required to be included on the label by Standard 120. For the sake of clarity and consistency in conveying information to the user of the vehicle, this notice proposes that the dimensional requirements and the English language requirements used in Part 567 be applied to the tire and loading information required by Standard 120.

In establishing Standard 120, NHTSA included a provision permitting continuation of the practice under which a new vehicle purchaser who owns or leases used tires instructs the vehicle manufactuer to equip its new vehicles with these tires. This type of arrangement is called a "mileage contract purchase" and is most commonly used by bus companies and large tractor-trailer fleet owners. To allow mileage contract purchases to continue, section S5.1.3 of Standard 120 permits new motor vehicles to be equipped with used tires owned or leased by the vehicle purchaser if the maximum load ratings labeled on the used tires is sufficient to carry the load of the axles on which the tires are installed.

However, the language set forth in S5.1.3 of the rule does not limit the provisions permitting the use of used tires to miliage contract purchasers. Since a mileage contract purchaser buys or leases tires on a per mile basis, the tire company providing those tires has a contractual obligation to ensure that the tires mounted on the vehicles are safe for use on the vehicles. This safeguard would not exist in the case of any vehicle purchaser desiring to save the cost of purchasing new tires since the purchaser could send the vehicle manufacturer palpably unsafe tires (e.g., bald tires or poorly repaired cut tires) and request that these be mounted on the new vehicle. Accordingly, NHTSA proposes to amend the standard to specify that only mileage contract purchasers may have tires which do not

meet the requirements of either Standard 109 or 119 installed on new vehicles.

Further, S5.1.3 as presently written does not permit the use of retreaded tires on new vehicles by mileage contract purchasers. This result was not intended by the agency. Since there are not any safety considerations suggesting that used tires are safer than retreaded tires, this notice would amend this section to permit the use of retreaded tires or used tires by mileage contract purchasers.

The rim labeling example shown in S5.2(b) of Standard 120 has caused some confusion. The example shows the following as a permissible rim marking: "N 20 x 5.50 or N 20 x 5.5." The confusion has resulted because S5.2(a) of the Standard uses the letter "N" to show the source for a rim's dimensions. Hence, several rim manufacturers have asked whether it is necessary to mark the letter showing the source of a rim's dimensions twice on the rim, once in response to the specific requirement in S5.2(a) and again before the rim size required in S5.2(b). To make clear that these letters need only appear once on the rim, this notice proposes to delete the letter "N" from the rim example in S5.2(b).

The final correction to Standdard 120 proposed in this notice is to list the changed names for the Japanese and German standardization organizations listed in S5.2(a). Under this proposal, "J" would be changed to refer to Japan Automobile Tire Manufacturers Association and "D" would refer to the Deutsches Institut fur Normung.

In consideration of the foregoing, 49 CFR 571.120 is proposed to be amended as follows:

§ 571.120 Standard No. 120; Tire selection and rims for motor vehicles other than passenger cars.

1. Section S4 is amended by adding the following definition:

S4. *Definitions.* All terms defined in the Act and the rules and standards issued under its authority are used as defined therein.

"Mileage contract purchaser" means a purchaser whose vehicle is equipped with tires purchased or leased from a tire supplier on a cost per mile basis.

* * * * *

2. Section S5.1.3 is amended to read as follows:

S5.1.3 In place of tires that meet the requirements of Standard No. 119, a truck, bus, or trailer may at the request of a mileage contract purchaser be equipped at the place of manufacture of the vehicle with retreaded or used tires owned or leased by the mileage contract purchaser, if the sum of the maximum load ratings meets the requirements of S5.1.2. Retreaded or used tires employed under this provision must have been originally manufactured to comply with Standard No. 119, as evidenced by the DOT symbol.

3. Section S5.2 is revised to read as follows:

S5.2 *Rim Marking.*

* * * * *

(a) A designation which indicates the source of the rim's published nominal dimensions, as follows:

(1) * * *

(2) * * *

(3) "J" indicates Japan Automobile Tire Manufacturers Association.

(4) "D" indicates Deutsches Institut fur Normung.

* * * * *

(b) The rim size designation, and, in case of multipiece rims, the rim type designation. For example: 20 x 5.50, or 20 x 5.5.

* * * * *

4. Section S5.3 is revised to read as follows:

S5.3 *Label information.*

S5.3.1 *Vehicles manufactured before September 1, 1982.* Each vehicle manufactured before September 1, 1982 shall show the information specified in S5.3.3 through S5.3.5 in the format set forth following this section. The information shall appear either—

(a) After each GAWR listed on the certification label required by § 567.4 or § 567.5 of this chapter; or, at the option of the manufacturer,

(b) On a tire information label affixed to the vehicle in the manner, location, and form described in § 567.4 (b) through (f) of this chapter, as appropriate for each GVWR–GAWR combination listed on the certification label.

S5.3.2 *Vehicles manufactured on and after September 1, 1982.* Each vehicle manufactured on and after September 1, 1982, shall show the information specified in S5.3.3 through S5.3.5 in the English language, lettered in block capitals and numerals not less than three thirty-seconds of an inch high and in the format set forth following this section. This information shall appear either—

(a) After each GAWR listed on the certification label required by § 567.4 or § 567.5 of this chapter; or, at the option of the manufacturer,

(b) On a tire information label affixed to the vehicle in the manner, location, and form described in § 567.4 (b) through (f) of this chapter, as appropriate for each GVWR–GAWR combination listed on the certification label.

S5.3.3 The size designation of tires (not necessarily those on the vehicle) appropriate (as specified in S5.1.2) for the GAWR.

S5.3.4 The size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for those tires.

S5.3.5 Cold inflation pressure for those tires.

* * * * *

Interested persons are invited to submit comments on this proposal. Comments must be limited so as not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a succinct and concise fashion. Those commenters desiring to be notified of the receipt of their comments in the docket section should enclose a stamped, self-addressed postcard in the envelope with their comments. When the comments are received, the docket supervisor will return the postcard by mail.

All comments received before the close of business on the comment closing date indicated at the beginning of this proposal will be considered in formulating a final rule, and will be available for public inspection in the docket before and after the comment closing date.

Comments received too late to be considered in formulating this final rule will be treated as suggestions for future rulemaking. The agency will continue to file relevant material in the docket as it becomes available after the comment closing date, and it is recommended that interested persons continue to examine the docket for new material.

The agency has reviewed the impacts of this proposal, and concluded that the costs associated with these clarifying amendments are either nonexistent or minimal. The agency has determined that this proposal is not a significant regulation within the meaning of Executive Order 12221 and that preparation of a regulatory evaluation is not required.

The program official and attorney principally responsible for the development of this proposed regulation are Arturo Casanova and Stephen Kratzke, respectively.

(Secs. 103 and 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392 and 1407); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on October 21, 1980.

Michael Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 80-33558 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 680 and 611

Precious Corals Fishery; Fishery Management Plan; Extension of Comment Period

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

ACTION: Extension of comment period.

SUMMARY: Proposed regulations on the fishery management plan (FMP) for the precious corals fishery were published on September 15, 1980 (45 FR 60957), for public comment. Comments were to be received for a period of 45 days, until October 31, 1980. That comment period is hereby extended for an additional 15 days, until November 15, 1980.

DATE: Comments on the FMP and regulations are invited until November 15, 1980.

ADDRESS: Comments should be addressed to: Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Mr. Alan W. Ford, Regional Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731, Telephone: 213-548-2575; or Mr. Doyle E. Gates, Administrator, Western Pacific Program Office, Southwest Region, P.O. Box 3830, 2570 Dole Street, Honolulu, Hawaii 96812, telephone: 808-946-2181.

Signed this 24th day of October, 1980.

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

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 80-33845 Filed 10-29-80; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 45, No. 212
Thursday, October 30, 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.

CIVIL AERONAUTICS BOARD

Application for an All-Cargo Air Service Certificate

October 23, 1980

In accordance with Part 291 (14 CFR Part 291) of the Board's Economic Regulations (effective November 8, 1978), notice is hereby given that the Civil Aeronautics Board has received an application, Docket 38814, from Sedalia-Marshall-Boonville Stage Line, Inc., 1060 E. Northwest Highway, Grapevine, Texas 76051, for an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of section 291.12(c) of Part 291, interested persons may file an answer in opposition to this application by November 20, 1980. An executed original and six copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 80-33852 Filed 10-29-80; 8:45 am]
BILLING CODE 6320-01-M

[Docket 38866]

Air International Fitness Investigation; Assignment of Proceeding

This proceeding is hereby assigned to Administrative Law Judge William A. Pope, II. Future communications should be addressed to him.

Dated at Washington, D.C., October 24, 1980.

Joseph J. Saunders,
Chief Administrative Law Judge.

[FR Doc. 80-33854 Filed 10-29-80; 8:45 am]
BILLING CODE 6320-01-M

[Docket 38865]

Sun Pacific Airlines Fitness Investigation; Assignment of Proceeding

This proceeding is hereby assigned to Chief Administrative Law Judge Joseph J. Saunders.

Dated at Washington, D.C., October 24, 1980.

Joseph J. Saunders,
Chief Administrative Law Judge.

[FR Doc. 80-33853 Filed 10-29-80; 8:45 am]
BILLING CODE 6320-01-M

[Docket 38011; Order 80-10-148]

Establishment of Subsidy Mail Rates; Petition of Alaska Airlines, Inc.; Order Fixing Temporary Subsidy Rate

Issued under delegated authority October 24, 1980.

By Order 80-9-153, adopted September 24, 1980, the Board directed Alaska Airlines, Inc. to show cause why the Board should not adopt the temporary subsidy mail rate set forth in that order as the fair and reasonable final temporary rate to be paid Alaska for the transportation of mail over its subsidy-eligible system effective April 9, 1980.

The time designated for filing a notice of objection has elapsed, and no notice of objection or answer to the order has been filed by any party.[1] All parties have therefore waived the right to a hearing and all other procedural steps short of a final decision fixing the temporary rate.

The Board, upon consideration of the record, hereby reaffirms and makes final all of the findings and conclusions set forth in Order 80-9-153, except as modified herein.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly Sections 102, 204, and 406 thereof, and the regulations promulgated in 14 CFR 302,

It is ordered that: 1. The fair and reasonable temporary rate of compensation to be paid Alaska Airlines, Inc. for the transportation of mail by aircraft between the points between which the carrier has been, is presently, or hereafter may be authorized to transport mail on a subsidy-eligible basis by its certificate of public convenience and necessity, shall be the sum of (1) the service mail pay as heretofore and hereafter established by the Board, [2] and (2) subsidy as follows: For each calendar month on and after April 9, 1980, in which subsidy-eligible routes authorized for the carriage of mail are flown, an amount determined by multiplying the appropriate rate stated below by the scheduled miles flown during the month in non-stop mainline service to and from the points Cordova, Yakutat, Petersburg, Wrangell, and Gustavus:

Period of Operation	Rate per mile	Daily subsidy rate ceiling
April 1980	$5.946643	$7,938.77
May-October 1980	3.243749	5,206.22
November 1980-March 1981	5.946643	7,938.77
For service effective April 1, 1981:		
November-April[3]	8.645047	11,541.14
May-October[3]	4.715668	7,568.65

[3] And succeeding annual periods.

The total cumulative subsidy otherwise due and payable to Alaska during any semiannual rate period pursuant to the table above shall be subject to the condition and limitation that, it shall not exceed the daily rate as set forth above times the number of days in the semiannual rate period to date.

Provided, that the number of days in the month shall be based on the number of days in the calendar month exclusive of days on which operations are completely suspended due to a strike or other work stoppage; provided, further, that any days of partial reduction of

[1] Although it has not filed a formal notice of objection, Alaska has informally notified us that the payback provision in Order 80-9-153 is inconsistent with the provision in Order 78-6-161. The correct annual payback should be $1,066,716. The rate formula contained in this order reflects the corrected payback provision, and will provide a net annual temporary rate of $2,394,861 through March 31, 1981. Effective April 1, 1981, the net rate will increase to $3,481,577 to reflect elimination of the payback provision.

[2] This order is not intended to disturb the service mail rates established pursuant to other orders of the Board.

operations due to strikes or other work stoppages, when departures flown by the carrier are less than 90 percent of the departures scheduled to be flown on such days, shall be counted as a reduced number of days to be arrived at by multiplying the number of such days by the ratio of (a) the departures flown on such days divided by (b) the product of the departures scheduled to be flown on such days[4] times the system average performance factor of the carrier during the corresponding month of the prior year.

The scheduled revenue aircraft miles flown shall be computed on the direct airport-to-airport mileage between the points actually served on each revenue trip operated over Alaska's subsidy-eligible routes pursuant to its flight schedules filed with the Board including all revenue trips operated as extra sections thereto.

The compensation proposed herein shall be in lieu of, and not in addition to, the compensation heretofore received by Alaska for the actual transportation of mail, or for the provision of its facilities and services to transport mail, on and after April 9, 1980.

2. This order shall be effective the date of service.

3. This order shall be served upon Alaska Airlines, Inc., and the Postmaster General.

This order will be published in the Federal Register.

By Director, Bureau of Domestic Aviation.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-33835 Filed 10-29-80; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

National Bureau of Standards

Federal Standard COBOL (FIPS PUB 21-1); Proposed Interpretation

Correction

In FR Doc. 80-33184, appearing on page 70535 in the issue of Friday, October 24, 1980, make the following correction.

On page 70536, first column, the last line of the first complete paragraph reading "January 22, 1980.", should have read "January 22, 1981.".

BILLING CODE 1505-01

[4] Based on the carrier's official schedules on file with the Board on or as at the last day prior to the work stoppage.

Changes Pertaining to the Interface Standards Exclusion List

In a notice published in the Federal Register on August 11, 1980 (45 FR 53193), the National Bureau of Standards announced proposed changes to the exclusion list pertaining to Federal Information Processing Standards Publication 60, I/O Channel Interface; Federal Information Processing Standards Publication 61, Channel Level Power Control Interface; Federal Information Processing Standards Publication 62, Operational Specifications for Magnetic Tape Subsystems; and Federal Information Processing Standards Publication 63, Operational Specifications for Rotating Mass Storage Subsystems. Interested parties were allowed until September 25, 1980, to submit written comments regarding the proposed changes to the exclusion list.

As a result of a review and analysis of comments received, NBS has made a determination that the following changes will be made to the exclusion list:

Manufacturer and Model

Additions:
CDC, Cyber 18 System
Honeywell, Series 60 Level 64 DPS 330
ICL, Inc., ME 29/35
Sperry Univac, System 80 Model 3
Sperry Univac, System 80 Model 5
CDC, Cyber 18-10 (now included in Cyber 18 System being added)
CDC, Cyber 18-20 (now included in Cyber 18 System being added)
CDC, Cyber 18-30 (now included in Cyber 18 System being added)

Interested parties are invited to submit written comments or recommendations regarding the exclusion list to the Director, Institute for Computer Sciences and Technology, Attention: Interface Standards Exclusion List, National Bureau of Standards, Washington, D.C. 20234. Comments specifically identifying candidate systems which should be added or removed from the exclusion list are especially encouraged. Comments should also include information supporting any proposed additions (or removals) to that list according to the criteria described in the Federal Register notice of March 19, 1979 (44 FR 16466), which announced the availability of a proposed initial exclusion list. Any comments submitted which are deemed by the sender to contain confidential or proprietary information should be appropriately designated and marked.

NBS is maintaining a mailing list of vendors, Federal agencies, and other interested parties to whom copies of the current exclusion list are sent on a regular basis. Parties on the mailing list will also be sent copies of proposed changes and the announcement of the determination on proposed changes. Those who wish to be included on the mailing list should send a written request to the address noted above for submission of comments or recommendations regarding the exclusion list.

The exclusion list will be used in conjunction with the applicability provisions of the Federal I/O channel level interface standards. This list and the exclusion criteria are not a part of the standards themselves, but are provided for in the standards.

Dated: October 27, 1980.

Ernest Ambler,

Director.

[FR Doc. 80-33768 Filed 10-29-80; 8:45 am]

BILLING CODE 3510-13-M

Proposed Changes Pertaining to the Interface Standards Exclusion List; Correction

In FR Doc. 80-32060 appearing at page 68417 in the Federal Register of Wednesday, October 15, 1980, the list entitled Manufacturer and Model is corrected to read as follows:

Manufacturer and Model

Burroughs, B90 Series
Burroughs, CP9000 Series
Burroughs, B1900 Series
CADO Systems Corp., C.A.T.
CADO Systems Corp., 20/20
Computer Talk, 427 Distributed Processing Terminal
E&L Instruments, MMD-2
E&L Instruments, MD-X
Hewlett-Packard, 2100A*
Hewlett-Packard, 21005*
Hewlett-Packard, 2114A/B*
Hewlett-Packard, 2115A*
Hewlett-Packard, 2116A/B/C*
Pertec, MITS/ALTAIR 8800B*
Prime, 150
Prime, 250
Qantel, 200 Series
Qantel, 300 Series
Wang, PCS III
Wang, SVP
Wang, LVP
Wang, VS-B
Wang, VS-F
Wang, VS-50
Wang, OIS

Dated: October 24, 1980.

Ernest Ambler,

Director.

[FR Doc. 80-33709 Filed 10-29-80; 8:45 am]

BILLING CODE 3510-13-M

*No longer manufactured.

National Oceanic and Atmospheric Administration

New England Fishery Management Council's Scientific and Statistical Committee; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94–265), has established a Scientific and Statistical Committee, which will meet to discuss minutes of the previous meeting; third discussion of the value of reducing variability and abundance of catch as an objective; old and new business, as well as the following reports: Council meeting; groundfish oversight committee meeting; lobster—final report of economic subcommittee on market survey and economic data needs; biological subcommittee's discussion with the oversight committee; meeting with the executive committee regarding Charles River Associates, and report of the Executive Director.

DATES: The meeting, which is open to the public, will convene on Tuesday, November 18, 1980, at approximately 10 a.m., and will adjourn at approximately 5 p.m. The meeting may be lengthened or shortened, or agenda items rearranged, depending upon progress on the agenda.

ADDRESS: The meeting will take place at the Council offices, Suntaug Office Park, Five Broadway (Route One), Saugus, Massachusetts.

FOR FURTHER INFORMATION CONTACT: New England Fishery Management Council, Suntaug Office Building, Five Broadway (Route One), Saugus, Massachusetts 01906, telephone: (617) 231–0422.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

Dated: October 27, 1980.

[FR Doc. 80-33850 Filed 10-29-80; 8:45 am]

BILLING CODE 3510-22-M

COUNCIL ON WAGE AND PRICE STABILITY

Price Advisory Committee—Change of Meeting Location

Authority of Committee: The Price Advisory Committee was established by the Council on Wage and Price Stability pursuant to Executive Order 12161 (44 FR 56663).

Time and Place of Meeting: On October 24, 1980, the Council announced in Vol. 45 of the Federal Register, at page 70538 (FR Doc. 80–33370), that the next meeting of its Price Advisory Committee would be Wednesday, November 12, 1980, at 10:00 a.m. in Room 2010 of the New Executive Office Building. The location of this meeting has now been changed to the Board Room of the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20550. Persons interested in attending the meeting should contact Cheryl Bailey at 456–6210 by 3:00 p.m. on November 10, 1980 in order to be assured admission to the building on the meeting day. Other details of the meeting remain unchanged.

Additional Information: For additional information, please telephone the Office of Public Affairs at (202) 456–6756.

Dated: October 28, 1980.

Sally Katzen,

Advisory Committee Management Officer

[FR Doc. 80-33841 Filed 10-29-80; 8:45 am]

BILLING CODE 3175-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Boards for the Correction of Military Records; Form of Index to the Decisions of the Boards for the Correction of Military Records (Nondischarge Cases)

AGENCY: Department of the Army, DOD.

ACTION: Notice of public comment period.

SUMMARY: The Department of Defense, acting through the Director of the Department of the Army Military Review Boards Agency, is considering changes in the subject/category listing for the index to the decisions in nondischarge cases of the Boards for the Correction of Military and Naval Records. The purpose of this public comment period is to allow users of the index and other interested members of the public to suggest to the Department of Defense any specific changes to the subject/category listings of the present index used for nondischarge cases that they believe would increase its convenience to users. The Department of Defense will evaluate all suggestions received during this comment period to determine if any change to the subject/category listings of the present index is desirable, and, if warranted, subsequently will prepare a proposed revision of the subject/category listings for the index and republish them in the Federal Register for further public comment.

DATE: Comments received on or before December 29, 1980, will be considered.

ADDRESS COMMENTS TO: Director, Department of the Army, Military Review Boards Agency, HQDA, Washington, D.C. 20310.

FOR FURTHER INFORMATION CONTACT: Mr. Francis X. Plant, Director, Department of the Army, Military Review Boards Agency, Washington, D.C. 20310, (Phone (703) 697–9641).

SUPPLEMENTARY INFORMATION: Boards For the Correction of Military and Naval Records have been established by the Secretaries of each of the Military Departments pursuant to 10 U.S.C. 1552 (1976). Procedures and standards for such boards are set out at 32 CFR 581.3, 32 CFR 723.1 *et seq.* and 32 CFR 865.1 *et seq.* Beginning on April 1, 1977, pursuant to the Stipulation of Dismissal in *Urban Law Institute of Antioch College, Inc.* v. *Secretary of Defense* (No. 76–530 D.D.C. January 31, 1977), each of the boards has indexed and made available for public inspection, statements of findings, conclusions, recommendations, and the record of the votes of board members made on final determinations of applications by the board or the Secretary concerned. The subject/category listings of the index for discharge cases of the Boards for Correction and Military and Naval Records is the same as that used by the Discharge Review Boards, and is set out in the Federal Register of October 13, 1978 (43 FR 47237). Due to its revision in 1978 and a lack of complaints by users since this revision, the subject/category listings of the discharge portion of the index used by the Boards for Correction of Military and Naval Records are not a subject of this public comment period. The subject/category listings of the index adopted for nondischarge cases were the same as those used internally by the Army Board of Correction for Military Records for a long number of years. Notice of the index's present subject/category listings for nondischarge cases was first published in the Federal Register of February 17, 1977 (42 FR 9699). Notice of an amendment to the index's subject/category listings was published in the Federal Register of June 21, 1977 (42 FR 31480). No unfavorable public comments concerning the index's subject/category listings for nondischarge cases were submitted following publication of these notices nor have any such comments been submitted to the Department of Defense or the Department of the Army Military Review Boards Agency since then until July 21, 1980. At that time, plaintiffs' attorneys in *Urban Law Institute of Antioch College, Inc.* v.

Secretary of Defense, supra, pointed out in a letter to the Department of Defense General Counsel, three areas they perceived as shortcomings in the subject/category listings of the index. these three areas are: (1) The lack of sufficient index subject categories that are specific (e.g. Courts-Martial category should be broken down into categories of offenses); (2) the lack of an index subject category that relates to whether boards waived the normal three year statute of limitation contained in 10 U.S.C. 1552 in a particular case, and (3) failure to subdivide subject categories to indicate whether the issue described by a particular category was resolved in favor of or against the applicant. Although the Department of Defense does not consider these three areas of the present index to be inadequate, the Department is interested in making the form of index used for future decisional documents of the boards as convenient as possible for its users. Accordingly, the Department invites comments and suggestions for possible revision of the subject/category listings of the present index for nondischarge cases of the Boards for Correction of Military and Naval Records. The subject/category listings of the present index for nondischarge cases are set out below:

Correction Boards Index—Non-Discharge Cases

A

100.00 Administrative Matters
- 100.01 Change of Name/Sex
- 100.02 Change of Date/Place of Birth
- 100.03 Change of Reenlistment Code
- 100.04 Presumption of Death
- 100.05 Change of MOS/Designation

101.00 Archive Cases
- 101.01 Civil War
- 101.02 Desertion
- 101.03 Spanish-American War
- 101.04 Establish Service
- 101.05 Revolutionary War

102.00 Appointments
- 102.01 Effective Date
- 102.02 Grade
- 102.03 Component
- 102.04 Reason for Disqualification
- 102.05 Inter-Service Transfer
- 102.06 Termination
- 102.07 Date of Rank
- 102.08 Constructive Service for Officers

B

103.00

C

104.00 CADETS USMA/USNA/USAFA
- 104.01 Restoration of Status
- 104.02 Graduation/Appointments

105.00 Courts-Martial
- 105.01 Sentence (Including Dismissal/Discharge)
- 105.02 Mental Incompetency/Capacity
- 105.03 Lack of Opportunity for Restoration
- 105.04 Conscientious Objection
- 105.05 Impeachment of Testimony
- 105.06 Use or Possession of Drugs

106.00 Clemency Discharge/Pardon

D

107.00 Decorations and Awards

108.00 Disability Separation/Retirement
- 108.01 Diagnosis
- 108.02 Percentage of Disability
- 108.03 Line of Duty Determination
- 108.04 Permanent
- 108.05 Temporary
- 108.06 Termination
- 108.07 Combat Incurred
- 108.08 Instrumentality of War
- 108.09 Grade
- 108.10 Effective Date

109.00 Discharge From Draft (WWI)

110.00 Discharge/Separation Documents
- 110.01 Change in Date
- 110.02 Reason and Authority

E

111.00 Efficiency/Effectiveness Reports
- 111.01 Officers and Warrant Officers
- 111.02 Enlisted Personnel
- 111.03 Bias/Prejudice—Rater/Indorser
- 111.04 Administrative/SRB Review

112.00 Enlistment/Reenlistment Contract
- 112.01 Home of Record
- 112.02 Grade/Date of Rank
- 112.03 Term of Enlistment
- 112.04 Broken Enlistment Commitment
- 112.05 Date of Enlistment
- 112.06 Void
- 112.07 Constructive Service
- 112.08 Continuous Service
- 112.09 Base Pay Entry Date

113.00 Establishment of Service
- 113.01 Reserve Components
- 113.02 SATC
- 113.03 Furlough
- 113.04 Civilian Conservation Corps
- 113.05 WWI Railway Battalions

F

114.00 Fitness Reports (Navy/Marine Corps)
- 114.01 Removal of Officer Reports
- 114.02 Revised Reports
- 114.03 Enlisted Performance Evaluation—Removal/Modify

115.00 Flying Status
- 115.01 Effective Date
- 115.02 Removal From
- 115.03 Qualifying Service
- 115.04 Aeronautical Ratings

116.00

G

117.00

H

118.00

I

J

119.00 Jurisdiction of Board

119.01 Philippine Guerrilla Cases

120.00

K

L

121.00 Leave Adjustments
- 121.01 Type of Leave
- 121.02 Lump Sum Leave Settlement

122.00 Line of duty Status
- 122.01 Injury
- 122.02 Disease/EPTS
- 122.03 Mental Responsibility

123.00 Lost Time
- 123.01 Absence Without Leave/Desertion
- 123.02 Mental Incompetency
- 123.03 Injury or Illness on Leave
- 123.04 Error or Technicality
- 123.05 Port Call
- 123.06 Confinement
- 123.07 Removal

M

124.00 Medical Records
- 124.01 Change in Diagnosis
- 124.02 Dates of Treatment
- 124.03 Establishment of Record of Treatment

N

125.00 National Guard
- 125.01 Status
- 125.02 Federal Recognition

126.00 Nonjudicial Punishment
- 126.01 Improperly Filed
- 126.02 Excessive Punishment
- 126.03 Removal of Reprimands
- 126.04 Expunge Record

127.00

O

P

128.00 Pay and Allowances
- 128.01 Family Separation Allowances
- 128.02 Travel Pay
- 128.03 Dislocation Allowance
- 128.04 Flying/Incentive Pay (including Submarine, Flight Deck, Experimental Stress duty, etc.)
- 128.05 Enlistment/Reenlistment Bonuses
- 128.06 Variable Incentive Pay/Continual/Medical/Dental, etc.
- 128.07 Proficiency Pay
- 128.08 Severance Pay
- 128.09 Readjustment Pay
- 128.10 Remission/Cancellation of Indebtedness
- 128.11 Mustering-Out Pay
- 128.12 BAQ/Subsistence Allowance
- 128.13 Uniform/Clothing Allowance
- 128.14 Other types Pay

129.00 Pay Grade
- 129.01 Service Credit
- 129.02 Revocation of Orders
- 129.03 Authority
- 129.04 Highest Grade Satisfactorily Held for Pay Purposes

145.00 Physical Disability
- 145.01 Incurred while on unauthorized absence
- 145.02 Existed prior to entry/aggravated
- 145.03 Existed prior to entry/not aggravated
- 145.04 Incurred while not in receipt of basic pay
- 145.05 Disciplinary action pending; handling of
- 145.06 Administrative discharge proceedings pending; handling of

130.00 Prisoner of War

131.00 Promotion
- 131.01 Selection Boards
- 131.02 Removal From Recommended List
- 131.03 Failure to be Considered

131.04 Effective Date
131.05 Date of Rank
131.06 Prisoner of War
131.07 Casualty Status
131.08 Terminal Leave Promotion
131.09 Advancement in Grade
131.10 Passover—failure of selection
132.00

Q

R

133.00 Reduction in Grade/Rank
133.01 Misconduct
133.02 Inefficiency
133.03 Void/Remove From Record
133.04 Technical Defect
134.00 Removal/Deletion of Records
134.01 Letters of Reprimand/Admonition
134.02 Derogatory Material
134.03 Remark of Desertion
135.00 Reserve Service Credit
135.01 Transfer Between Components
135.02 Retirement Point Credits
135.03 Change of Status
135.04 War/National Emergency Service
135.05 Date of Retirement
136.00 Retirement/Separation (Other Than Disability)
136.01 Effective Date
137.00 Survivors Benefit Plan and RSFPP
137.01 Eligibility
137.02 Effective Date of Participation
137.03 Termination of Participation
137.04 Change in Election

T

138.00

U

139.00

V

140.00

W

141.00

X

142.00

Y

143.00

Z

144.00

Z

(10 U.S.C. 1552)

Dated: October 17, 1980.

Francis X. Plant,

Deputy Assistant Secretary (DA Review Boards and Personnel Security).

[FR Doc. 33779 Filed 10-29-80; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C., App. I), notice is hereby given that the Science and Technology Sub-Panel of the Chief of Naval Operations (CNO) Executive Panel Advisory Committee will meet on November 12 and 13, 1980, from 8:00 a.m. to 5:00 p.m. each day, at Mark Center VI, 2000 N. Beauregard Street, Alexandria, Virginia. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions of the U.S. particle beam technology program. 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, U.S. Navy, Executive Secretary, Chief of Naval Operations, Executive Panel Advisory Committee, 2000 N. Beauregard Street, Room 392, Alexandria, Virginia 22311, Telephone (703) 756-1205.

Dated: October 28, 1980.

P. B. Walker,

Captain, JAGC, U.S. Navy Alternate Federal Register Liaison Officer.

[FR Doc. 80-34030 Filed 10-29-80; 8:45 am]

BILLING CODE 3810-71-M

DEPARTMENT OF EDUCATION

Education Appeal Board; Board Proceedings Scheduled for November

AGENCY: Department of Education.

ACTION: Notice of Education Appeal Board proceedings scheduled for November 1980.

SUMMARY: This notice advises readers that the Education Appeal Board has scheduled a prehearing conference in the *Appeal of the State of New Mexico*, Docket No. 5-(35)-77, for November 6, 1980; in the *Appeal of the State of Texas*, Docket No. 7-(43)-78, for November 13, 1980; and in the *Appeal of the State of California*, Docket No. 2-(57)-80, for November 21, 1980. This notice also advises readers that interested third parties may apply to intervene in the appeal proceedings.

FOR FURTHER INFORMATION CONTACT: Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, S.W. (Room 2141, FOB-6), Washington, D.C. 20202. Telephone (202) 245-7835.

SUPPLEMENTARY INFORMATION: Under the Education Amendments of 1978 (20 U.S.C. 1234), the Education Appeal Board has authority to conduct (1) audit appeal proceedings, (2) withholding, termination, and cease and desist proceedings initiated by the Secretary of Education, and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board. For information concerning the Board and its procedures, see the Board's final regulations as published in the Federal Register on April 3, 1980 (45 FR 22634).

Prehearing Conferences

The Education Appeal Board has scheduled prehearing conferences in three audit appeals for the month of November 1980:

(1) *Appeal of the State of New Mexico*, Docket No. 5-(35)-77. The prehearing conference is scheduled for November 6, 1980, in Room 3000, 400 Maryland Avenue, S.W., Washington, D.C., and will begin at 10:30 a.m. The prehearing conference originally was scheduled for July 22, 1980, and was postponed at the request of the Assistant Secretary for Elementary and Secondary Education to allow the parties time to recompute the damages at issue in the appeal.

In its appeal, New Mexico is contesting final audit determinations made by the Deputy Commissioner for Elementary and Secondary Education (now the Assistant Secretary). The Deputy Commissioner found that during fiscal year 1973, the Las Cruces public school district spent funds under Title I of the Elementary and Secondary Education Act of 1965 at two schools that were ineligible to receive Title I funds; that in fiscal year 1973, the Santa Fe and Las Cruces school districts failed to meet minimum comparability requirements under Title I by failing to provide services from State and local funds at Title I participating schools that were comparable to services provided at all other public schools; and that in fiscal year 1972, the State educational agency used Title I funds for expenditures that were not directly related to or reasonably necessary for the administration of Title I. The Deputy Commissioner requested a refund of $639,042.00 from New Mexico.

(2) *Appeal of the State of Texas*, Docket No. 7-(43)-78. The prehearing conference is scheduled for November 13, 1980, in Room 3000, 400 Maryland Avenue, S.W., Washington, D.C. The conference will begin at 10:30 a.m.

In its appeal, Texas is contesting final audit determinations made by the Deputy Commissioner for Elementary and Secondary Education (now the

Assistant Secretary). The Deputy Commissioner found that in fiscal year 1974, the San Antonio, Edgewood, and McAllen school districts failed to meet comparability requirements under Title I of the Elementary and Secondary Education Act of 1965 by failing to provide services with State and local funds in Title I project schools that were comparable to services provided with such funds in non-project schools. The Deputy Commissioner requested a refund of $350,151.00 from Texas.

(3) *Appeal of the State of California,* Docket No. 2-(57)-80. A second prehearing conference in the appeal is scheduled for November 21, 1980, in Room 3000, 400 Maryland Avenue, S.W., Washington, D.C., and will begin at 10:30 a.m. At the initial prehearing conference in the appeal held on June 27, 1980, the Panel members and parties agreed to hold a second prehearing conference on November 21, 1980.

In its appeal, California is contesting final audit determinations made by the Deputy Commissioner for Elementary and Secondary Education (now the Assistant Secretary). The Deputy Commissioner found that between July 1, 1974, and June 30, 1978, 62 local educational agencies used Federal funds provided under Title I of the Elementary and Secondary Education Act of 1965 to supplant State funds available to Title I project schools under the State's Educationally Disadvantaged Youth Act. The Deputy Commissioner requested a refund of $28,682,142.00 from California.

Intervention

Section 100d.43 of the final regulations establishing procedures for the Education Appeal Board provides that an interested person, group, or agency may, upon application to the Board Chairperson, intervene in appeals before the Education Appeal Board, including the three appeals listed above.

An application to intervene must indicate to the satisfaction of the Board Chairperson or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in and information relevant to the specific issues raised in the appeal. If an application to intervene is approved, the intervenor becomes a party to the proceedings.

All such applications or questions should be addressed to Dr. David S. Pollen, Chairman, Education Appeal Board, 400 Maryland Avenue, S.W. (Room 2141, FOB-6), Washington, D.C. 20202, telephone (202) 245-7835.

(20 U.S.C. 1234)

(Catalog of Federal Domestic Assistance Number not applicable)

Dated: October 24, 1980.

Shirley M. Hufstedler,

Secretary of Education.

[FR Doc. 80-33719 Filed 10-29-80; 8:45 am]

BILLING CODE 4000-01-M

National Advisory Council on Women's Educational Programs; Amended Meeting

AGENCY: National Advisory Council on Women's Educational Programs.

ACTION: Amendment to notice of meeting.

SUMMARY: This document amends the notice of the November 10-12, 1980 meeting of the Advisory Council as published in the Federal Register on October 22, 1980. The Executive Committee meeting which was scheduled for 7:30 p.m. to 9:30 p.m. on November 10, 1980, the Federal Policies, Practices, and Programs and the Civil Rights Committee meetings scheduled for November 11, 1980 from 8:30 a.m. to 3:00 p.m. and the full Council meetings scheduled for November 11 from 3:30 p.m. to 5:00 p.m. and November 12, 1980 from 8:30 a.m. to 5:00 p.m. have been cancelled. An orientation session for newly appointed members will be held on November 10 from 1:00 p.m. to 5:00 p.m. and November 11, 1980 from 9:00 a.m. to 12:00 p.m. The WEEA Program Committee of the Advisory Council will meet on November 11, 1980 as planned; however, the meeting has been shortened and will be held from 1:00 p.m. to 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Kathleen Dauito, Administrative Assistant, National Advisory Council on Women's Educational Programs, 1832 M Street, NW., Suite 821, Washington, D.C. 20036, (202) 653-5846.

Signed at Washington, D.C., on October 27, 1980.

Joy R. Simonson,

Executive Director.

[FR Doc. 80-33828 Filed 10-29-80; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Dickey-Lincoln School Lakes Transmission Project Public Meetings; Change in Meeting Location

In the document appearing in the October 22, 1980 (45 FR 70043), the location of the public meeting has changed.

The public meeting to provide information and receive comments on a draft Environmental Impact Statement (EIS) describing electrical transmission facilities between the Comerford and Moore Dams and Franklin, New Hampshire, area in Littleton, New Hampshire, on Wednesday, November 12—7:30 p.m. at the Littleton Town Hall in Littleton, New Hampshire, has been changed to be held at the Congregational Church at 198 Main Street in Littleton, New Hampshire. The location of the public meeting in Plymouth, New Hampshire, on November 13, has not changed.

Dated at Washington, D.C., this 23d day of October 1980.

George E. Bell,

Assistant Administrator.

[FR Doc. 80-33744 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RA80-83]

Robert F. Badders; Filing of Petition for Review

October 24, 1980.

Take notice that Robert F. Badders on July 22, 1980, filed a Petition for Review under 42 U.S.C. 7194(b) (1977) Supp.) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a petition to intervene. However, any such person wishing to be a participant is requested to file a notice of participation on or before November 12, 1980, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior preceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a petition to intervene on or before November 10, 1980, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.40(e)(3)).

A notice of participation or petition to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through John McKenna, Office of General Counsel, Department of Energy, Room 6H-025,

1000 Independence Avenue, SW. Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33757 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3298]

City of Hyrum, Utah; Application for Preliminary Permit

October 24, 1980.

Take notice that the City of Hyrum (Applicant) filed on August 6, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3298 to be known as the Blacksmith Fork Project located on the Blacksmith Fork River in Cache County, Utah. Correspondence with the Applicant should be directed to: Mr. Reece Nielsen, 90 West Main Street, Hyrum, Utah and Mr. Clifford R. Foresgren, P. E., James M. Montgomery Consulting Engineers, 1301 Vista Avenue, Boise, Idaho 83705.

Project Description—The proposed project would consist of existing project works including: (1) An earthfill dam, about 40 feet high and 500 feet long; (2) a reservoir with a surface area of 12 acres and storage capacity of less than 1,000 acre-feet at surface elevation 4992 feet m.s.l.; (3) an abandoned powerhouse; (4) a 12 KV transmission line; and new project works to include (5) a penstock; (6) a new powerhouse with installed capacity of between 700 and 1900 KW depending upon the location of the structure; (7) a 12 KV transmission line, 1.5 to 3.5 miles long depending upon the powerhouse location; (8) a discharge channel; and (9) other appurtenances. Applicant would consider possible reconstruction of the existing powerhouse which option, if feasible, would require no new transmission line. Applicant estimates annual generation would average between 4.3 and 8.3 million KWH depending upon final configuration of the project.

Purpose of Project—Project energy would be utilized within the City of Hyrum's own electric utility system for sale to customers in its service area.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of 36 months. During the term of the permit the Applicant would accomplish engineering, economic, and environmental feasibility studies, and, if feasible, prepare an FERC application for license. Applicant estimates the cost of studies under a preliminary permit and preparation of an FERC license application would be $35,000.

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 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 December 24, 1980, 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 February 23, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), (*as amended* 44 FR 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, protest, or petition to intervene must be filed on or before December 24, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33758 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Dockets Nos. RP75-106, RP76-94, and RP78-20, etc.]

Columbia Gas Transmission Corp., et al.; Order Granting in Part and Denying in Part Motion, and Establishing Date Certain for Making Refunds

October 23, 1980.

On September 19, 1980, Columbia Gas Transmission Corporation (Columbia) filed a motion with the Commission requesting a modification of tariff filing requirements contained in ordering paragraph (A) of the Commission's Opinion No. 74-A,[1] and further requesting that the Commission establish October 13, 1980, as the date by which refunds are to be made pursuant to that opinion.[2]

Columbia has asked the Commission, in its motion, to modify Ordering Paragraph (A) in Opinion No. 74-A to the extent that it requires Columbia to file prospective tariff reductions and refunds applicable to the period beginning June 1, 1980. The opinion specified that the reduction and refunds were to be made in accordance with the provisions of approved settlement agreements.[3] Columbia states that the cost of service data which it filed with the Commission contemporaneously with its motion shows that its existing rates are deficient on an annual basis by approximately $24 million. Columbia argues that as a consequence there is no justification for the prospective tariff

[1] Issued August 7, 1980.

[2] Columbia perceived ambiguity, as to the due date for refunds, such that some refunds might be due by September 22, 1980.

[3] The settlement agreements referred to were those in Docket Nos. RP75-106, *et al.*; RP76-94, *et al.*; and RP78-19, *et al.*

reductions and refunds, inasmuch as they would only serve to increase the claimed deficit.

On review of Columbia's request for modification of the Opinion No. 74-A tariff requirements, we see no reason not to accord the terms of the pertinent settlements agreements full weight. If Columbia is correct that its existing rates are deficient, it may file for a rate increase.[4] We therefore will deny Columbia's motion in this regard.

We construe Columbia's request for the establishment of a date certain as a request for an extension of time. We find such a request reasonable, and we will grant it.

The Commission orders. (A) The date by which refunds are to be made pursuant to Opinion No. 74-A, issued August 7, 1980, is established as no later than November 21, 1980.

(B) Columbia's motion for modification of tariff filing requirements set forth in Opinion No. 74-A is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33745 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[4] We note that Columbia has made such a filing.

[Docket No. ER81-34-000]

Florida Power Corp.; Filing

October 24, 1980.

The filing Company submits the following:

Take notice that on October 20, 1980, Florida Power Corporation (Florida Power) tendered for filing an executed transmission service agreement with the City of Homestead, Florida. Florida Power states that the form of service agreement was provided in its transmission tariff on file with the Federal Energy Regulatory Commission. Florida Power requests that the sixty (60) day notice requirement be waived so that the agreement may be permitted to become effective on October 9, 1980, the day on which it was executed by the City of Homestead, Florida. Florida Power states that copies of the filing have been served on the City of Homestead, Florida and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 17, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33759 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3454]

Franklin Electric Light & Power Co.; Application for Preliminary Permit

October 24, 1980.

Take notice that the Franklin Electric Light and Power Company, Inc., (Applicant) filed on September 10, 1980, an application for preliminary permit (pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)) for proposed Project No. 3454 to be known as the Stevens Mill Dam Project, located on the Winnipesaukee River in Merrimack County, New Hampshire. Correspondence with the Applicant should be directed to: The Franklin Electric Light and Power Company, Inc., 100 Memorial Street, Franklin, New Hampshire 03235.

Project Description—The proposed project would consist of the following existing works: (1) A concrete gravity dam having an overall length of 133 feet and a maximum height of 18 feet. The spillway is an overflow gravity structure approximately 65 feet in length equipped with flashboards ponding the headwater to an elevation of approximately 315 feet m.s.l. (2) two intakes on each side of the dam leading to eight-foot diameter riveted steel penstocks approximately one hundred feet in length; (3) two powerhouses having a total installed capacity of 492 kW; and (4) appurtenant works.

The applicant proposes to refurbish the existing facilities and replace the existing generating equipment with two new 400 kW units having an annual net generation of 4,500,000 kilowatt-hours.

Purpose of Project—Project power would be sold to a local public utility.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time Applicant would study existing construction plans, topographical surveys, hydrologic studies and operating history of the development. The environmental impacts involved with the activation of the site will also be studied during the permit period.

Depending upon the outcome of the studies, the Applicant would prepare an application for FERC license. Applicant estimated the cost of studies under the permit would be between $10,000 and $15,000.

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 applications for preliminary permit. (A copy of the applications may be obtained directly from the Applicants.) 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 December 29, 1980, 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 February 27, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), *as amended*, 44 FR 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 to make any protests about these applications 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, protest, or petition to intervene must be filed on or before December 29, 1980. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33760 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-37-000]

Gulf Power Co; Filing

October 24, 1980.

The filing Company submits the following:

Take notice that on October 20, 1980, Gulf Power Company (Gulf) filed herein Amendment to its FERC Electric Tariffs providing for service by Gulf to Escambia River Electric Cooperative, Inc., at Century (Escambia County), Florida. This tariff amendment is proposed to be effective for service commencing on October 1, 1980 and Gulf therefore requests waiver of the Commission's notice requirements to allow such effective dates.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 17, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33761 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER80-57]

Gulf States Utilities Co.; Filing

October 24, 1980.

The filing company submits the following:

Take notice that on October 6, 1980, Gulf States Utilities Company submitted for filing a supplemental report of compliance. Said report is being submitted pursuant to the request of the Commission.

A copy of this filing has been sent to Cajun Electric Power Cooperative, Inc., Louisiana Public Service Commission, Public Utility Commission of Texas, and the Cities of Lafayette and Plaquemine, Louisiana.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before November 10, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33762 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Projects Nos. 3274, 3276, 3277, and 3278]

Kansas Electric Power Cooperative, Inc.; Applications for Preliminary Permits

October 24, 1980.

Take notice that Kansas Electric Power Cooperative, Inc. (Applicant) filed on July 30, 1980, four applications for preliminary permits [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] for the projects described below. Correspondence with the Applicant on these projects should be addressed to: Mr. Charles Ross, Executive Vice President, Kansas Electric Power Cooperative, Inc., 5709 West 21st Street, P.O. Box 4267, Gage Center Station, Topeka, Kansas 66604.

The proposed projects are located as follows:

(i) Tuttle Creek Waterpower Project No. 3274 would be located at the U.S. Army Corps of Engineers' Tuttle Creek Dam and Lake, a flood control project on the Big Blue River near Manhattan, in Riley County, Kansas.

(ii) Perry Waterpower Project No. 3276 would be located at the U.S. Army Corps of Engineers' Perry Dam and Lake, a flood control project on the Delaware River near Topeka, in Jefferson County, Kansas.

(iii) Glen Elder Waterpower Project No. 3277 would be located at the Water and Power Resources Service's (formerly U.S. Bureau of Reclamation) Glen Elder Dam and Reservoir, a flood control project on the Solomon River near Glen Elder, in Mitchell County, Kansas.

(iv) Milford Waterpower Project No. 3278 would be located at the U.S. Army Corps of Engineers' Milford Dam and Lake, a flood control project on the Republican River near Junction City, in Geary County, Kansas.

Purpose of Project—Energy produced at the above described Applicant's projects would be utilized primarily within KEPCO's system to displace power which would otherwise be purchased from other member cooperatives.

Project Description—The four proposed projects would utilize either an existing U.S. Army Corps of Engineers' (Corps) or Water and Power Resources Service's dam and reservoir.

Project No. 3274 would consist of: (1) A new powerhouse, about 75 feet long and 60 feet wide, adjacent to and on the south side of an existing stilling basin, containing three generating units with a total installed capacity of 14,750 kW; (2) a 34.5 kV transmission line approximately 1 mile long; and (3) appurtenant facilities. Applicant estimates the annual generation would average about 56,690 MWh.

Project No. 3276 would consist of: (1) A new powerhouse, adjacent to and on the southwest side of an existing stilling basin, with an installed capacity of 5,800 kW; (2) a transmission line approximately 4.5 miles long; and (3) appurtenant facilities. Applicant estimates the annual generation would average about 15,300 MWh.

Project No. 3277 would consist of: (1) A new powerhouse, located on the north side of an existing stilling basin, with an installed capacity of 3,500 kW; (2) a transmission line approximately 2 miles long; and (3) appurtenant facilities. Applicant estimates the annual generation would average about 8,900 MWh.

Project No. 3278 would consist of: (1) A new powerhouse, located adjacent to and on the south side of an existing stilling basin, with an installed capacity of 14,600 kW; (2) a transmission line approximately 4 miles long; and (3) appurtenant facilities. Applicant estimates the annual generation would average about 38,300 MWh.

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 December 29, 1980, either the competing application itself or a notice of intent to file a competing application. Submission the competing application no later than March 2, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), *as amended* 44 FR 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, protest, or petition to intervene must be filed on or before December 29, 1980. The Commission's address is: 825 North Capitol Street NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33763 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3104]

Idaho Power Co.; Application for Transmission Line License

October 24, 1980.

Take notice that on March 26, 1980, Idaho Power Company filed an application for license [pursuant to the Federal Power Act, 16 U.S.C. 791(a)-825(r)] to construct, operate, and maintain a transmission line to be known as the Lucky Peak 138-kV Tie Line (FERC Project No. 3104). The proposed project would be located entirely in Ada County, Idaho, partially on lands administered by the Bureau of Land Management and the Corps of Engineers, Department of the Army. Correspondence with the Applicant on this matter should be addressed to: Mr. Lee S. Sherline, Leighton and Sherline, Suite 406, 1701 K Street NW., Washington, D.C. 20006, with copies to: Paul L. Jauregui, General Counsel, Idaho Power Company, P.O. Box 70, Boise, Idaho 83707.

Project Description—The proposed project would consist of a 4.47-mile long, 138-kV overhead transmission line extending from the proposed Lucky Peak Power Plant Project No. 2832 to the Applicant's existing Lower Malad—Boise Bench 138-kV transmission line which is part of the Idaho Power Company's interconnected system. The proposed line would be supported on 2-pole, wood H-frame structures with associated conductors and electrical hardware.

Purpose of Project—The proposed transmission line would transmit power from the proposed Lucky Peak Power Plant Project to the Applicant's transmission line.

Estimated Cost—The cost of the project is estimated, by the Applicant, to be about $600,000.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the Federal Power Act, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. No other formal requests for comments will be made.

Comments should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the Applicant. 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 December 24, 1980, 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 December 24, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33764 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ES81-5-000]

Idaho Power Co.; Application

October 24, 1980.

Take notice that on October 17, 1980, Idaho Power Company (Applicant) filed

an application seeking authority, pursuant to Section 204 of the Federal Power Act, to issue up to $120,000,000 of unsecured promissory notes, commercial paper and other evidence of indebtedness to be issued from time to time with maturities not later than December 31, 1982.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 17, 1980, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petition to intervene or 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 proceedings. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petition to intervene in accordance with the Commission's Rules. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33765 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. ER81-33-000]

Minnesota Power & Light Co. and Superior Water, Light & Power Co.; Filing

October 24, 1980.

The filing Company submits the following:

Take notice that on October 17, 1980, Minnesota Power & Light Company and Superior Water, Light and Power Company (Applicants) filed pursuant to the Federal Power Act a Transmission Agreement (Agreement) between Lake Superior District Power, Superior Water, Light & Power and Minnesota Power & Light. Applicants and LSDP proposes an effective date of November 13, 1980. Lake Superior District Power will make an annual payment to Minnesota Power & Light and Superior Water, Light and Power for benefits supplied by a new interconnection facility among the parties until such time as Lake Superior District Power adds sufficient interconnection capacity to provide for its transmission needs.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8, 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 14, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33748 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Project No. 3346]

Seiden & Sons, Inc.; Application for Preliminary Permit

October 24, 1980.

Take notice that Seiden & Sons, Inc. (Applicant) filed on August 21, 1980, and supplemented on September 3, 1980, an application for preliminary permit [pursuant to the Federal Power Act, 16 U.S.C. 791(a)–825(r)] for proposed Project No. 3346 to be known as the Valatie Hydro Project located on the Valatie Kill in the Village of Valatie, the Town of Kinderhook, Columbia County, New York. Correspondence with the Applicant should be directed to: Mr. Paul A. Seiden, 163 Delaware Avenue, Delmar, New York 12054.

Project Description—The proposed project would redevelop the existing but inoperative Valatie Mill Hydroelectric Plant and would consist of: (1) A 15-foot high and 80-foot long concrete and masonry dam; (2) a reservoir, known as Wild's Pond, with a surface area of about 35 acres at spillway crest elevation 244.9 feet m.s.l.; (3) a gated intake through the dam's right (west) abutment; (4) a 54-inch diameter and 450-foot long steel penstock; (5) a powerhouse containing a turbine connected to a new generator having a rated capacity of 250 kW; (6) a new 300-foot long tailrace to Kinderhook Creek; and (7) appurtenant facilities. Applicant estimates the annual generation would average about 1,500,000 kWh.

Purpose of Project—Project energy would be sold to New York State Electric and Gas Corporation or would be sold to the senior citizen residents of the adjacent rehabilitated Mill building containing approximately 80 1-bedroom senior citizen apartments.

Proposed Scope and Cost of Studies under Permit—Applicant seeks issuance of a preliminary permit for a period of three years, during which time it would complete a feasibility study and perform the steps necessary to prepare an application for an FERC license. Applicant estimates the cost of the work under the permit would be $36,000.

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 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 December 29, 1980, 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 2, 1981. A notice of intent must conform with the requirements of 18 CFR 4.33 (b) and (c), as amended, 44 FR 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, protest, or petition to intervene must be filed on or before December 29, 1980. The Commission's address is: 825 North Capitol Street, NE., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33749 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket Nos. RP78-36, etc.]

Southern Natural Gas Co., et al.; Filing of Pipeline Refund Reports and Refund Plans

October 24, 1980.

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

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, on or before November 7, 1980. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
10/6/80	Southern Natural Gas Company.	RP78-36	Report.
10/10/80	Midwestern Gas Transmission Company.	RP76-114	Report.
10/14/80	Cities Service Gas Company.	RP72-142, *et al.*	Plan.

[FR Doc. 80-33750 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP80-21]

Texas Eastern Transmission Corp.; Third-Party Protests[1]

October 24, 1980.

Take notice that in accordance with the procedures established by the Federal Energy Regulatory Commission (Commission) in Order No. 23-B,[2] and "Order on Rehearing of Order No. 23-B,"[3] The Associated Gas Distributors (ADG) filed on August 15, 1980 a Supplemental Third-party Protest to their protest of October 15, 1979. AGD protests that Texas Eastern contracts listed below do not constitute contractual authority for the producer to increase prices to the applicable maximum lawful price set forth in the Natural Gas Policy Act of 1978, 15 U.S.C. 3301 *et seq.*

Seller	Rate schedule number	Contract date
Continental Oil Company	318	1/29/80
Sun Gas Company	209	1/29/80
General Crude Oil Company	10	1/29/80

Any person, other than the pipeline and the seller, desiring to be heard or to make any response with respect to this protest should file with the Commission on or before November 10, 1980, a petition to intervene in accordance with 18 CFR 1.8. The seller need not file for intervention because under 18 CFR 154.94(j)(4)(ii), the seller in the first sale is automatically joined as a party.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33751 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP80-21]

Texas Eastern Transmission Corp.; Third-Party Protests[1]

October 24, 1980.

Take notice that in accordance with the procedures established by the Federal Energy Regulatory Commission (Commission) in Order No. 23-B,[2] and "Order on Rehearing of Order No. 23-B,"[3] The public Service Commission of the State of New York (New York) filed on August 12, 1980, a Supplemental Third Party Protest to their protest of October 15, 1979. New York protests Texas Eastern's contractual authority allegedly contained in the "Stipulation and Agreement Regarding Producer Issues" in *Texas Eastern Transmission Corp.*, Docket No. G-12446 *et al.* (Rayne Field Settlement) to increase prices to the applicable maximum lawful price set forth in the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301 *et. seq.* The rate schedules are as follows:

Seller	Rate schedule number
Continental Oil Company	318
Sun Gas Company	209
General Crude Oil Company	10

New York states that the Rayne Field settlement agreement does not provide contractual authority to collect any NGPA price increases, including the section 104 price.

Any person, other than the pipeline and the seller, desiring to be heard or to make any response with respect to this protest, should file with the Commission on or before November 10, 1980, a petition to intervene in accordance with 18 CFR 1.8. The seller need not file for intervention because under 18 CFR 154.94(j)(4)(ii), the seller in the first sale is automatically joined as a party.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33752 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP80-21]

Texas Eastern Transmission Corp.; Third-Party Protests[1]

October 24, 1980.

Take notice that in accordance with procedures established by the Federal Energy Regulatory Commission (Commission) in Order No. 23-B,[2] and "Order on Rehearing of Order No. 23-B," [3] The Associated Gas Distributors (AGD) filed on September 22, 1980 a Supplemental Third-Party Protest to their protest of October 15, 1979. AGD protests that Texas Eastern contracts listed below do not constitute contractual authority for the producer to increase prices to the applicable maximum lawful price set forth in the Natural Gas Policy Act of 1978, 15 U.S.C. 3301, *et seq.*

[1] The term "third-party protest" refers to a protest filed by a party who is not a party to the contract which is protested.

[2] "Order Adopting Final Regulations and Establishing Protest Procedure," Docket No. RM79-22, issued June 21, 1979.

[3] Docket No. RM79-22, issued August 6, 1979.

[1] The term "third-party protests" refers to a protest filed by a party who is not a party to the contract which is protested.

[2] "Order Adopting Final Regulations and Establishing Protest Procedure," Docket No. RM79-22, issued June 21, 1979.

[3] Docket No. RM79-22, issued August 6, 1979.

[1] The term "third-party protest" refers to a protest filed by a party who is not a party to the contract which is protested.

[2] "Order Adopting Final Regulations and Establishing Protest Procedure," Docket No. RM79-22, issued June 21, 1979.

[3] Docket No. RM79-22, issued August 6, 1979.

Seller	Rate schedule number	Contract date
Atlantic Richfield Co	359	1/7/79
Atlantic Richfield Co	360	1/10/80
Amoco Production Co	283	6/2/80
Getty Oil Co	269	6/3/80
Union Oil Co of Calif	152	7/13/79
Texaco, Inc	416	5/12/80
Kerr-McGee Corp	172	2/1/80

Any person, other than the pipeline and the seller, desiring to be heard or to make any response with respect to this protest should file with the Commission on or before November 10, 1980, a petition to intervene in accordance with 18 CFR 1.8. The seller need not file for intervention because under 18 CFR 154.94(j)(4)(ii), the seller in the first sale is automatically joined as a party.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33753 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. RP77-138]

United Gas Pipe Line Co.; Supplement to Petition for Advance Approval for Accounting and Rate Treatment of Project Year Two Research, Development and Demonstration Expenditures, and Petition for Approval for Accounting and Rate Treatment of Project Years Three, Four and Five Research, Development and Demonstration Expenditures

October 24, 1980.

Take notice that on October 14, 1980, purusuant to § 154.38 (d)(5)(i) of the Regulations of the Federal Energy Regulatory Commission (Commission) United Gas Pipe Line Company (United) filed a petition in Docket No. RP77-138 for approval for accounting and rate treatment of research, development and demonstration (RD&D) expenditures incurred during the second through fifth years of United's RD&D project known as Project SNG-Biomass. Project SNG-Biomass involves the conversion of an untested combination of selected renweable carbonaceous materials into synthetic natural gas of pipeline quality by a unique integrated process combining the anaerobic digestion of biomass and waste feedstocks with the production of terrestrial and aquatic biomass feedstocks. United's petition describes the research tasks undertaken, the estimated or actual costs (as available) associated with such tasks and the integration of United's Project SNG-Biomass into a biomass research program being conducted by the Gas Research Institute.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 7, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33754 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. CI78-968]

United Gas Pipe Line Co.; Informal Conference

October 24, 1980.

This proceeding involves a petition by United Gas Pipe Line Company (United) for a declaratory order requesting that the Commission remove uncertainty as to whether and/or to what extent an interest in certain natural gas and producing acreage in the Ridge Field, Lafayette Parish, Louisiana, owned by Exchange Oil and Gas Corporation (Exchange) is dedicated to United. Both United and Exchange have submitted statements of facts, and both parties request an informal conference to be attended by all parties and Staff Counsel to discuss the facts, conclusions, and law involved in this proceeding to see if a determination can be reached on the issues.

Accordingly, an informal conference will be held at the Offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on November 18, 1980, at 9:00 A.M., in Room 8402, for the purpose above-stated. All interested parties are invited to attend.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33755 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[Docket No. GP81-4-000]

United States Geological Survey (New Mexico) Section 108 NGPA Determination, El Paso Natural Gas Co., Huerfanito Unit No. 75 Well; Preliminary Finding

October 23, 1980.

On May 28, 1980, the United States Geological Survey at New Mexico (USGS) notified the Commission of its determination that El Paso Natural Gas Company's Huerfanito Unit No. 75 Well, JD80-36472 USGS Docket No. NM4274-79 qualified as a stripper well under section 108 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301 *et seq.* The Commission published notice of the determination in the Federal Register on June 25, 1980.

Section 108(b) of the NGPA provides that in order to qualify as a stripper well, a well must, among other things, produce no more than 60 Mcf per production day at its maximum efficient rate of flow (MER) during the 90-day production period upon which the application is based. Section 271.804(d) of the Commission's interim regulations[1] stipulates the methods by which a jurisdictional agency may find that a well produced at its MER during the 90-day production period. One such method is reviewing average production over the 12-month period ending concurrently with the 90-day production period.

In this case, the USGS found that the subject well had produced an average of 40 Mcf for 50 producing days during the 90-day production period upon which the determination was based (February-April, 1979). However, the agency was initially unable to find that the well had produced at its MER, since no production capability tests were submitted by the applicant and average production over the 12-month period ending concurrently with the 90-day production period was 96 Mcf per production day.[2] Thus, the agency deferred making the determination in accordance with § 271.804(d)(3)(ii) of the Commission's interim regulations.

On March 24, 1980, the applicant submitted additional production information for May 1979 through January 1980 and sought to base its MER qualification on the 12-month period

[1] The deferral procedure of § 271.804(d)(3)(ii) of the interim regulations applies to all NGPA Section 108 applications filed before September 21, 1979. Order No. 44-A, Docket No. RM79-73 issued November 9, 1979, mimeo. at 7. The instant application was filed with USGS in July 1979. This procedure allows the jurisidictional agency to defer a preliminary well category determination when there has been no showing that the well produced at its MER.

[2] The average is apparently based on 319 production days.

from February 1979 through January 1980. For the first five months of this period records indicate that the well was intermittently shut in either for maintenance, repair, to build up pressure in the well, or to obtain reservoir data. The entire production amounted to 1,990 Mcf on a total of 68 production days during the 12-month period.[3] For the final seven months of the period, the well was continuously shut in. No attempts were made to reopen it to the line. Thus, the production average for the entire 12-month period, February 1979—January 1980, was 39 Mcf per production day. On that basis the USGS made and MER finding and submitted to the Commission a determination that the subject well qualifies as a stripper well.

On July 11, 1980, the Commission's Office of Pipeline and Producer Regulations (OPPR) sent a tolling letter to USGS requesting an explanation for the basis of its affirmative determination because the record did not reflect the establishment of a production pattern over a 12-month period during which the well was actually in production. A production pattern is necessary to establish the MER presumption required under § 271.804(d) of the interim regulations. Section 271.804(d)(2) provides that an MER presumption may be established: "if during the [deferred] 12-month period * * * such well produced non-associated natural gas at a rate which did not exceed an average of 60 Mcf per production day."

The Commission believes that in order to establish the MER presumption where a well has ceased production on its own before being shut in, it must be periodically opened to the line during the 12-month production period in conjunction with an attempt to return the well to production.

The subject well did cease production on its own prior to being shut-in. However, El Paso did not reopen the well to the line at any time during the final seven months of the 12-month production period. The Commission believes that an MER presumption cannot be made under these facts.

Accordingly, the Commission finds that there is a lack of substantial evidence that the subject well produced at its maximum efficient rate of flow during the qualifying 90-day production period.

The Commission Finds: On the basis of the record submitted with this determination, the Commission hereby makes a preliminary finding, pursuant to 18 CFR 275.202(a)(1)(i), that the determination submitted by USGS, that the Huerfanito Unit No. 75 well qualified as a section 108 stripper well, is not supported by substantial evidence in the record on which the determination was made.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33746 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

[3] The 68 production days include 50 days during the original 90-day production period plus 18 days in May and June of 1979.

[Docket No. ER81-35-000]

West Penn Power Co.; Proposed Tariff Change

October 24, 1980.

The filing Company submits the following: Take notice that West Penn Power Company, on October 20, 1980, tendered for filing a Supplement to its FERC Electric Service Tariff, Volume No. 2 consisting of an Electric Service Agreement with the Borough of Chambersburg, Pennsylvania, and three appendices thereto. The Agreement supersedes a pervious Agreement between West Penn Power Company and the Borough. West Penn Power Company has requested that the Agreement be deemed effective as of September 30, 1980, in order that the date of the Agreement and its applicability coincide. The proposed changes will have no effect upon purchases under other rate schedules and no change in rates is proposed in Agreement.

The reasons for the porposed changes are to update the format and language of the Agreement, to include special provisions applicable only to the Borough, and to provide for an increase in the capacity which West Penn will provide to the Borough.

A copy of the filing has been served upon the Borough of Chambersburg and upon the Pennsylvania Public Utility Commission by West Penn Power Company.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 17, 1980. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 80-33758 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-85-M

Office Hearings and Appeals

Issuance of Decisions and Orders; Week of August 25 Through August 29, 1980

During the week of August 25 through August 29, 1980, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Blum & Nash, Washington, D.C., BFA-0434, Freedom of Information

The law firm of Blum & Nash filed an Appeal from a partial denial by the Deputy Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration of a request for information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE concluded that portions of a memorandum discussing options for the regulatory treatment of crude oil-for-product exchange transactions and the draft of a Federal Register notice on that subject had been properly withheld under Exemption 5. The DOE also found, however, that there existed a distinct possibility that there were additional documents in the possession of the Division of Petroleum Price Regulations which were responsive to the Blum & Nash request, and a further search was therefore ordered.

William A. Dobrovir, Washington, D.C., BFA-0405, freedom of information

William A. Dobrovir filed an Appeal from a partial denial by the Deputy General Counsel for Regulation of a request for information which he had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that one document which was originally withheld under Exemption 5 should be released since the document's disclosure would not be contrary to the public interest. In addition, the DOE remanded several documents to the Deputy General Counsel with instructions either to release those documents in their entirety or to provide an adequate description of those documents and an adequate justification for their nondisclosure.

Marathon Oil Company, Findlay, Ohio, BEA-0135, motor gasoline

Marathon Oil Company filed an Appeal from a Redirection of Product Order which was issued to it by the Economic Regulatory Administration, Region IV on December 7,

1979. The Order directed Marathon to supply Farm Stores, Inc. with 93,273 gallons of motor gaosline during the month of November 1979. In considering the Appeal, the DOE found that contrary to Marathon's contentions, the Redirection of Product Order satisfied the criteria governing the issuance of such Orders. The DOE also rejected Marathon's contention that it was inappropriately selected as a supplier to Farm Stores due to its high gasoline prices. However, the DOE noted that the ERA failed to consider comments submitted by Marathon on a timely basis in opposition to its selection as a supplier. Therefore the DOE granted Marathon's Appeal and directed ERA Region IV to review the comments and determine whether the Redirection of Product Order should be reissued, modified or rescinded. The DOE also declined to require restitution of product before ERA Region IV reaches a final determination in this matter.

Mustang Fuel Corporation, Washington, D.C., BFA-0438, Freedom of information

Mustang Fuel Corporation filed an Appeal from a denial by the District Manager for Enforcement for the Southwest District of the Economic Regulatory Administration of a request for information which the firm has submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that two paragraphs which were initially withheld under Exemption 5 should be released because they contained only factual information. The remainder of the document was found to have been properly withheld because it was exempt from mandatory disclosure pursuant to Exemption 5 and because its release would be contrary to the public interest.

Shell Oil Company, Houston, Texas, BEA-0204;
Gulf Oil Corporation, Houston, Texas, BEA-0277;
Mobil Oil Corporation, Washington, D.C., BEA-0250;
Texaco, Inc., White Plains, New York, BEA-0302;
Cities Service Company, Tulsa, Oklahoma, BEA-0217, crude oil

Shell Oil Co. *et. al.*, filed Appeals seeking the rescission of a Decision and Order issued to Commonwealth Oil Refining Company (Corco) by the Economic Regulatory Administration (ERA) on February 5, 1980. In their submissions, the Appellants contended that the February 5 Order which granted Corco an emergency allocation of crude oil under the Buy/Sell Program, 10 C.F.R. § 211.65 is erroneous in fact and law, and is arbitrary and capricious. In considering the Appeals, the DOE determined that the ERA's methodology for determining range of prices for most crude oil on the world market was proper and that the ERA correctly concluded that Corco had met the criteria for an emergency allocation of crude oil under the Buy/Sell Program. Accordingly, the Appeals were denied.

Remedial Orders

Union Shell, BRO—1256;
Tom's Shell, BRO-1257;
Olympic Shell, BRO—1258;
Robbins Shell, BRO-1259;
North Oak Shell, BRO—1260;
Ken's No. 2 Shell, BRO-1261;
Ventura Shell, Los Angeles, California, BRO-1262, motor gasoline

Mr. Fazlollah Bazarganan, the owner and operator of the above-listed retail outlets, filed a submission which the Office of Hearings and Appeals deemed to be a Notice and Statement of Objections to a May 19, 1980 Proposed Remedial Order which was issued to him by the Western District of Enforcement of the Department of Energy. In the May 19 Proposed Remedial Order, the Western District Office found that during the period August 1, 1979 through February 29, 1980 the seven firms charged prices for motor gasoline which exceeded the maximum prices that they were permitted to charge under the provisions of 10 C.F.R. Part 212. On the basis of this finding, the Western District Office determined that each of the seven firms should rollback its prices by 2.0 cents per gallon until a specified quantity of gasoline has been sold at the reduced price. Mr. Bazarganan's submission failed to comply with several requirements of the DOE procedural regulations. Accordingly, he was informed by letter and by mailgram of the nature of the deficiencies and notified that the PRO would be issued as a final order unless the firm made a further submission. Since Mr. Bazarganan never responded to these communications or otherwise corrected the procedural deficiencies in his submission, the PRO was issued as a final order of the Department of Energy.

Requests for Exception

Automotic Comfort Corporation, Hartford, Connecticut, BEE-0294, gasohol

Automatic Comfort Corporation filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of unleaded motor gasoline for the purpose of blending and selling additional volumes of gasohol. In considering the request, the DOE found that exception relief was necessary because the firm's inability to obtain additional volumes of unleaded gasoline as a result of the DOE allocation regulations was frustrating the national objective of developing alternative energy sources. The DOE also found that the firm was in a position to continue to expand its gasohol program Accordingly, the request for exception relief was granted.

Bennett's Ashland, Burgin, Kentucky, BEO-0208, motor gasoline

Bennett's Ashland filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that it was suffering a serious financial hardship as a result of DOE regulations. Accordingly, exception relief was denied.

Broadway Truck Service, Spokane, Washington, BEE-0319, gasohol

Broadway Truck Service filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increased allocation of unleaded motor gasoline with which to produce gasohol. In considering the request, the DOE found that exception relief was necessary to enable the firm to establish a viable gasohol marketing program which would meet the demand for gasohol in its area. Accordingly, exception relief was granted.

Chevron U.S.A., Inc., BEE-0614; Cities Service Company, BEE-0735; Derby Refining/Coastal Corporation, BEE-1130; Diamond Shamrock Corporation, BEE-0774, Farmland Industries, BEE-0899; Getty Refining & Marketing Company, BEE-0492; Gulf Oil Corporation, BEE-0527; Kerr-McGee Corporation, BEE-1010; Pacific Resources, Inc., BEE-0589; Pester Refining Company, BEE-0656; Phillips Petroleum Company, BEE-0683; Standard Oil Company of Indiana, BEE-0702; Standard Oil Company of Ohio, BEE-0974; Sun Oil Company of Pennsylvania, BEE-1159; Texaco, Inc., BEE-0769; Time Oil Company, BEE-0703; Total Petroleum Company, BEE-0985; United Refining Company, BEE-0738; Vickers Petroleum Corporation, San Francisco, California, BEE-0537, gasohol

Nineteen refiners filed Applications for Exception from the provisions of 10 CFR Part 211 in which the firms sought permission to treat gasohol as a separate category and grade of motor gasoline for cost passthrough purposes. In considering the request, the DOE found that exception relief was necessary to prevent the application of the DOE Mandatory Allocation and Price Regulations from frustrating an important policy object. Accordingly, exception relief was granted.

Edgington Oil Company, Inc., Long Beach, California, BEE-0215, gasohol

Edgington Oil Company, Inc., filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an allocation of unleaded gasoline so that it could blend and market gasohol. In considering the request, the DOE found that the firm had failed to demonstrate that the DOE regulations were preventing it from obtaining sufficient supplies of unleaded gasoline to institute its gasohol programs. Accordingly, exception relief was denied. An important issue discussed in the Decision and Order is the appropriateness of diverting unleaded gasoline from a refiner which has made the improvements necessary to produce unleaded gasoline to a refiner which has not yet completed the improvements necessary to produce unleaded gasoline.

Green Springs Chevron, Homewood Alabama, BEO-0135, motor gasoline

Green Springs Chevron filed an Application for Exception from the provisions of 10 CFR § 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that Green Springs failed to submit any additional information in support of its Application for Exception, despite explicit findings in a Proposed Decision and Order regarding the particular deficiencies in the firm's submission. Accordingly, exception relief was denied.

Jack Halbert, Dallas, Texas, DEE-7932, crude oil

Jack Halbert filed an Application for Exception from the provisions of 10 CFR Part 212 in which the firm sought relief from its obligation to refund revenues allegedly attained by charging prices for crude oil and gas condensate in excess of the maximum levels permitted by Sections 212.73 and 212.74. In considering the request, the DOE found that the manner in which Halbert is required to refund the overcharges should be adjusted in order to avoid irreparable injury to Halbert. Accordingly, exception relief was granted in part.

Highway 259 Service Station and Garage, Leitchfield, Kentucky, BEO-0750, motor gasoline

Highway 259 Service Station and Garage filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that the base period allocation of a retail outlet the firm had acquired was apparently misrepresented by the outlet's former owner. The DOE further found that Highway 259 Service Station and Garage could not operate the outlet profitably or realize any of the intended benefits of investments made in the outlet with its existing base period allocation of motor gasoline. Accordingly, exception relief was granted.

Laurence & Sons Oil Company, Inc., Panama City, Florida, BEE-0237, gasohol

On October 26, 1979, Laurence & Sons Oil Company, Inc. (LOCO) filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought a separate allocation of unleaded motor gasoline for the purpose of blending and marketing gasohol. In considering the request, the DOE found that exception relief was necessary to prevent a gross inequity under applicable DOE allocation regulations. Accordingly, American Petrofina, Inc., the base period supplier of LOCO, was selected to furnish LOCO with an additional 108,000 gallons per month of unleaded motor gasoline for the purpose of blending gasohol for the twelve month period beginning the effective date of this Decision.

Lunday-Thagard Oil Company, Washington, D.C., DXE-3717, crude oil

The Lunday-Thagard Oil Company filed an Application for Exception from the provisions of 10 CFR 211.67. The exception relief, if granted, would relieve Lunday-Thagard of its entitlement obligations for the period June through September 1979. In considering the Lunday-Thagard request, the DOE determined that the firm should be granted exception relief under the *Delta* standards as modified by the "NOOSR ceiling" in the amount of $65,585 per month for the June through November 1979 period.

Randy Jones Car Wash, Escondido, California, BEO-0400, motor gasoline

Randy Jones Car Wash #2 filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had not demonstrated that it would be adversely affected to a significant degree in the absence of exception relief. The DOE also determined that an increase in traffic flow around the applicant's outlet due to completion of a highway bypass did not by itself justify relief. Accordingly, exception relief was denied.

Reserve Oil Inc., Denver, Colorado, BEE-0325, crude oil

Reserve Oil, Inc. (Reserve) filed an Application for Exception from the provisions of 10 C.F.R., Part 212, Subpart D. Exception relief was granted to permit Reserve to sell 48.09 and 74.82 percent of the crude oil produced from the SL-071595A Lease and the SL-069551 Lease, respectively, during the period November 14, 1979 through February 29, 1980; and 100 percent of the crude oil produced from those two leases during the period March 1, 1980 through July 31, 1980, at market price levels.

River Road Exxon, Richmond, Virginia, BEO-0370, motor gasoline

River Road Exxon filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the DOE allocation regulations. Accordingly, exception relief was denied.

Requests for Temporary Exception

Benson-Montin-Greer Drilling Corporation, Farmington, New Mexico, BEL-1118, crude oil

Benson-Montin-Greer Drilling Corporation (Greer) filed an Application for Temporary Exception from the provisions of 10 C.F.R. § 212.75 in which the firm sought permission to establish the base production control level (BPCL) in accordance with the provisions of 10 C.F.R. § 212.72 in conjunction with the formation of a single unit from a number of preexisting properties in order to improve extraction operations in the East Puerto Chiquito Mancos Pool in Rio Arriba County, New Mexico. In considering the request, the DOE concluded that the application to the firm of the provisions of the DOE regulations governing unitized properties resulted in a gross inequity which warranted exception relief. Accordingly, temporary exception relief was granted to permit Greer to establish the BPCL of the East Puerto Chiquito Mancos Unit by combining the BPCL's of all the properties comprising the Unit in the month that unitization takes effect.

Charter Oil Company, Jacksonville, Florida, BEL-1062, gasohol

The Charter Oil Company filed an Application for Temporary Exception from the provisions of 10 C.F.R. § 212.83 in which the firm sought to treat gasohol as a separate category and grade of gasoline for cost passthrough purposes. In considering the request, the DOE found that exception relief was necessary to encourage the firm to begin producing and marketing gasohol. Accordingly, exception relief was granted.

Motions for Discovery

Coastal States Gas Corporation, Houston, Texas, DRD-0113;
New England Power Company, Houston, Texas DRD-0015;
Southern California Edison Company, Los Angeles, California, DRH-0013; City of Los Angeles, Los Angeles, California, DRH-0037, DRD-0017;
Department of Water and Power, Houston, Texas, DRD-0018, DRD-0019;
Pacific Gas and Electric Company, Los Angeles, California, BRJ-0103, crude oil

Coastal States Gas Corporation, New England Power Company, Southern California Edison Company, City of Los Angeles, Department of Water and Power, Pacific Gas and Electric Company, and the DOE Office of Special Counsel for Compliance filed various Motions for Discovery and Evidentiary hearing in connection with several Statements of Objection filed by various parties concerning a Proposed Remedial Order issued to Coastal on September 6, 1978. In considering the request, the DOE found that several of the Motions were no longer necessary and accordingly dismissed them. In addition, the DOE found that Coastal's request for access to communications between members of Congress and employees of the Office of Hearings and Appeals should be denied as a discovery request but granted under the Freedom of Information Act. Finally, the DOE determined that a Protective order submitted by the parties should be issued as a final Order of the Department of Energy.

Interim Orders

Eagle's Chevron Service, West Yellowstone, Montana, BEN-0053, motor gasoline

On August 15, 1980, the Federal Energy Regulatory Commission issued an Order to Eagle's Chevron Service in which it determined that the firm had demonstrated that there was some likelihood of the firm prevailing on the merits of its Petition for Review and that in the absence of interim relief the firm would experience irreparable harm. In accordance with that Order, the Office of Hearings and Appeals increased Eagle's base period allocation of motor gasoline for the month of August 1980 from 18,000 gallons of motor gasoline to 24,000 gallons of motor gasoline.

Energy Cooperation, Inc., Central Point, Oregon, BEN-0952, gasohol

The Office of Hearings and Appeals issued an Interim Decision and Order to Energy Cooperation, Inc. which implemented immediately the exception relief tentatively approved for the firm in a Proposed Decision and Order issued July 15, 1980. In granting Interim relief, the DOE found that public interest considerations and the national policy of encouraging use of gasohol strongly favored interim exception relief. Accordingly, the exception tentatively approved in the Proposed Decision and Order was granted on an interim basis pending the resolution of the firm's Application for Exception.

Interim Orders

The following firms were granted Interim Exception relief which implements the relief

which the DOE proposed to grant in an order issued on the same date as the Interim Order:

Company Name, Case No., and Location

American Natural Gas Production Company, BEN-0052; Washington, DC
J. T. Collier & Sons Oil Company, BEN-0566; Jessup, GA

Protective Orders

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following applications and issued the requested Protective Order as an Order of the Department of Energy:

Company Name, Case No., and Location

White Petroleum, Inc., Rock Island Refining Corporation, BEJ-0123; Washington, DC
White Petroleum, Inc., Standard Oil of Ohio, BEJ-0124; Washington, DC, Cleveland, OH

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be denied.

Company Name, Case No., and Location

Bonura Exxon, BEO-0392; Cypress, CA
Cotten Service Station & Rentals, DEE-6464; Dallas, TX
Detroit Car Care Center, BEO-0726; Detroit, MI
Dick's Texaco Service, DEE-7438; Glendale, CA
John Fluck's Mini-Market, DEE-5877; Lansdale, PA
Milt Sears, BEE-0860
Don Cooper, BEE-0854
Reeder Service Center, BEE-0849
Jim Cole, BEE-0859
Will McConnell, BEE-0857
John Walker, BEE-0865
Clark Jones, BEE-0853
Bill Cooper, BEE-0861
Bob Jones, BEE-0863
Jim Still, BEE-0856
Virgil's Interstate Texaco, BEE-0802
Paul Clayton, BEE-0864
Jim Deer, BEE-0851
Harold's Texaco Service, BEE-0799
Chapel Hill Texaco, BEE-0797
Larry Reber, BEE-0852
Bob Grinter, BEE-0862
Arnoldo Barg, BEE-0855
Bill Satterfield, BEE-0858
Guy Goodine, BEE-0866
Charley's Texaco, BEE-0798

Petitions Involving the Motor Gasoline Allocation Regulations

The following firm filed an Application for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The request, if granted, would result in an increase in the firm's base period allocation of motor gasoline. The DOE issued a Decision and Order which determined that the request be dismissed without prejudice to a refiling at a later date.

Company Name, Case No., and Location

Coastal Center "66" Service Station, BEO-0041; Ladson, SC

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Company Name and Case No.

American Natural Gas Production Company, BEL-0057
Corona Mall Chevron, DRO-0781
Greene Oil Company, DEE-2040
Harrell Petroleum Company, DEE-3196; DES-3196; DST-3196
Mid-States Petroleum Inc., BEE-0847
Randall Memorial Texaco, Inc., DEE-7691
Texaco, Inc., BEE-1230; DEE-2160
Tosco Corporation, BEA-0408

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W. Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.d.t., except Federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

October 24, 1980.

[FR Doc. 80-33620 Filed 10-29-80; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of July 28 Through August 1, 1980

During the week of July 28 through August 1, 1980, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Ashland Oil, Inc., Ashland, Kentucky, BEA-0070; Conoco, Inc., Houston, Texas, BMR-0020; Getty Refining & Marketing Company, Tulsa, Oklahoma, BEA-0062; Kerr-McGee Refining Company, Oklahoma City, Oklahoma, BEA-0063; La Gloria Oil & Gas Company, Houston, Texas, BEA-0056; Mobil Oil Corporation, Washington, D.C., BEA-0057; BEA-0075; Phillips Petroleum Company, Bartlesville, Oklahoma, BES-0069; BST-0069; Sinclair Marketing, Inc., Washington, D.C., BEA-0058; BEA-0071; BEA-0041; BST-0041; BES-0042; BST-0042; Sun Oil Company of Pennsylvania, Washington, D.C., BMR-0017; BEH-0071; Texaco Inc., Washington, D.C., BEA-0052; Vickers Petroleum Corporation, Wichita, Kansas, BEA-0055 motor gasoline

The firms listed above filed Appeals, Applications for Stay and Temporary Stay, and a Motion for Evidentiary Proceeding to obtain relief from supply obigations imposed by the ERA Region VII Office of Petroleum Operations on October 11, 1979. Each of the firms was directed to supply specified amounts of motor gasoline to American Agri-Fuels Corporation (AAF) in order to implement an August 28, 1979 Decision and Order issued by the Office of Hearings and Appeals in which AAF was granted exception relief to promote the production of gasohol. Several firms also filed Motions for Reconsideration in which they asked the Office of Hearings and Appeals to modify or rescind the August 28 Decision and Order.

In the present Decision, the DOE considered all of the arguments which had been raised in connection with the October 11 Orders and the underlying August 28 Decision and Order. First, the DOE considered Sun's Motion for Evidentiary Proceeding and determined that the firm had failed to satisfy the criteria set forth in 10 CFR 205.64(c). Sun's Motion was therefore denied.

Next, the DOE examined various procedural claims advanced by the firms. In considering the firms' claims that their rights to due process had been violated, the DOE found that the firms had had an adequate opportunity to comment on both their assignment as suppliers and the underlying exception application. The DOE therefore concluded that the firms' due process rights had not been violated.

The DOE then discussed the firms' contention that the Office of Hearings and Appeals is without authority to grant exception relief to AAF. The DOE noted that a United States District Court recently upheld the authority of the Office of Hearings and Appeals to grant exception relief to AAF and therefore rejected this argument.

The DOE next considered Sun's contentions that the DOE was required to comply with the National Environmental Policy Act (NEPA). The DOE determined that NEPA's requirements were inapplicable to an adjudicatory proceeding such as the AAF Application for Exception. The DOE also rejected the firms' contention that AAF's sale of blended gasohol is an illegal "tying arrangement" prohibited by U.S. antitrust laws.

After concluding that all of the firms' legal arguments were without merit, the DOE considered their arguments for modification or rescission of the August 28 exception decision. The DOE rejected the argument that AAF should be allocated gasoline only to the extent necessary to enable it to produce anhydrous alcohol. The DOE also concluded that although it is uncertain whether the use of gasohol results in a net energy gain, the relevant issue is whether gasohol replaces a product made from imported crude oil with a partially renewable energy source of domestic origin. In addition, the DOE found that the firms' claim that the exception relief granted to AAF would result in a diversion of

unleaded gasoline supplies from other parts of the country to AAF's market area was largely without foundation. Finally, the DOE agreed that the August 28 Order should be modified to require AAF to offer 50 percent, rather than 25 percent, of its products on a first refusal basis to base period customers of its suppliers.

In the final part of the Decision, the DOE considered each firm's arguments concerning the appropriateness of its selection as a supplier. The DOE found that La Gloria and Sinclair had demonstrated that their customers would be burdened to a greater extent than the customers of the other assigned suppliers. Consequently, the Appeals of La Gloria and Sinclair were granted. The DOE concluded that the other firms were appropriate choices of suppliers for AAF. The Appeals of Vickers, Ashland, Getty, Kerr-McGee, Mobil, Phillips, Sun, and Texaco were therefore denied.

Cities Service Company, Tulsa, Oklahoma, BEA-0038; BEA-0081; BEA-0129; BEA-0157; BEA-0269; crude oil

Cities Service Company filed Appeals of each of the DOE Entitlements Notices issued during the period July 1979 through November 1979. In its Appeals, Cities claimed that the Entitlements Notices for those five months were not calculated in accordance with the definition of the national domestic crude oil supply ratio found at 10 C.F.R. § 211.62. In considering the request, the DOE found that an inadvertent error had been made when the definition at 10 C.F.R. § 211.62 was republished. Accordingly, the Appeals were denied.

Energy Cooperative, Inc., BEA-0309; Ashland Oil Company; BEA-0311; Crown Central Petroleum Corporation, BEA-0332; International Processors, BEA-0333; Energy Cooperative, Inc., BEA-0334; Ashland Oil Company, BEA-0335; Texas City Refining, Inc., BEA-0374; Tosco Corporation, BEA-0375; Ashland Oil Company, BEA-0376; Energy Cooperative Inc., BEA-0377; International Processors, BEA-0378; Crown Central Petroleum Corporation, BEA-0379; Seaview Petroleum Company, BEA-0380; United Refining Company, BEA-0381; Clark Oil & Refining Corporation, BEA-0382; Texas City Refining, Inc., BEA-0396; Seaview Petroleum Company, BEA-0402; International Processors, BEA-0403; Crown Central Petroleum Corporation, BEA-0404; United Refining Company, BEA-0409; Energy Cooperative, Inc., BEA-0410; Ashland Oil Company, BEA-0411; Clark Oil & Refining Corporation, BEA-0412; Murphy Oil Corporation, Washington, D.C. BEA-0413, crude oil

The petitioners in this proceeding filed Appeals from various Entitlements Notices issued by the ERA in which they challenged the treatment of Alaska North Slope crude oil under the Entitlements Program prior to the Program's amendment on July 3, 1980. The DOE held that the Entitlements Notices and the ERA's regulatory treatment of Alaska North Slope crude oil were lawful. Accordingly, the Appeals were denied.

Exxon Company, U.S.A., Washington, D.C. BEA-0150; BEA-0211; BEA-0263; BEA-0264; BEA-0266; BEA-0315; motor gasoline

Exxon Company, U.S.A. filed Appeals of six Orders for the Redirection of Product issued by the Region IV Office of Petroleum Operations in January, February, and March 1980. The Redirection Orders required Exxon to supply specified volumes of motor gasoline to four small wholesale purchaser-resellers in the Southeastern United States. In considering Exxon's appeals, the DOE determined that the six Redirection Orders contained adequate factual and legal bases. The DOE concluded that the Region IV Office of Petroleum Operations had not erred in choosing Exxon to supply the four firms. Accordingly, Exxon's Appeals were denied.

Exxon Company, U.S.A., Washington, D.C., BEA-0279;
Sun Oil Company of Pennsylvania, Philadelphia; Pennsylvania, BEA-0285;
Atlantic Richfield Company, Los Angeles, California, BEA-0303;
Cities Service Company, Tulsa, Oklahoma, BEA-0304;
Mobil Oil Corporation, New York, New York, BEA-0306;
Texaco Inc., White Plains, New York, BEA-0307;
Standard Oil Company (Indiana) Chicago, Illinois, BEA-0365, motor gasoline

Exxon Company, U.S.A., Sun Oil Company of Pennsylvania, Atlantic Richfield Company, Cities Service Company, Mobil Oil Corporation, Texaco Inc., and Standard Oil Company of Indiana filed Appeals from Revised Assignment Orders issued to the firms by the ERA Region V Office of Petroleum Operations. The Revised Assignment Orders directed each of the firms to supply U.S. Oil Company with approximately 3.8 million gallons of motor gasoline annually on a permanent basis. In considering the consolidated Appeals, the DOE determined that the Revised Assignment Orders provide reasoned bases for their issuance and adequate responses to the comments submitted by the appellants in opposition to their selection as suppliers. Accordingly, the Appeals were denied.

Giant Industries, Inc., Los Angeles, California, BFA-0388, Freedom of Information

Giant Industries, Inc. filed an Appeal from a denial by the Office of Special Counsel of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that release of the documents which were initially withheld under Exemption 7(A) would interfere with ongoing enforcement proceedings and concluded that the documents therefore should not be released to the public.

Howrey & Simon, Washington, D.C., BFA-0417, Freedom of information

The law firm of Howrey & Simon filed an Appeal from a denial by the ERA Region V Regional Counsel of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE determined that release of the withheld documents was not compelled by the United States Court of Appeals' recent decision in *Coastal States Gas Corp.* v. *DOE*. Accordingly, Howrey & Simon's Appeal was denied.

Industrial Fuel and Asphalt of Indiana, Inc., Hammond, Indiana, BEA-0369 crude oil

Industrial Fuel and Asphalt of Indiana, Inc. (IFAI) filed an Appeal of a Decision and Order issued by the ERA on April 23, 1980. In considering the Appeal, the DOE noted that it had previously rejected all the contentions raised by IFAI. Accordingly, the present Appeal was denied.

Western Organization of Resource Councils, Washington, D.C., BFA-0416, freedom of information

Western Organization of Resource Councils filed an Appeal from a denial by the DOE Office of Procurement Operations of a Request for Information which the firm had submitted under the Freedom of Information Act. The appellant sought copies of proposals which had been submitted in response to DOE solicitations. In considering the Appeal, the DOE fund that all of the proposals had been properly withheld under Exemption 4, since no final contracts or grants had yet been awarded.

Remedial Orders

Atwood Gulf, Pampa, Texas, BRO-0947, motor gasoline

Atwood Gulf filed a Notice of Objection to a Proposed Remedial Order which the Southwest Enforcement District of the ERA issued to the firm on November 13, 1979. In the Proposed Remedial Order, the Southwest District found that from September 21, 1979 to October 23, 1979 Atwood charged prices for motor gasoline which exceeded the maximum lawful prices which the firm was permitted to charge under the provisions of 10 C.F.R. § 212.93. Atwood failed to file a Statement of Objections to the Proposed Remedial Order. Accordingly, the DOE concluded that the Proposed Remedial Order should be issued as a final Order.

Golden Eagle Oil Company, Inc., Mount Kisco, New York, DRO-0286; DRD-0286; DRH-0286, residual fuel oil

Golden Eagle Oil Company, Inc. objected to a Proposed Remedial Order which the ERA issued to the firm on June 20, 1979. In the Proposed Remedial Order, the ERA found that Golden Eagle did not qualify as an "eligible firm" for purposes of receiving entitlements for the residual fuel oil which it imported and resold to certain utilities. In considering Golden Eagle's Statement of Objections, the DOE determined that the term "eligible firm" was ambiguous as applied to Golden Eagle. The DOE therefore concluded that the Proposed Remedial Order should be remanded. In addition, the DOE concluded that Golden Eagle's Motions for Discovery and Evidentiary Hearing should be denied, because Golden Eagle was seeking to establish facts which were already in the record.

Texinia Corporation, Oklahoma City, Oklahoma, DRO-0076; DRH-0076, crude oil

Texinia Corporation objected to a Proposed Remedial Order which the Office of Enforcement issued to the firm on June 20,

1978. In the Proposed Remedial Order, the Office of Enforcement found that Texinia had erroneously certified "gas well condensate" from two wells as "stripper well lease" crude oil and had charged more than the maximum allowable selling price for the liquid hydrocarbon. In considering the firm's objections, the DOE found that the Office of Enforcement had not met its burden of proving that the production was not from an associated reservoir. The DOE therefore concluded that the Proposed Remedial Order should be rescinded. Texinia's Motion for Evidentiary Hearing was dismissed as moot.

Requests for Modification and or Rescission

Commonwealth Oil Refining Company, Inc., The Charter Company, Washington, D.C., Jacksonville, Florida, BMR-0045, naphtha; motor gasoline

Commonwealth Oil Refining Company, Inc. (Corco) and Charter Company filed a joint Application for Modification in which they requested that exception relief previously granted to Corco be continued after the merger of the two companies. In considering the request, the DOE found that the proposed merger would not substantially alter the bases for the earlier approvals of exception relief but that certain minor modifications of the prior determinations were appropriate in light of the merger. Accordingly, the modification request was granted in part.

Marathon Oil Company, Washington, D.C., BMR-0042; BEA-0347, motor gasoline

Marathon Oil Company filed a Request for Modification or Recission of a Decision and Order which the DOE Office of Hearings and Appeals issued to Delta Petroleum Corporation on March 6, 1980. Marathon also filed an Appeal of an Amended Assignment Order issued by the ERA Region IV Office of Petroleum Operations on April 2, 1980 to effectuate the relief granted to Delta in the March 6 Decision and Order. In its submissions, Marathon argued that the circumstances under which Delta had been granted exception relief had substantially changed and that exception relief was no longer warranted. In considering these submissions, the DOE found that Delta had improperly upward certified increased motor gasoline supply obligations to Marathon. Accordingly, the DOE rescinded Delta's exception relief for the period August 1980 through October 1980, as well as the Assignment Order implementing that relief.

Requests for Exception

Arnie's ARCO Mini-Market, Junior, Boulder City, Nevada, DEE-3003, motor gasoline

Arnie's ARCO Mini-Market, Junior filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which it requested an increase in its base period allocation of motor gasoline. In considering the exception request, the DOE found that the firm was not suffering any hardship or inequity as a result of the Mandatory Petroleum Allocation Regulations. Accordingly, exception relief was denied.

Burns Service Center, Acton, Massachusetts, DEE-4490, motor gasoline

Burns Service Center filed an Application for Exception from the provisions of 10 C.F.R. § 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm was able to maintain a profitable operation at its current allocation level. Accordingly, exception relief was denied.

Cambrian School District, San Jose, California, BEO-0534, motor gasoline

The Cambrian School District filed an Application for Exception from the provisions of 10 C.F.R. § 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the School District had not shown that it would be unable to obtain sufficient motor gasoline for its operations. Accordingly, exception relief was denied.

Charles Fenley Enterprises, Modesto, California, BEO-1130, motor gasoline

Charles Fenley Enterprises filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. Fenley's request was tentatively granted in part in a Proposed Decision and Order issued by the Western Regional Center of the Office of Hearings and Appeals. The firm filed a Statement of Objections to the Proposed Decision and Order in which it requested additional increases in its base period allocation. In considering the request, the DOE found that the firm had failed to demonstrate that the relief granted in the Proposed Decision and Order was inappropriate or that the firm would suffer a serious hardship or gross inequity in the absence of additional relief. Accordingly, Fenley's Statement of Objections was denied, and the Proposed Decision and Order was issued in final form.

Chevron U.S.A., Inc., San Francisco, California, DEE-7939, crude oil

Chevron U.S.A., Inc., filed an Application for Exception from the provisions of 10 C.F.R. Part 212, Subpart D. Exception relief was granted to permit Chevron to sell at market prices not to exceed $15.10 per barrel 71.52 percent of the crude oil produced from the KCL-63, Stevens Pool Lease.

R. H. Engelke, San Antonio, Texas, BXE-0896, crude oil

R. H. Engelke filed an Application for Exception from the provisions of 10 C.F.R. Part 212, Subpart D. Exception relief was granted to permit Engelke to sell at market prices 64.49 percent of the crude oil produced from the Bertha Copsey Lease.

Furr's Texaco, Annandale, Virginia, BEO-1116, motor gasoline

Furr's Texaco filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that it was suffering a serious financial hardship as a result of DOE regulations. Accordingly, exception relief was denied.

Guam Oil & Refining Company, Inc., Dallas, Texas, FEE-4105, crude oil

Guam Oil & Refining Company, Inc., (Gorco) filed an Application for Exception from the provisions of 10 C.F.R. § 211.67 in which it requested retroactive exception relief to earn entitlements on unfinished oils utilized in its refinery during the period November 1974 through February 1977. In considering the request, the DOE found (1) that approximately $20 million of the $25 million in entitlements benefits which the firm had incorrectly earned on unfinished oils had been passed through to the firm's customers, (2) that Gorco might well experience severe and irreparable injury in the absence of relief, and (3) that the denial of relief would adversely affect the economy of the Island of Guam. Accordingly, exception relief was granted which relieved Gorco of any liability for the portion of the entitlements benefits which the firm had passed through to its customers.

Import Dealers Service Corporation, Long Beach, California, DEE-4484, motor gasoline

Import Dealers Service Corporation filed an Application for Exception from the provisions of 10 CFR Part 211, in which the firm requested an increase in its base period allocation of motor gasoline. In considering the request, the DOE determined that exception relief was inappropriate, since there was not a significant discrepancy between the firms's base period entitlement of motor gasoline and its current business requirements. Accordingly, exception relief was denied.

James Tidwell Chevron, Nipomo, California, BXE-0699, motor gasoline

James Tidwell Chevron filed an Application for Exception from the provisions of 10 CFR § 211.102 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm had failed to demonstrate that the community of Nipomo was experiencing a gross inequity or an unfair distribution of burdens under the motor gasoline allocation regulations. Accordingly, exception relief was denied.

Kleen King, Inc., Seattle, Washington, BEO-0064, motor gasoline

Kleen King, Inc. filed an Application for Exception from the provisions of 10 CFR Part 211. In considering the request, the DOE found that the applicant had no reasonable expectation of receiving an increase in the base period allocation of motor gasoline for the retail outlet which it purchased subsequent to the updating of the base period. The DOE also found that the residents of the community in which the applicant is located are not experiencing an unfair distribution of burdens. Accordingly, exception relief was denied.

L. S. Riggins Oil Company; Atlantic Richfield Company, Millville, New Jersey; Los Angeles, California, DEE-3603; DST-3603, motor gasoline

L. S. Riggins Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought a lower-priced supplier of motor gasoline. In a Proposed Decision and Order, the DOE tentatively granted Riggins' exception request

and assigned the Atlantic Richfield Company (Arco) to supply a portion of Riggins' allocation for June and July 1979. The DOE also issued an Interim Decision and Order which immediately implemented this relief. Arco subsequently filed an Application for Temporary Stay of the Interim Decision and Order and a Statement of Objections to the Proposed Decision and Order. In considering Arco's Statement of Objections, the DOE determined that the Proposed Decision and Order incorrectly found that Arco would be a willing supplier of Riggins. However, the DOE affirmed the designation of Arco as a supplier of Riggins. Accordingly, the DOE granted Riggins' Application for Exception and dismissed Arco's temporary stay request.

Paradee Oil Company, Dover, Delaware, DEE-7527, Gasohol

The Paradee Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increased allocation of unleaded gasoline for the purpose of blending gasohol. In considering the request, the DOE found that exception relief was necessary in order to further the national policy objective of increasing gasohol production. Accordingly, exception relief was granted.

Pearce Community Mart, Kinston, North Carolina, BEO-1120, motor gasoline

Pearce Community Mart filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm's operations were profitable at its current allocation level. Accordingly, exception relief was denied.

Pennant Petroleum Company, Tulsa, Oklahoma, DEE-3931, motor gasoline

Pennant Petroleum Company filed an Application for Exception from the provisions of 10 CFR Part 211.102, in which the firm sought an increase in its base period allocation of motor gasoline. In considering the firm's request, the DOE found that the reduction in Pennant's profits was not caused by the DOE's motor gasoline allocation regulations but by bad debts and by sales of petroleum products other than gasoline. Accordingly, exception relief was denied.

Rainbow Oils of San Angelo, Inc., San Angelo, Texas, DEE-5501, motor gasoline

Rainbow Oils of San Angelo, Inc. filed an Application for Exception from the provisions of 10 CFR Part 211.104 in which the firm sought an increased based period allocation of motor gasoline for three of its customers, each of which is a tire testing firm. In considering the request, the DOE found that exception relief was necessary in order to allow the tire testing firms sufficient supplies of motor gasoline to enable them to test passenger tires for compliance with federal grading requirements. Accordingly, exception relief was granted.

Standard Oil Company (Indiana), Chicago, Illinois, DEE-6160, propane

Standard Oil Company (Indiana) filed an Application for Exception from the provisions of 10 CFR Part 211, Subpart D, in which it requested an increase in its base period volumes of propane for use as petrochemical feedstock at its petrochemical complex in Chocolate Bayou, Texas. In considering the request, the DOE noted that the propane allocation regulations had been amended to permit a firm to file a request with the Economic Regulatory Administration for an adjustment in its propane allocation. Accordingly, the DOE dismissed the firm's exception request.

Wally's Arco, Arlington Heights, Illinois, BEO-0022, motor gasoline

Wally's Arco filed an Application for Exception from the provisions of 10 C.F.R. Part 211, in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE determined that exception relief was inappropriate since the applicant had acquired the retail sales outlet in question after the updating of the base period for motor gasoline allocation. Accordingly, exception relief was denied.

Requests for Temporary Exception

Pacific Refining Company, Houston, Texas, BEL-1267, naphtha

Pacific Refining Company filed an Application for Temporary Exception from the provisions of 10 C.F.R. Part 211, Subpart C. In its Application, Pacific sought to include all of its refinery feedstock, including the portion consisting of imported naphtha, in determining the number of entitlements that its parent company, Coastal Corporation, is permitted to sell to other refiners. In considering the request, the DOE found that Pacific had not demonstrated that its transportation fuel customers would experience economic and competitive harm in the absence of the requested relief. The DOE also determined that the firm had not demonstrated that it was likely to succeed on the merits of its underlying Application for Exception. Accordingly, Pacific's Application for Temporary Exception was denied.

Pennzoil Company, Houston, Texas, BEL-1186, crude oil

Pennzoil Company filed an Application for Temporary Exception from the provisions of 10 C.F.R. § 211.67 in which the firm sought an increase in the number of entitlements issued to it under the DOE Entitlements Program. In considering the request, the DOE determined that the firm had failed to demonstrate that it was suffering an irreparable injury as a result of the Entitlements Program or that there was a strong likelihood that it would succeed on the merits of its underlying exception application. Accordingly, temporary exception relief was denied.

Quaker State Oil Refining Corporation, Oil City, Pennsylvania, BEL-0795, crude oil

Quaker State Oil Corporation filed an Application for Temporary Exception from the provisions of 10 C.F.R. § 211.67 in which the firm sought an increase in the number of entitlements issued to it under the DOE Entitlements Program. In considering the request, the DOE determined that the firm had failed to satisfy the regulatory criteria for the approval of temporary exception relief. In particular, the DOE found that the firm had failed to demonstrate that it was suffering an irreparable injury as a result of the closing of its Emlenton, Pennsylvania, refinery. Accordingly, temporary exception relief was denied.

Tenneco Oil Company, Houston, Texas, BEL-1238, gasohol

Tenneco Oil Company filed an Application for Temporary Exception from the provisions of 10 C.F.R. Part 211 and 10 C.F.R. § 212.83 in which the firm sought to sell motor gasoline in the form of gasohol to designated retail outlets in excess of the outlets' base period allocations and to market gasohol as a separate category and grade of gasoline. In considering the request, the DOE found that temporary relief was warranted, since the removal of regulatory disincentives to the production of gasohol would help to diminish the nation's reliance on imported crude oil. In addition, the DOE found that the firm was likely to succeed on the merits of its underlying Application for Exception. Accordingly, temporary exception relief was granted.

Request for Stay

Dollar-Wise, Ltd., Afton, Iowa, BES-1212, test procedures

Dollar-Wise, Ltd. filed an Application for Stay of the energy efficiency test procedures prescribed in 10 C.F.R. Part 430, Appendix N, which are applicable to a water heater-assisted, forced air furnace recently developed by the firm. In considering the stay request, the DOE found that the test procedures could not be applied to the Dollar-Wise furnace and that in the absence of immediate relief the firm would be prevented from marketing the furnace. Accordingly, stay relief was granted pending a final determination on the firm's Application for Exception

Request for Temporary Stay

Little America, Refining Company, Inc., Washington, DC., BST-0085, Crude oil

Little America Refining Company, Inc. (Larco) filed an Application for Stay and temporary Stay in which the firm sought to be relieved of its obligation to purchase entitlements under 10 C.F.R. § 211.67. In considering Larco's request, the DOE determined that some temporary stay relief was necessary to prevent Larco from suffering irreparable injury. However, the DOE also determined that granting the entire amount of relief requested by Larco would harm several firms by preventing them from selling entitlements. Accordingly, the DOE stayed for ten working days approximately one-half of Larco's entitlements purchase obligations.

Motions for Discovery

Gulf Oil Corporation, Houston, Texas, BED-0062, BEJ-0092, Motor gasoline

Gulf Oil Corporation filed a Motion for Discovery and a Motion for Protective Order relating to the firm's Statement of Objections to a Proposed Decision and Order issued to Cia. Petrolera Del Caribe, Inc. on April 29, 1980. Both of Gulf's Motions request that the firm be provided with information designated as confidential in Petrolera's original

Application for Exception. In considering Gulf's requests, the DOE determined that Gulf should be provided with all of the information contained in the Petrolera Application for Exception, in order to enable the firm fully and fairly to present its objections to the proposed grant of exception relief. Accordingly, Gulf's Motions were granted, and Petrolera was ordered to execute a protective order with Gulf prior to providing the firm with the withheld information.

Marathon Oil Company, Findlay, Ohio, DED-6387, motor gasoline

Marathon Oil Company filed a Motion for Discovery and Protective Order in connection with its Statement of Objections to a Proposed Decision and Order which the DOE tentatively granted to U.S. Oil Company. In its Motion, Marathon requests that the DOE direct U.S. Oil to disclose to Marathon certain financial and operating data which U.S. Oil submitted to the DOE. In considering Marathon's Motion, the DOE found that with a single exception, the data requested by Marathon was both relevant and material to the firm's objections to the Proposed Decision and Order. Accordingly, Marathon's Motion for Discovery and Protective Order was granted in part.

Missouri Terminal Oil Company, St. Louis, Missouri, BED-0048, motor gasoline

Missouri Terminal Oil Company (MoTer) filed a Motion for Discovery in connection with its Statement of Objections to a Proposed Decision and Order which was issued to the Onyx Corporation. In its discovery request, MoTer asks the DOE to direct Onyx to supply MoTer with certain financial information relating to Onyx's petroleum-related business operations. In considering the request, the DOE concluded that MoTer could not respond to Onyx's claim of financial hardship unless it could review data possessed by Onyx concering the extent of the firm's alleged injury. Accordingly, MoTer's discovery request was granted in part.

Wyoming Refining Company, Washington, D.C., BED—1064, crude oil

Wyoming Refining Company filed a Motion for Discovery in which it sought access to confidential information submitted to the DOE by Little America Refining Company, Inc., (Larco) in connection with the firm's Application for Exception. In considering Wyoming's request, the DOE found that although a Proposed Decision and Order has not yet been issued in response to Larco's Application for Exception, discovery was necessary in view of the adversarial nature of the exception proceeding and Wyoming's showing that it had been harmed in the past by exception relief granted to Larco. Accordingly, Wyoming's Motion was granted in part, and Larco was directed to enter into a protective order under which independent counsel for Wyoming would be allowed access to Larco's data.

Supplemental Orders

Belcher Oil Company, Washington, D.C., BRX—0076, residual fuel oil

Belcher Oil Company filed a "Motion to Compel and to Strike Responses to Certain Requests for Admission" in connection with a Statement of Objections to a Proposed Remedial Order which was issued to the firm by the DOE Office of Special Counsel. In considering the Motion, the DOE determined that the Florida Power and Light Company's responses to Belcher's requests for admission were adequate but that the OSC should be requred to file supplemental responses with respect to three of Belcher's requests. Accordingly, Belcher's Motion was granted in part.

Edgewater Standard Service, Orlanda, Florida, BEX-0061, motor gasoline

In this proceeding, the DOE reconsidered its decision to dismiss an Application for Exception filed by Edgewater Standard Service. The dismissal of the firm's exception request had been based upon a finding that the firm was entitled to receive additional supplies of motor gasoline under the provisions of 10 C.F.R. § 211.106(c)(1). In reconsidering that finding, the DOE determined that Edgewater could not automatically receive additional volumes of gasoline under Section 211.106(c)(1). In considering the firm's original Application for Exception, the DOE determined that the agency's interpretation of Section 211.106(c)(2)(i) set forth in Ruling 1974-13 results in a gross inequity to Edgewater. Accordingly, the firm's exception request was granted.

Young Refining Corporation, Washington, D.C., BEX-0081, crude oil

On July 29, 1980, the DOE issued a Decision and Order to Young Refining Company staying that firm's obligation to purchase entitlements as required by 10 C.F.R. § 211.67 to the extent specified in a Proposed Decision and Order which was issued to the firm on the same day.

Protective Order

The following firms filed an Application for Protective Order. The application, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firms. The DOE granted the following application and issued the requesting Protective Order as an Order of the Department of Energy:

Company Name, Location, and Case No.

Atlantic Richfield Company; Chevron U.S.A. Inc., Los Angeles, CA, BEJ-0111

Interim Order

The following firm was granted Interim Exception Relief which implements the relief which the DOE proposed to grant in an order issued on the same date as the Interim Order:

Company Name, Location, and Case No.

Wherrell Oil Company, Okeechobee, FL; BEN-0042

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocations of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be denied.

Company Name, Location, and Case No.

Auberry general Store, Auberry, CA; DEE-4386
Automatic Gas Distributors, Inc., Denver, CO; DEE-5103; DEE-5104; DEE-5106 through DEE-5108
Bullard Plaza Union, Fresno, CA; DEE-5207
Bullock's Exxon, Mason, OH; DEE-7341
Daniel Kobasa, Lansdale, PA; BEO-1103
Jim's Standard Station, McLain, MS; BEO-0254
Jim's Quick Stop Shopper, Parker, PA; BEO-0511
Lemoine Petroleum Products, Mansura, LA; DEE-6663
Marty's Amoco, Burtonsville, MD; DEE-7354
Mel's 66 Truck Stop, Spooner, WI; BEO-1090
Melrose Park Shell, Ft. Lauderdale, FL; BEO-0023
Phil's Gulf & Service, Blue Hill, ME; DEE-5806
The Country Store, Paupack, PA; BEO-0468
Tom's Mobil, Lebanon, PA; BEO-1047

Company Name and Case No.

Amerada Hess Corp., BEE-1098
Bale Oil Company, DEE-3422
Bale Tire Store, DEE-6890
Budget Rent-A-Car of Oakland, DEE-6666
Carriage Square Mobil Service, DEE-6647
Dunston Enterprises, Inc., DEE-7236
E. C. Feagan, Inc., DEE-5598
Eagle Oil Company, Inc., DEE-3393
Embry Hills Chevron, DEE-3240
Empire Oil Company, Inc., DEE-6750
Homestead Plaza Exxon, DEE-6654
Kern's Thrift, DEE-6886
L. M. Petroleum Company, BEE-0374
Live Oak Texaco, DEE-4925
Louk Oil Company, DEE-3514
M-59 Pontiac Lake Shell, DEE-6863
McDonald Lumber Company, Inc., DEE-3279
McSpadden Petroleum, Inc., DEE-5779
Meridian Oil Company, BEE-0933
Mid Coast Oil Sales, DEE-7778
Montclair Service Station, DEE-3965
Montgomery Oil Company, DEE-4299
Omer's Shell Service, DEE-5892
RPN, Inc., DEE-4083
Seaway ARCO, DEE-8100
Seitz, Norman, DEE-4097
Summer Avenue 66 Service, DEE-6976
Super Truck Rental Corporation, DEE-6800
Town Line Service, DEE-7116
Tuloil Inc. DEE-2996
Walters Distributing Company, DEE-3582
Walters Distributing Company, DEE-6713
WESCO Fuels, Inc., DEE-2584
Whitie's Alliance Service, DEE-3754

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Company Name and Case No.

Bell Fuels, Bell Fuels, Inc., R. W. Troch Oil Co., Robert W. Troch, Jr., BSG-0028
Federation of American Scientists, BFA-0436
Homes Oil Company, Inc., DEE-6894
John E. Jones Oil Company, Inc., BEO-0627
Keystops, Inc., DEE-6475
The Country Store, BEN-0012

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

October 24, 1980.

[FR Doc. 80-33830 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of August 11 Through August 15, 1980

During the week of August 11 through August 15, 1980, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management; Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Acting Director, Office of Hearings and Appeals.

October 24, 1980.

Appeals

Deuterium Corporation, New Rochelle, New York, BFA-0419, Freedom of Information

Deuterium Corporation filed an Appeal from a partial denial by the Assistant Manager for Administration, DOE San Francisco Operations Office, of a Request for Information which the firm had submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that portions of a Proposal submitted in response to an Office Request for Proposal which were initially withheld under Exemption 4 are confidential and therefore should not be released to the public.

Giant Industries, Incorporated, Washington, D.C., BEA-0182, crude oil

Giant Industries, Inc. (Giant) filed an Appeal of an Order issued to the firm by the Economic Regulatory Administration (ERA). The ERA Order grants the firm an allocation of crude oil, under 10 CFR 211.65(a)(1)(iii), for 3,200 B/D of "newly constructed refinery capacity." In its Appeal, Giant requests that the level of this allocation be increased. In considering the Appeal, the DOE found that, as of August 24, 1977, the Giant planned capacity expansion was at a level of 7,900 B/D of "newly constructed refinery capacity." The DOE therefore granted the Giant Appeal and ordered that crude oil allocations to the firm be based on 7,900 B/D, rather than 3,200 B/D, of "newly constructed refinery capacity."

U-Haul Corp. of Central Virginia, Washington, D.C., BEA-0158, motor gasoline

U-Haul Corporation of Central Virginia filed an Appeal of a determination issued by the Region III Director of Petroleum Operations dismissing the Application for Assignment of a supplier and base period supply volumes filed by U-Haul. In considering the Appeal, the DOE found that U-Haul had a base period supplier and allocation of motor gasoline since the firm had purchased gasoline during the November 1977-October 1978 base period. The DOE also found that U-Haul had not made a *prima facie* showing that it was entitled to exception relief. Accordingly, the U-Haul Appeal was denied.

Remedial Orders

Texaco, Inc., White Plains, New York, DRO-0166, DRD-0166, DRH-0166, motor gasoline

Texaco, Inc. objected to a Proposed Remedial Order (PRO) which the DOE Office of Special Counsel issued to the firm on December 26, 1978. In the PRO, the Office of Special Counsel found that Texaco reduced the price differential between its retail and distributor prices of motor gasoline in PADD V by implementing unequal price increases in January 1977. In considering the firm's objections, the DOE found that Texaco was correct in stating that it has not violated the DOE Mandatory Price and Allocation Regulations as alleged in the PRO. The DOE therefore concluded that the PRO should be dismissed with prejudice and the accompanying motions dismissed as moot. Important issues discussed in the Decision and Order include (i) whether price differentials may be considered as normal business practices and (ii) whether an unequal price increase circumvents supplier/purchaser relationships or discriminates or retaliates against distributors.

In the following case involving a Proposed Remedial Order and/or Interim Remedial Order for Immediate Compliance, no Statement of Objections was filed. The DOE therefore issued the order in final form.

Company Name, Case No., and Location

Earl's Downtown Standard, BRW-0050; St. Louis, MO

Requests for Exception

Baxter's Marathon Services, Indianapolis, Indiana, BEO-0014, motor gasoline

Baxter's Marathon Services filed an Application for Exception from the provisions of 10 C.F.R., Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary to prevent the firm from experiencing a serious hardship. Accordingly, exception relief was granted.

Combie Plaza, Auburn, California, BEO-0492, motor gasoline

Combie Plaza filed an Application for Exception from the provisions of 10 C.F.R. 211.102 in which the firm sought an increased allocation of motor gasoline. In considering the request, the DOE found that the firm has failed to demonstrate that its adjusted base period allocation was insufficient to meet the needs for motor gasoline of the residents of Auburn, California. Accordingly, exception relief was denied.

Ewing Oil Company, Hagerstown, Maryland, BEE-0459, gasohol

Ewing Oil Company, Inc. filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increased allocation of unleaded motor gasoline for the purpose of producing gasohol. In considering the request, the DOE found that exception relief was necessary to provide the firm sufficient resources and incentive to enable it to establish a viable gasohol marketing program. Accordingly, exception relief was granted.

Flower Exxon Service Center, Takoma Park, Maryland, DEE-5537, motor gasoline

Flower Exxon Service Center filed an Application for Exception from the provisions of 10 C.F.R., Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the DOE allocation regulations. Accordingly, exception relief was denied.

General Dynamics, Pomona, California, BEO-1181, motor gasoline

General Dynamics filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary to enable the firm to maintain its inter-facility van service and its fleet car shared ride service. Accordingly, exception relief was granted. The significant issue discussed in the Decision and Order is the importance of assisting firms to promote the important national policy of conserving motor gasoline.

Hawaii Automotive and Retail Gasoline Dealers Assn., Honolulu, Hawaii, DEE-8070, motor gasoline

The Hawaii Automotive and Retail Gasoline Dealers Association (H.A.R.G.D.) filed an Application for Exception on behalf of all retail gasoline service stations in the State of Hawaii. In its Application, H.A.R.G.D. sought an increase in the maximum price which retailers are permitted to charge under the provisions of 10 CFR 212.93(a). In considering the request, the DOE found that there was no basis for determining that retailers in Hawaii would experience a serious hardship, gross inequity or unfair distribution of burdens in the absence of exception relief permitting them to apply a higher profit margin on their gasoline sales.

Accordingly, exception relief was denied. The factors upon which the Decision was based are (i) a majority of the retail stations in Hawaii were not selling gasoline at or near the maximum permissible price; (ii) living costs in Hawaii do not appreciably exceed those in several populous American cities; and (iii) labor costs incurred by retailers in Hawaii are not inordinately high.

Lake Wright Texaco, Virginia Beach, Virginia, DEE-2685, motor gasoline

Lake Wright Texaco filed an Application for Exception from the provisions of 10 CFR Part 211 in which the firm sought an increase in its base period allocation of motor gasoline. In considering the request, the DOE found that the firm was not experiencing a serious hardship, gross inequity or unfair distribution of burdens as a result of the DOE allocation regulations. Accordingly, exception relief was denied.

Illinois Ayers Oil Company, Quincy, Illinois, BEE-0562, gasohol

Illinois Ayers Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211. In its Application, the firm sought an increase in its base period allocation of unleaded gasoline in order to maintain and expand its gasohol production and marketing activities. In considering the request, the DOE found that exception relief was necessary to enable the firm to expand its gasohol marketing operations. Accordingly, exception relief was granted increasing Illinois Ayers' base period allocation of unleaded gasoline by 100,000 gallons per month.

Keller Oil Company, Inc., Effingham, Illinois, BEE-0711, gasohol

The Keller Oil Company, Inc. filed an Application for Exception from the provisions of 10 CFR § 211.102 in which the firm sought an increased allocation of unleaded motor gasoline for the express purpose of producing gasohol. In considering the request, the DOE found that the firm had not made a significant commitment to the production and marketing of gasohol. Accordingly, exception relief was denied.

L. H. Smith Oil Corporation, Indianapolis, Indiana, BEE-0913, motor gasoline

L. H. Smith Oil Corporation filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought to be established as the base period supplier of motor gasoline at several federal installations. In considering the request, the DOE found that exception relief was necessary to permit the firm to participate in the Small Business Administration's Section 8(A) program. Accordingly, exception relief was granted.

Laketon Asphalt Refining, Inc., Evansville, Indiana, DXE-2113, crude oil

Laketon Asphalt Refining, Inc. filed an Application for Exception from the provisions of 10 C.F.R. 211.67 in which the firm sought relief from its obligation to purchase entitlements during the period January through June 1979. In considering Laketon's request, the DOE found that the entitlement purchase obligation would prevent the firm from attaining either its historical profit margin or its historical return on invested capital. The DOE granted Laketon exception relief amounting to $238,910 per month for five months from January through May 1979 and $1,463,251 for June 1979.

Lohr Petroleum Company, Columbus, Nebraska, BEE-0432, gasohol

Lohr Petroleum Company filed an Application for Exception in which it sought an increase in its base period allocation of unleaded motor gasoline for the purpose of enabling the firm to produce and market gasohol. The DOE granted the firm's request and assigned Phillips Petroleum Company, Lohr's base period supplier, to supply Lohr with 9,000 gallons of additional unleaded motor gasoline per month.

Mauritz & Carroll, White Plains, New York, BEE-0737, gasohol

Mauritz & Carroll filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its base period allocation of unleaded motor gasoline for the purpose of producing gasohol. In considering the request, the DOE found that exception relief was necessary to provide the firm with an adequate economic incentive to increase its production of gasohol. Accordingly, exception relief was granted.

Mercy Peninsula Ambulance Service, Dale City, California, BEO-0611, motor gasoline

Mercy Peninsula Ambulance Service filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increased base period allocation of motor gasoline. In considering the request, the DOE found that exception relief was necessary to enable the firm to provide efficient emergency service to the San Mateo, California area. Accordingly, exception relief was granted.

Petro-Wash, Inc., Atlanta, Georgia, DEE-2318, motor gasoline

Petro-Wash, Inc. filed an Application for Exception which, if granted, would increase the firm's base period allocation of motor gasoline. Petro-Wash claimed that it would experience a serious financial hardship if exception relief were not approved. In considering the firm's request, the DOE found that any reduction in profits which Petro-Wash is experiencing results from its own discretionary business decisions rather than the DOE allocation regulations. The DOE concluded that exception relief was therefore inappropriate in this case and denied the Petro-Wash exception request.

Priest Explorations, Inc., Oklahoma City, Oklahoma, BXE-0817, Crude oil

Priest Explorations, Inc. (Priest) filed an Application for Exception from the provisions of 10 C.F.R., Part 212, Subpart D. Exception relief was granted to permit Priest to sell at market prices 30.25 percent of the crude oil produced from the Barnes Well 2A.

Surfco Branded Service Station, Tulsa, Oklahoma, BEO-1075, motor gasoline

Getty Refining and Marketing Company (GRMC) filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in the motor gasoline allocation of one of its Surfco branded service stations. In considering the request, the DOE found that exception relief was necessary to enable the Surfco outlet to sell sufficient volumes of motor gasoline to meet its operating expenses. Accordingly, exception relief was granted. The important issues discussed in the Decision and Order are (i) the gross inequity which GRMC would incur in view of its investment in the outlet subsequent to the updated base period and prior to the implementation of Standby Regulation Activation Order No. 1; (ii) that the Surfco remain competitive; and (iii) that the increased volumes for the Surfco outlet should come from other GRMC-operated service stations.

T.W. Brown Oil Company, Ventura, California, BEE-0520, gasohol

T.W. Brown Oil Company filed an Application for Exception from the provisions of 10 C.F.R. Part 211 in which the firm sought an increase in its allocation of unleaded motor gasoline to be used to blend and sell gasohol. In considering the request, the DOE found that the DOE regulations were not preventing the firm from obtaining sufficient supplies of unleaded gasoline to initiate its gasohol program. Accordingly, exception relief was denied.

Motion for Evidentiary Hearing

Buck's Butane & Propane Service, Incorporated, San Jose, California, BEH-0016, propane

Buck's Butane & Propane Service, Inc. filed a Motion for Evidentiary Proceeding in which it sought to determine whether the record in a related exception proceeding (Case No. DEE-5546) contained certain documents. In dismissing the Buck's Motion, the DOE stated that the approval of a Motion for Evidentiary Proceeding is not appropriate for determining the scope of the administrative record in a particular proceeding, and that Buck's could submit any documents in support of its exception request.

Supplemental Orders

Commonwealth Oil Refining Company, Inc., San Antonio, Texas, BEX-0071, crude oil

On February 25, 1980, the Commonwealth Oil Refining Company, Inc. filed a "Request for Supplementary Order or for Modification" in which the firm requested the DOE to adjust the price charged by Chevron U.S.A. on certain sales of crude oil to Corco. These sales were made pursuant to the terms of a prior DOE Decision and Order approving temporary exception relief for Corco. In considering the request, the DOE first found that Chevron had set its price to Corco in a manner which complied with the prior Decision and Order. In reaching this conclusion, the DOE determined that (i) the prior Decision and Order permitted Chevron to charge Corco the maximum price that it could have charged if the crude oil had been furnished pursuant to the provisions of the Buy/Sell Program, (ii) a requirement that Chevron impose "reasonable delivery terms" did not alter the Buy/Sell Program's provisions relating to the inclusion of transportation costs in the price charged for

crude oil, (iii) delivery of the crude oil to Corco on January 2, 1980 did not violate the requirement that crude oil be furnished for a period ending on December 31, 1979, and (iv) Chevron was justified in setting its price at the maximum level allowed by the Buy/Sell Program for crude oil sold in January 1980, the month in which title passed from Chevron to Corco. The DOE further determined that the possibility of modifying the pricing provisions of the temporary exception granted to Corco could more appropriately be addressed in the context of the review of a Proposed Decision and Order which tentatively grants Corco the same relief approved in the temporary exception order.

Little America Refining Company, Inc., Casper, Wyoming, BEX-0086, crude oil

In a Supplemental Order issued August 15, 1980, the DOE extended and modified the temporary stay relief granted to the firm on August 1, 1980. Relief was extended for an additional five business days and the list of firms from whom Larco was obligated to purchase entitlements was altered to correct for technical difficulties.

Newhall Refining Company, Inc., Newhall, California, DEX-0011, crude oil

In accordance with Decisions and Orders issued to Newhall Refining Company, Inc. which granted the firm exception relief from the provisions of 10 C.F.R. 211.67 (the Entitlements Programs) the firm submitted actual financial data for its 1977 fiscal year ended March 31, 1977. Upon reviewing the level of exception relief granted to Newhall under the applicable standards, the DOE determined that Newhall received the correct amount of entitlements for its 1977 fiscal year.

Protective Orders

The following firms filed Applications for Protective Orders. The applications, if granted, would result in the issuance by the DOE of the proposed Protective Order submitted by the firm. The DOE granted the following applications and issued the requested Protective Order as an Order of the Department of Energy:

Name, Case No., and Location

Dow Chemical USA, Cities Service Co., BEJ-0118, Wash., DC
Energy Coop., Inc., Chevron USA, Inc., BEJ-0121, Wash., DC

Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception, Temporary Exception, Stay, and/or Temporary Stay from the provisions of the Motor Gasoline Allocation Regulations. The requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Decisions and Orders which determined that the requests be denied.

Company name, Case No., and Location

Beard Oil Co., Inc., DEE-6281; Camden, SC
Brazos Electric Power Coop., Inc., BEO-0715; Waco, TX
Don's Mobil Service, DEE-7063; St. Paul, MN
Grace Standard Serv., BEO-0335; Lawrence, KS
Heath Oil & Distributing Co., DEE-2337; Mena, AR
Jesse Davis, BEO-1065; Okla. City, OK

Dismissals

The following submissions were dismissed without prejudice to refiling at a later date:

Name and Case No.

Alco Energy, Inc., BEE-1034
Edward Applegate, Esq., DEA-0594
Elmwood Car Wash, Inc., DRO-0277
Farmers Coop. Oil Co., BEE-1119
Farmers Union Central Exchange, BEE-0549; BSG-0011; BEJ-0056
Gas Del Oro, Inc., FIA-1429
IU International Corporation, DEE-6871
Toney Petroleum, Inc., BEE-0754
Willowbrook Service Station, DEE-8125
Wind Energy Report, BFA-0420
Zip-N-Go Food Stores, BEE-0955

[FR Doc. 80-33831 Filed 10-29-80; 8:45 am]
BILLING CODE 6450-85-M

Western Area Power Administration

Eastern Division, Pick-Sloan Missouri Basin Program Final Post-1985 Marketing Plan

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Announcement of the final post-1985 marketing plan for the Eastern Division, Pick-Sloan Missouri Basin Program.

Background

The Eastern Division, Pick-Sloan Missouri Basin Program, operates an integrated power system located in Montana (east of the Continental Divide), North Dakota, South Dakota, western Minnesota, western Iowa, and eastern Nebraska. The power system consists of over 7,300 circuit miles of high-voltage transmission line and 90 substations. In the Eastern Division, Western Area Power Administration (Western) markets power to 230 preference customers from eight Federal powerplants on the Missouri River and the Big Horn River. Two powerplants, Yellowtail and Canyon Ferry in Montana, are operated by the Water and Power Resources Service (formerly the Bureau of Reclamation). The other powerplants are operated by the U.S. Army Corps of Engineers, namely: Fort Peck in Montana; Garrison in North Dakota; and Big Bend, Oahe, Fort Randall, and Gavins Point in South Dakota. The total installed capacity of the eight powerplants is 2,398 megawatts. The Eastern Division power system is administered by Western's Billings Area Office.

Present commitments of commercial firm power (excluding project pumping) in the Eastern Division total 1,982 megawatts in the summer and 1,967 megawatts in the winter. Contractual commitments terminate during the period 1985-1990, with most commitments terminating on December 31, 1985.

In January 1979, Western announced it would start planning for marketing Eastern Division hydropower for the period after 1985. Preliminary meetings were held with customers and other interested parties in March 1979 in Sioux Falls, South Dakota, and Billings, Montana. Western representatives described the planning information needed and basic options open to Western. Comments and suggestions were requested.

During the balance of 1979, new depletion studies for the Missouri River were completed by the Upper Missouri Region of the Water and Power Resources Service (Service). These new depletion studies were used by the U.S. Army Corps of Engineers (USCE), Missouri River Division, in new generation studies for main-stem Missouri River powerplants. New resource data were made available to Western in March and April 1980.

Informal public information forums were held in Fargo, North Dakota; Sioux Falls, South Dakota; and Billings, Montana in May 1980. Western representatives presented a 73-page report which contained considerable detail on resources available and refined options for marketing actions. Comments were requested.

Formal public information forums were held in Sioux Falls, South Dakota; Fargo, North Dakota; and Billings, Montana, in late June 1980. Western representatives presented a 46-page report which contained Western's proposals for post-1985 marketing of Eastern Division power. All comments received following the informal public information forums held in early May were considered in the preparation of the proposed marketing plan. Comments were again requested.

Public Comment Forums were held in Billings, Montana; Bismarck, North Dakota; Moorhead, Minnesota; Sioux City, Iowa; Lincoln, Nebraska; and Mitchell, South Dakota, in late August 1980. These forums gave customers and other interested parties an opportunity to present oral and/or written comments on the marketing plan proposed in June 1980. The comment period closed on September 12, 1980. All comments received since March 1979 were carefully considered in preparing the final marketing plan.

Post-1985 Marketing Plan

Major elements of the final post-1985 marketing plan are listed below:

1. Power and energy from existing Eastern Division resources will be marketed in the existing Eastern Division marketing area. This marketing area was established in 1953 and includes Montana (east of the Continental Divide), North Dakota, South Dakota, and specific areas in western Iowa, western Minnesota, and eastern Nebraska.

2. Existing commitments to existing customers will be extended through December 31, 1990. These commitments total 1982 MW in the summer season and 1967 MW in the winter season. Customers receiving an extension will be required to adopt an approved conservation program by July 1982 as described in Public Information Forums held in June 1980.

3. New commitments will be made to preference entities within the existing marketing area which meet the criteria for new customers set forth in the June 1980 report. Such commitments will total 34 MW in the winter season. Assignments of power to new customers will be based on actual loads experienced in the 1979 summer and the 1979–80 winter, except that no such new customer will receive more than 5,000 kilowatts. New customers will be required to adopt an approved conservation program by July 1982.

4. Western will reserve the right to reduce commitments made to existing and new customers through 1990 by up to 1.6461 percent of such commitments in the summer season only. Such reductions would be made only if required because of new depletions or new project pumping requirements. Also, reductions would be made only after giving 5 years notice to customers, and existing customers would receive no reductions prior to the date their existing contract would have terminated.

5. Western will market firm power at system load factors for as long as possible. However, Western will reserve the right to limit energy deliveries to energy associated with a monthly load factor of 75 percent through 1990. Such limitations of energy deliveries will be made only after giving 3 years notice to customers.

6. Western will continue to market firm peaking power in the same manner as presently in force in firm peaking power contracts.

7. Western will commit power to customers for the period 1991 through 2000. Such commitments will total 1984 MW in the summer season and 2000 MW in the winter season. New commitments in 1991 will be 1.6361 percent less than 1990 commitments in the summer season and 0.34878 percent less than 1990 commitments in the winter season. This represents a total reduction in commitments for the 1991–2000 period of 33 MW in the summer and 7 MW in the winter. Existing customers which have annual contract commitments at this time will be required to accept seasonal commitments as of Janaury 1991. Seasonal commitments will be based on 1976–1979 load patterns.

8. Western will reserve the right to reduce commitments made to customers for the 1991–2000 period by up to 7.3589 percent in summer seasons only (a total of 146 MW). Such reductions would be made only if required because of new depletions or new project pumping requirements. Also, reductions would be made only after giving 5 years notice to customers.

9. Western will continue to market firm power at as near to system load factors as possible, but Western will reserve the right to limit monthly load factors to 70 percent if necessary in the 1991–2000 period. A 3-year notice would be given prior to requiring such limitation.

10. Western will study each new resource available to the Eastern Division at the time it is authorized and will determine the best method of marketing new power available through a public involvement process with existing and potential new customers.

Western will market new resources from new facilities to the existing marketing area and to potential customers in an expanded marketing area on a case by case basis. The expanded marketing area would include all or parts of the Missouri Basin States of Montana, North Dakota, South Dakota, Minnesota, Iowa, Nebraska, and Kansas.

Comments

A total of 202 comments were received from customers and other interested parties. Most comments were very favorable.

A majority of those commenting agreed with elements 1–9 of the marketing plan as described above. Many elements were agreed to by a large majority of entities commenting. For example, 95 percent agreed with marketing existing resources within the existing marketing area. A large majority of comments suggested that new resources from new facilities be marketed to the existing marketing area or that customers within the existing marketing area be given priority or a right of first refusal before such resources are marketed to an expanded marketing area. Western believes that new resources at new facilities, when and if authorized, may be such that it will be desirable to market a portion of them to an expanded marketing area on a case by case basis. This does not necessarily mean that all new resources at new facilities would be marketed to an expanded area. However, Western believes the flexibility to take such action would be desirable.

ADDRESS: Inquiries regarding this final marketing plan should be directed to: Mr. James D. Davies, Area Manager, Billings Area Office, U.S. Department of Energy, Western Area Power Administration, P.O. Box EGY, Billings, MT 59101, Telephone: (406) 657–6532.

SUPPLEMENTARY INFORMATION: Transcripts were made of the June 1980 public information forums and the August 1980 public comment forums. Comments on the marketing plan have been received from March 1979 through September 1980. Transcripts and all comments received and Western's responses are on file at Western's Billings Area Office in the Federal Building at North 26th Street and 3rd Avenue North in Billings, Montana, and at Western's Headquarters Office at 1536 Cole Boulevard in Golden, Colorado. Interested parties may examine transcripts and comment files at those locations. In addition, a copy of all comments received and Western's responses may be obtained for the cost of reproduction by request to the Billings Area Office.

Issued at Golden, Colorado, October 24, 1980.

Robert L. McPhail,

Administrator.

[FR Doc. 80-33835 Filed 10-29-80; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FNL 1620-8; OPTS-51144]

Ethene-Alkene-Vinyl Carbonyl Amine Polymer; Premanufacture Notice

Correction

On page 65030 in the issue of Wednesday, October 1, 1980, the document on Ethene-Alkene-Vinyl carried a misprinted Federal Register document number. At the bottom of the third column of page 65031, "FR Doc. 80-3037" should have read "FR Doc. 80-30371".

BILLING CODE: 1505-01-M

[SA-FRL 1648-3]

Science Advisory Board, Toxic Substances Subcommittee; Postponement of Meeting

Under Pub. L. 92-463, notice if hereby given that the meeting of the Toxic Substances Subcommittee of the Science Advisory Board scheduled for November 5, 1980 and announced in the October 16, 1980 issue of the Federal Register (45 FR 68755) has been postponed and will be rescheduled. The new date and further information regarding the meeting will be announced in the Federal Register. Any member of the public wishing further information regarding this postponement or regarding the next meeting of the Subcommittee should contact the Secretaries, Science Advisory Board (A-101), U.S. Environmental Protection Agency, Washington, D.C. 20460. Please ask for Ms. Bernadine Davis or Mr. Ernst Linde. The telephone number is (202) 472-9444.

Dated: October 24, 1980.

Richard M. Dowd,

Staff Director, Science Advisory Board.

[FR Doc. 80-33684 Filed 10-29-80; 8:45 am]

BILLING CODE 6560-34-M

[OPTS 41004A; FRL 1648-1]

Chemicals To Be Reviewed by the TSCA Interagency Testing Committee; Public Meeting: Correction

AGENCY: Toxic Substances Control Act (TSCA) Interagency Testing Committee.

ACTION: Correction.

SUMMARY: The previously announced location for a public meeting of the Toxic Substances Control Act (TSCA) Interagency Testing Committee was announced in the Federal Register of October 7, 1980 (45 FR 66506). The meeting place has been changed.

DATE: The meeting will be held on Thursday, November 6, 1980, 9:00 a.m.

ADDRESS: The meeting place has been changed to: Department of Health and Human Services, North Building Auditorium (Main Floor), 330 Independence Avenue, SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Martin Greif, Executive Secretary, TSCA Interagency Testing Committee, Environmental Protection Agency (TS-792), 401 M Street, SW., Washington, D.C. 20460 (202-472-3316).

SUPPLEMENTARY INFORMATION: A notice appeared in the Federal Register of October 7, 1980 (45 FR 66506) announcing the time and place of a public meeting of the TSCA Interagency Testing Committee and the subject matter to be covered at the meeting. The location of the meeting has been changed to a new address, as set forth in the front of this notice. The time and date of the meeting are unchanged.

The purpose of this meeting, as originally announced in the Federal Register, is to receive comments on a new list of chemicals selected for review by the TSCA Interagency Testing Committee.

Dated: October 23, 1980.

Vera Hudson, *Chairperson,*

TSCA Interagency Testing Committee.

[FR Doc. 80-33685 Filed 10-29-80; 8:45 am]

BILLING CODE 6560-31-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-3083-EM]

New Jersey; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of an emergency for the State of New Jersey (FEMA-3083-EM), dated October 19, 1980, and related determinations.

DATED: October 19, 1980.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Response and Recovery, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 634-7848.

NOTICE: Pursuant to the authority vested in the Disaster of the Federal Emergency Management Agency by the President under Executive Order 12148 effective July 15, 1979, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that, in a letter of October 19, 1980, the President declared an emergency as follows:

I have determined that the impact of a water shortage in the State of New Jersey is of sufficient severity and magnitude to warrant a declaration of an emergency under Pub. L. 93-288. I therefore declare that such an emergency exists in the State of New Jersey.

Federal aid is supplemental in nature and should be limited to that which is necessary to provide potable water on an emergency basis as may be required to save lives and protect public health and safety.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal emergency assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, the Federal Government will provide 75 percent of all eligible assistance under Pub. L. 93-288 in designated areas.

Notice is hereby given that pursuant to the authority vested in the Director of Federal Emergency Management Agency under Executive Order 12148, and delegated to me by the Director under Federal Emergency Management Agency Delegation of Authority, I hereby appoint Ms. Rita Meyninger of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

(Catalog of Federal Domestic Assistance No. 83.300, Disaster Assistance. Billing Code 6718-02)

William H. Wilcox,

Associate Director, Disaster Response and Recovery, Federal Emergency Management Agency.

[FR Doc. 80-33741 Filed 10-29-80; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Vic Sather & Associates, Inc.; Proposed Retention of General Insurance Agency Activities

Vic Sather & Associates, Inc., Bloomington, 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 retain its general insurance agency activities. These activities are performed from offices of Applicant in Franklin, Minnesota, and the geographic area to be served is the geographical area within a 10 mile circle around Franklin, 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 outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing.

identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than November 24, 1980.

Board of Governors of the Federal Reserve System, October 23, 1980.

Jefferson A. Walker,

Assistant Secretary of the Board.

[FR Doc. 80-33743 Filed 10-29-80; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on October 21, 1980. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB, ICC, and NRC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before November 17, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Civil Aeronautics Board

The CAB requests clearance of a regulation which incorporates the Passenger Origin-Destination Survey Report, Form 2787, into the reporting requirements of Part 241 of the Board's Economic Regulations—Uniform System of Accounts and Reports for Certificated Air Carriers. Therefore, the filing of Form 2787 will change from voluntary to a mandatory requirement under section 407 of the Federal Aviation Act of 1958, as amended, for all U.S. certificated air carriers operating scheduled passenger service, except helicopter and intra-Alaska carriers. The CAB estimates respondents will number approximately 45 and that reporting burden will average 540 hours per quarterly report for each carrier. The mandatory requirement to file Form 2787 will become effective January 1, 1981.

Interstate Commerce Commission

The ICC requests an extension-without-change clearance of Form QCS, Quarterly Report of Freight Commodity Statistics, required to be filed by some 41 Class I line-haul railroads, pursuant to Section 11145 of the Interstate Commerce Act. Data collected by Form QCS are used for economic regulatory purposes. No change is made in the data requirements ICC states. Reports are mandatory and available for use by the public, except that traffic of less than 3 shippers of a single commodity may be excluded and filed in a supplemental report not open to public inspection. The ICC estimates that reporting burden for carriers is expected to average 217 hours per quarterly report.

Nuclear Regulatory Commission

The NRC requests an extension-without-change clearance of the application, recordkeeping and reporting requirements contained in 10 CFR Part 32, Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material. ICC states that there are no substantive changes in the requirements since the previous clearance in 1977. The specific sections containing the requirements are 32.11, 32.12, 32.14, 32.16, 32.17, 32.18, 32.20, 32.22, 32.25(c), 32.26, 32.29(c), 32.51, 32.52, 32.53, 32.56, 32.57, 32.61, 32.71, 32.72, 32.73 and 32.74(a). The NRC estimates reporting burden for sections 32.12, 32.16, 32.20, 32.25(c) and 32.29(c) to average one hour for each report filed under these sections; reporting burden for § 32.52 will average 10 minutes for each transfer to be placed in the quarterly report; reporting burden for 32.56 will average 10 minutes for each transfer to be placed in the annual report required for this section; and time to prepare applications under §§ 32.11, 32.14, 32.17, 32.18, 32.20, 32.22, 32.26, 32.51, 32.57, 32.61, 32.71, 32.72, 32.73 and 32.74 will average 8 hours each application.

Norman F. Heyl,

Regulatory Reports, Review Officer.

[FR Doc. 80-33822 Filed 10-29-80; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreements for Nutrition Surveillance Systems

AGENCY: Centers for Disease Control, Public Health Service, HHS.

ACTION: Notice of extension of deadline for submission of initial applications.

SUMMARY: A notice of availability of funds for cooperative agreements for Nutrition Surveillance Systems was published in the Federal Register (45 FR 49165) on July 23, 1980. A correction in the agency heading was published in the Federal Register (45 FR 51921) on August 5, 1980.

The deadline for submission of applications reflected in the notice was on or before October 31 and May 31 of each calendar year, the cut off dates for the two annual review cycles for applications. Because of a delay in implementing this program, the October 31, 1980, deadline for submission of the initial applications has been extended to January 5, 1981.

Dated: October 17, 1980.

William H. Foege,

Director, Centers for Disease Control.

[FR Doc. 80-33810 Filed 10-29-80; 8:45 am]

BILLING CODE 4110-36-M

National Institutes of Health

Board of Scientific Counselors Subcommittee, Division of Cancer Resources, Centers, and Community Activities (DRCCA); Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Subcommittee of the Board of Scientific Counselors, DRCCA, November 7, 1980, Building 31C, Conference Room 9, National Cancer Institute, National Institutes of Health, Bethesda, Maryland 20205.

The entire meeting will be open to the public from 9:00 a.m. to adjournment. Agenda items will include consideration of proposed revisions for Cancer Center Support (Core) Grants. Attendance by the public will be limited to space available.

The Committee Management Officer, National Cancer Institute, Building 31,

Room 4B43, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Donald M. Pitcairn, Executive Secretary, National Cancer Institute Blair Building, Room 714, National Institutes of Health, Bethesda, Maryland 20205 (301/427-8663) will furnish substantive program information.

Dated: October 23, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80-33732 Filed 10-29-80; 8:45 am]

BILLING CODE 410-08-M

National Institute of Dental Research Programs Advisory Committee, Subcommittee on Periodontal Diseases; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Subcommittee on Periodontal Diseases, National Institute of Dental Research Programs Advisory Committee, on December 8-9, 1980, in Conference Room 8, Building 31-C, National Institutes of Health, Bethesda, Maryland.

The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m. on December 8, and from 9:00 a.m. to adjournment on December 9, to discuss research progress and ongoing plans and programs of the Periodontal Diseases Program Branch. Attendance by the public will be limited to space available.

Dr. Paul F. Parakkal, Executive Secretary, Subcommittee on Periodontal Diseases, National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 519, Bethesda, MD 20205 (phone 301-496-7784), will furnish rosters of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.841—Periodontal Diseases Research, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in section 8(b) (4) and (5) of the Circular.

Dated: October 23, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80-33734 Filed 10-29-80; 8:45 am]

BILLING CODE 4110-08-M

Sickle Cell Disease Advisory Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Sickle Cell Disease Advisory Committee, National Heart, Lung, and Blood Institute, November 14, 1980. The meeting will be held on the NIH Campus, Building 31, Conference Room 7, C-Wing. The entire meeting will be open to the public from 9:00 a.m. to 5:00 p.m., to discuss recommendations on the implementation and evaluation of the Sickle Cell Disease Program. Attendance by the public will be limited to space available.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, NHLBI, NIH, Building 31, Room 4A21, (301) 496-4236, will provide summaries of the meeting and roster of the Committee members.

Clarice D. Reid, M.D., Chief, Sickle Cell Disease Branch, DBDR, NHLBI, NIH, Federal Building, Room 504, (301) 496-6931, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Note.—NIH programs are not covered by OMB Circular A-95 because they fit the description of "programs not considered appropriate" in Section 8(b)(4) and (5) of that Circular.

Dated: October 23, 1980.

Suzanne L. Fremeau,

Committee Management Officer, National Institutes of Health.

[FR Doc. 80-33733 Filed 10-29-80; 8:45 am]

BILLING CODE 4110-08-M

Public Health Service

September List of Qualified Maintenance Organizations

AGENCY: Public Health Service, HHS.

ACTION: Notice, September list of qualified health maintenance organizations.

SUMMARY: This notice sets forth the names, addresses, service areas, and dates of qualification of entities determined by the Secretary to be qualified health maintenance organizations (HMOs). In addition, a service area revision of a previously qualified HMO is reported at the end of the list.

FOR FURTHER INFORMATION CONTACT: Howard R. Veit, Director, Office of Health Maintenance Organizations, Park Building, Third Floor, 12420 Parklawn Drive, Rockville, Maryland 20857, 301/443-4106.

SUPPLEMENTARY INFORMATION: Regulations issued under Title XIII of the Public Health Service Act, as amended, (42 CFR 110.605(b)) require that a list and description of all newly qualified HMOs be published on a monthly basis in the Federal Register. The following entities have been determined to be qualified HMOs under Section 1310(d) of the Public Health Service Act (42 U.S.C. 300e-9(d)):

Qualified Health Maintenance Organizations

Name, Address, Service Area, and Date of Qualification

(Operational Qualified Health Maintenance Organizations: 42 CFR 110.603(a))

1. Medical West Community Health Plan, Inc., (Staff Model, see section 1310(b)(1) of the Public Health Service Act), 444 Montgomery Street, Chicopee, Massachusetts 01020. Service area: Cities and towns in Massachusetts as follows:

Agawam	Montgomery
Belchertown	Palmer
Chicopee	Russell
Easthampton	Southampton
East Longmeadow	South Hadley
Granby	Southwick
Hampden	Springfield
Holyoke	Westfield
Longmeadow	West Springfield
Ludlow	Wilbraham
Monson	

Date of qualification: September 12, 1980.

2. PimaCare, Inc., (Medical Group Model, see section 1310(b)(1) of the Public Health Service Act), 255 East Adams, Tucson, Arizona 85716. Service area: Zip codes in Pima County, Arizona as follows:

85230	85614
85641	85710-6
85730	85619
85238	85718-9
85701	85629
85246	85721
85704-8	

Date of qualification: September 24, 1980.

3. American Health Plan, Inc., (Medical Group Model, see section 1310(b)(1) of the Public Health Service Act), 560 N.W. 165th Street Road, Suite 105, Miami, Florida 53169. Service area: Dade and Broward Counties, Florida. Date of qualification: August 1, 1980. (Transitionally qualified: July 29, 1977.)

Service Area Revision

1. Capital Area Community Health Plan, 1201 Troy-Schenectady Road, Latham, New York 12110. Service area: Add the following to the information contained in the cumulative list of qualified HMO's published on March 3, 1980, in the Federal Register, 45 FR 13894: Greene County, New York. Effective date: September 8, 1980.

Files containing detailed information regarding qualified HMOs will be available for public inspection between the hours of 8:30 a.m. and 5:00 p.m. on Tuesdays and Thursdays, except for Federal holidays, in the Office of Health Maintenance Organizations, Office of the Assistant Secretary for Health, Department of Health and Human

Services, Park Building, 3rd Floor, 12420 Parklawn Drive, Rockville, Maryland 20857.

Questions about the qualification review process or requests for informtion about qualified HMOs should be sent to the same office.

Dated: October 22, 1980.

Howard R. Veit,

Director, Office of Health Maintenance Organizations.

[FR Doc. 80-33737 Filed 10-29-80; 8:45 am]

BILLING CODE 4110-85-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona; Lower Gila North Planning Area: Preparation of Management Framework Plan

The Phoenix District Office is in the process of preparing a Management Framework (land-use) Plan for the Lower Gila North Planning Area in Northeast Yuma, Southwest Yavapai, and Northwest Maricopa counties, Arizona. The area extends from the Bill Williams River on the north to the Harquahala Plain on the south, and from the Hassayampa River on the east to the Bouse Hills and Little Harquahala Mountain on the west.

The following resource disciplines will be represented on the interdisciplinary planning team: Botany, Range Management, Geology, Wildlife Biology, Hydrology, Archaeology, Outdoor Recreation Planning, Land-use Planning, Economics, and Sociology.

The Planning effort began in May 1979 with an announcement in the Phoenix District's Newsletter. Additional information was published in the newsletters of September 1979 and February 1980.

Announcements were also made at public meetings/open houses relating to the previous Hualapai/Aquarius planning effort in Prescott, Phoenix and Kingman during June 1980.

Natural resource inventories and socio-economic studies were initiated in October 1979 to be used as base-line data in subsequent environmental analyses and land-use proposals. Resource data is currently being analyzed in an effort to describe each resource, its condition, and its potential uses.

Public workshop groups will be organized to provide commment and input to the analysis. Eight workshop groups will be established representing Land Use/Transportation/Utilities; Minerals/Energy Develpment; Livestock Grazing; Wild Burros; Wildlife Habitat/T&E Plants; Wilderness; Off-Road Vehicles/General Recreation; and Cultural Resources. These same Workshop Groups will also assist in development of resource use objectives and conflict analysis between proposed competing resource uses.

Public meetings will be held during April 1981 to obtain public comment on the resource use proposals. These meetings will be held in Wickenburg, Tonopah and Phoenix. Further specific information (times, dates and locations) concerning open house and public meetings will be provided at a later date.

Information generated by the above process will be considered as the "Scoping" effort for subsequent Environmental Statements as presented in 40 CFR 1501.7.

For further information about the planning or environmental statement process contact: Frank Splendoria, Phoenix District Office, BLM, 2929 West Clarendon Avenue, Phoenix, Arizona 85017; (602) 241-2501.

Planning and environmental documents eventually developed will be available at the above address.

Dated: October 22, 1980.

W. K. Barker,

District Manager.

[FR Doc. 80-33730 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-84-M

[Serial Nos. I-1639, I-2834]

Idaho; Partial Termination of Classification for Multiple-Use Management; Correction

In FR Doc. 80-22931, filed July 30, 1980, and appearing on page 50940 of the issue for July 31, 1980, the following correction should be made:

The sixth through the twelfth lines of paragraph one which reads: Classification Orders dated November 15, 1967 and September 15, 1970 (Serial Nos. I-1639 and I-2834) published in the Federal Register November 9, 1967, 32 FR 15767 and September 24, 1970, 35 FR 14853, insofar as they affect the lands described below, should read: Classification Orders dated November 9, 1967, and December 4, 1970 (Serial Nos. I-1639 and I-2834), published in the Federal Register November 16, 1967, 32 FR 15767 and December 11, 1970, 35 FR 18883, insofar as they affect the lands described below.

Eugene E. Babin,

Acting Chief, Branch of L&M Operations.

[FR Doc. 80-33729 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-84-M

Lakeview District Office, Oreg.; Designation of Public Lands for Off Road Vehicle Use

Notice is hereby given that use of motorized vehicles on specified public lands in the Black Hills of Lake County, Oregon, is closed in accordance with the provisions of 43 CFR Part 8340. This closure does not apply to emergency, law enforcement, and Federal, or other Government vehicles while being used for official or emergency purposes, or vehicles authorized by permit or contract.

The areas affected by this designation and restriction notice are located approximately four miles south of Christmas Valley, Oregon. The legal description of the closed lands is:

Township 28 South, Range 17 East, Willamette Meridian

Sec. 2, W ½, E ½ lying west of existing BLM road.*

Sec. 3, all.*

Sec. 4, E ½ E ½, lying east of BLM vehicle trail.

Sec. 10, E ½ NW ¼ and NE ¼ lying north of natural drainage.

Sec. 11, N ½ lying north of natural drainage.

Approximate Total Acres 1,740.

Closure of this area is necessary to protect Cusick's buckwheat (*Eriogonum cusickii*), and its habitat. The status of this threatened plant species is being reviewed by the U.S. Fish and Wildlife Service in compliance with the Endangered Species Act of 1973 (Pub. L. 93-205).

This closure is effective immediately and shall remain in effect until revised, revoked, or amended by the Authorized Officer. Maps showing the areas described above are available at the Bureau of Land Management, Lakeview District Office, 1000 South 9th Street, (P.O. Box 151), Lakeview, Oregon 97630, telephone (503) 947-2177.

Richard A. Gerity,

District Manager.

October 16, 1980.

[FR Doc. 80-33736 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-84-M

Proposed Livestock Grazing Management in the Salt Wells and Pilot Butte Areas, Southwest Wyo., Rock Springs District, Wyo.; Intent To Prepare Environmental Impact Statement

The Bureau of Land Management, Rock Springs District Office, will be preparing an environmental impact statement on proposed livestock grazing

*Except existing BLM roads providing access to interior of area. The areas and access corridors will be posted by signs on the boundaries and at common points of vehicular access.

management for the Salt Wells Resource Area and the Pilot Butte portion of the Big Sandy Resource Area located in southwest Wyoming. The statement is being prepared in compliance with a court decisions and subsequent agreement that the Bureau would prepare site-specific livestock grazing environmental impact statements.

The proposed action to be analyzed in the statement is the implementation of a program of allocating vegetation to domestic livestock, wildlife, and wild horses, and of establishing management practices necessary to accomplish the objectives of the proposed action on approximately 1.9 million acres of public lands administered by the Bureau of Land Management (BLM). The proposed action will identify the kinds and number of animals for which vegetation allocation is made, the periods of use of the range resource, and the range improvements (e.g., fencing, water developments, etc.) to be established.

Alternatives to the proposed actions will be analyzed in the environmental impact statement. The alternatives will be based on alternative levels of vegetation allocations and intensities of management for livestock, wildlife, and wild horses. Any viable alternative identified during the scoping or environmental analysis processes will be analyzed.

A public meeting on the scope of the Salt Wells-Pilot Butte livestock grazing management program and other elements of the Bureau planning system for the areas will be held at Western Wyoming College, Rock Springs, Wyoming, on December 11, 1980, beginning at 7:00 p.m. The purpose of the meeting will be: (1) To present multiple use planning recommendations for the Salt Wells and Big Sandy Resource Areas to the public; (2) to inform the public of the elements that BLM proposes to analyze in the livestock grazing statement (proposed action and tentative alternatives based on existing data and knowledge of the area); (3) gather resource information from the public; and (4) consider concerns, problems, and issues important to the public for inclusion into the environmental impact statement analysis amd planning system decisions. Federal actions concerning the use of public lands in this area are of high public interest because two major Southwest Wyoming population centers are located within the area to be assessed by the livestock grazing environmental impact statement.

All concerns or issues presented at the public meeting or received in writing at the Rock Springs District Office will be considered in the preparation of the environmental impact statement and resultant planning decision. All informational inquiries and written comments or issues on the environmental impact statement should be directed to Charles E. Reed, Grazing EIS Team Leader, P.O. Box 1869, Rock Springs, Wyoming 82901, phone (307) 382-5350. Planning information or the multiple use planning recommendations are available from Bob Bierer, Salt Wells Area Manager, and Clint Hanson, Big Sandy Area Manager. Don Dutcher, Rock Springs District Planning Coordinator is also available to provide information on the planning system. All are available at the above address and telephone number.

A new release regarding the start of the environmental impact statement process will be issued by the Rock Springs District following publication of this notice. Organizations, agencies, and individuals identified as having an interest in the area will be contacted by letter.

Dated: October 21, 1980.

Maxwell, T. Lieurance,

State Director, Wyoming.

[FR Doc. 80-33740 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-84-M

Wyoming and Montana: Intent To Prepare a Regional Environmental Impact Statement (EIS) for the Proposed Leasing of Federal Coal in the Powder River Coal Region

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an EIS.

Notice is hereby given in accordance with the National Environmental Policy Act and the Council on Environmental Quality regulations (43 CFR 1508.22) that the Bureau of Land Management (BLM) will prepare an EIS to address potential affects of new competitive coal leasing in the Powder River Region of Wyoming and Montana.

This proposed leasing is needed to meet a Department of the Interior Federal coal leasing target and a Department of Energy regional coal production goal, in accordance with the Federal Coal Management Program as announced by the Secretary of the Interior on June 4, 1979 (43 CFR Part 3400).

Potential lease tracts are being delineated by the U.S. Geological Survey from land found acceptable for further consideration for coal development during BLM land-use planning. The Casper District of BLM identified acceptable areas for Wyoming in a supplement and amendment to the Eastern Powder River Basin Management Framework Plan for the Highlight and Gillette review areas in Campbell County. The Miles City District BLM identified acceptable areas in Montana in updates of the Decker-Birney, South Rosebud and Coalwood Management Framework Plans covering parts of Custer, Powder River, Big Horn and Rosebud counties.

Preparation of the EIS is scheduled to begin in January 1981. A draft EIS should be available for public review and comment in June 1981. A final EIS is to be filed with the Environmental Protection Agency in November 1981. The Secretary of the Interior is tentatively scheduled to make the leasing decision in January 1982. A lease sale is scheduled for April 1982.

The proposed action is the leasing of a combination of tracts within the Powder River Region to meet a regional leasing target. Alternatives to the proposed action include leasing different combinations of tracts and no additional Federal coal leasing (no action). Prior to the preparation of the EIS, the tracts identified in accordance with the Federal coal management regulations (43 CFR 3420.4) will be ranked, selected and scheduled by the Powder River Regional Coal Team.

Public involvement is invited to determine the scope and significant issues to be analyzed in the EIS. Public participation will be sought by direct contact and mailings to interested and affected parties, announcements in local media, and review of the EIS and decision documents.

Public meetings will be held in areas that would be directly affected. These meetings are a part of the overall scoping process and it is anticipated that they will be held in November/December 1980, in Ashland and Colstrip, Montana, and in Sheridan, Gillette, and Douglas, Wyoming. Notices of exact date, time and location will be published in local newspapers, and by direct mailing to interested and affected parties.

Any individual, company, group, or agency who wishes to be included in the mailing list for notifications, to submit information that would be useful in preparing the EIS, or to provide comments and suggestions should contact the BLM District Manager, Casper District Office, 951 Rancho Road, Casper, Wyoming 82601. Telephone inquiries should be directed to Charles F. Wilkie, EIS Team Leader at the following numbers: (307) 265-5550, ext. 5101 (commercial phone) or 328-5101 (Federal Telecommunications System).

Dated: October 22, 1980.

Maxwell T. Lieurance,

State Director, Wyoming.

[FR Doc. 80-33738 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-84-M

Idaho Falls District Advisory Council Meeting

Notice is hereby given, in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that the meeting of the Idaho Falls District Advisory Council scheduled Friday, November 7, 1980, at 9:00 a.m. at the Bureau of Land Management office, 940 Lincoln Road, Idaho Falls, Idaho 83401 as notified by Federal Register/ Vol. 45 No. 194/Friday October 3, 1980 is canceled.

Dated: October 24, 1980.

Harold E. Isaacson,

Acting District Manager.

[FR Doc. 80-33808 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-84-M

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: U.S. Geological Survey, Department of the Interior.

ACTION: Notice of the receipt of a proposed supplemental development and production plan.

SUMMARY: Notice is hereby given that Marathon Oil Company has submitted a Supplemental Development and Production Plan describing the activities it proposes to conduct on Leases OCS-G 2934 and 4243, Block 86, portion, West Delta Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Geological Survey is considering approval of the Plan and that it is available for public review at the offices of the Conservation Manager, Gulf of Mexico OCS Region, U.S. Geological Survey, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837-4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the U.S. Geological Survey makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised Section 250.34 of Title 30 of the Code of Federal Regulations.

Dated: October 23, 1980.

E. A. Marsh,

Staff Assistant for Operations, Acting Conservation Manager, Gulf of Mexico OCS Region.

[FR Doc. 80-33802 Filed 10-29-80; 8:45 am]

BILLING CODE 4310-31-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Redelegation of Authority No. 99.1.83, Amend. No. 2]

Mission Director, USAID/Egypt; Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby amend Redelegation of Authority No. 99.1.83 dated January 26, 1977 (38 FR 27628) as follows:

1. The first paragraph is hereby amended to reflect the following changes:

a. Subhead (1) is revised to read as follows:

"(1) U.S. Government contracts including contracts with individuals for services of the individual alone, grants other than those with PVO's, and amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $300,000 or local currency equivalent."

b. Subhead (2) is deleted in its entirety and the following is substituted in lieu thereof:

"(20) With respect to these contracts and grants referred to above; to make findings and determinations with respect to advance payments including those financed by Federal Reserve Letters of Credit and to approve the contract provisions relating to such advance payments. This authority is limited to advance payments on non-profit contracts with non-profit educational or research institutions, including international organizations.

2. The second paragraph is hereby amended by deletion of subhead (2) in its entirety, and the following is substituted in lieu thereof:

"(2) Authority up to the maximum level of this redelegation may be redelegated with the prior concurrence of the Director, Office of Contract Management (except that such prior concurrence is not required in the cases of a redelegation to the Mission Director's principal deputy)."

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: July 22, 1980.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 80-33730 Filed 10-29-80; 8:45 am]

BILLING CODE 4710-02-M

[Redelegation of Authority No. 99.1.96; Amend. No. 1]

Principal Aid Officers Africa; Redelegation of Authority Regarding Operational Program Grants

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836), as amended, from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.96, dated October 31, 1978, to change the post of concurrence in executing operational program grants for the Gambia and Guinea from Director, USAID/Dakar to Director REDSO/WA.

Except as provided herein, the Redelegation of Authority remains unchanged and continued in full force and effect.

This amendment is effective on the date of signature below.

Dated: September 3, 1980.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 80-33731 Filed 10-29-80; 8:45 am]

BILLING CODE 4710-02-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (80-73)]

Space Science Steering Committee, Physical Science Spacelab and LDEF Ad Hoc Advisory Subcommittee; Renewal

Pursuant to Section 14(b)(1) of the Federal Advisory Committee Act (Pub. L. 92-463), and after consultation with the Committee Management Secretariat, General Services Administration, NASA has determined that the renewal of the Physical Science Spacelab and LDEF Ad Hoc Advisory Subcommittee for the evaluation of proposals for Physics,

Astronomy, and Planetary Science Spacelab and Long Duration Exposure Facility (LDEF) payloads, is in the public interest, in connection with the performance of duties imposed upon NASA by law. The Space Science Steering Committee, under which the Subcommittee operates, is a NASA internal committee, composed wholly of Government employees.

The function of this Subcommittee is to obtain the advice of the scientific community on proposals in the specialized areas identified by the name of the Subcommittee.

Gerald D. Griffin,

Acting Associate Administrator for External Relations.

October 24, 1980.

[FR Doc. 80-33742 Filed 10-29-80; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Museum Panel (General Services to the Field, Museum Training) 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 Museum Panel (General Services to the Field, Museum Training) to the National Council on the Arts will be held November 14, 1980 from 9:00 a.m. to 5:30 p.m. in room 1422 Columbia Plaza Office Complex, 2401 E St., 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: October 15, 1980.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 80-33815 Filed 10-29-80; 8:45 am]

BILLING CODE 7537-01-M

Music Panel (Recording Section) Meeting

Pursuant to Section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Panel (Recording Section) to the National Council on the Arts will be held November 13, 1980 from 9:00 a.m. to 5:30 p.m. and November 14, 1980 from 9:00 a.m. to 5:30 p.m., in room 1426 Columbia Plaza Office Complex, 2401 E St., N.W., Washington, D.C.

A portion of this meeting will be open to the public on November 14, 1980, from 3:30 p.m. to 5:30 p.m. for the discussion of guidelines.

The remaining sessions of this meeting on November 13, 1980, from 9:00 a.m. to 5:30 p.m. and November 14, 1980, from 9:00 a.m. to 3:30 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register 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: October 15, 1980.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 80-33814 Filed 10-29-80; 8:45 am]

BILLING CODE 7537-01-M

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meeting of the Humanities Panel will be held at 806 15th Street, N.W., Washington, D.C. 20506.

Date: November 17, 1980.
Time: 9:00 a.m. to 5:30 p.m.
Room: 1134.
Program: This meeting will review applications submitted for the Research Materials Program, Translations: Classics Languages projects, Division of Research Programs, for the projects beginning after March 1, 1981.

Date: November 20-21, 1980.
Time: 9:00 a.m. to 5:30 p.m.
Room: 807.
Program: This meeting will review applications submitted for the Research Resources Program: American Studies projects, Division of Research Programs, for projects beginning after March 1, 1981.

Date: November 21, 1980.
Time: 9:00 a.m. to 5:30 p.m.
Room: 1134.
Program: This meeting will review applications submitted for the Research Materials Program, Translations: Indic Languages projects, Division of Research Programs, for projects beginning after March 1, 1981.

Date: November 24, 1980.
Time: 9:00 a.m. to 5:30 p.m.
Room: 1134.
Program: This meeting will review applications submitted for the Research Materials Program, Translations: Germanic Languages projects, Division of Research Programs, for projects beginning after March 1, 1981.

The proposed meetings 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. Because the proposed meetings will consider information that is likely to disclose,

(1) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(3) information the disclosure of which would significantly frustrate implementation of proposed agency action;

pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the

Humanities, Washington, D.C. 20506, or call (202) 724-0367.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 80-33840 Filed 10-29-80; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

[N-AR 80-44]

Recommendations and Responses; Availability

Highway Safety Recommendation Letters

The National Transportation Safety Board announces the issuance on October 21 of three letters, containing six recommendations developed as a result of Board investigation of a two-vehicle collision. The accident occurred on June 6, 1980, about 11 p.m., in the westbound lane of the south frontage road to U.S. 40 in Clayton, Missouri.

Investigation indicated that the driver of an eastbound vehicle was passing two other eastbound vehicles, which were traveling at driver-estimated speeds of 50-55 mph, near a hill crest when he saw a westbound vehicle approaching in the lane. He braked and steered his vehicle to the left toward a clear, grass-covered area, but the westbound vehicle struck the right passenger door. A passenger in the eastbound vehicle and all four persons in the westbound vehicle were killed; the driver of the eastbound vehicle sustained minor injuries.

The board notes that U.S. 40 at this location is a four-lane, divided, east-west highway with a two-lane frontage road on either side. The accident occurred on the south frontage road which consists of two 10-foot-wide traffic lanes for two-way traffic, with 3-foot-wide gravel shoulders. Traffic control consists of a dashed yellow centerline and a solid white edgeline on both edges. The road in this area has on off-peak 85th percentile speed of 54.5 mph and has a posted speed limit of 55 mph. The average daily traffic flow on the south frontage road near the accident site is 5,855. Road alignment is straight over rolling terrain. The accident occurred at the crest of a hill with a 2.65 percent descending grade to the west and 3.02 percent descending grade to the east. According to plan and profile sheets provided by the Missouri Highway and Transportation Commission, beginning at a point 850 feet west until a point 190 feet west of the point of impact, the passing sight distance is less than 900 feet. There were no "no-passing zones" marked.

A Safety Board review has found that at least five States (Missouri, Iowa, Nebraska, Washington, and Oregon) do not conform with the U.S. Department of Transportation's Manual on Uniform Traffic Control Devices (MUTCD) pavement marking policy on no-passing zones and that the Federal Highway Administration has allowed these States to continue to use these nonconforming pavement marking policies on Federal-aid projects. This is contrary to the requirements of 23 U.S.C. 109(d). The MUTCD states that where centerlines are installed and a curve warrants a no-passing zone, it should be so marked where the sight distance is equal to or less than that listed below for the prevailing off-peak 85th percentile speed:

85th percentile speed (miles per hour)	Minimum passing sight distance (feet)
30	500
40	600
50	800
60	1,000
70	1,200

The Board notes that section 3B-3 of the MUTCD makes the installation of no-passing zone markings mandatory when centerlines are installed. Thus, the MUTCD requires a passing sight distance of 900 feet at the location where the accident occurred. Since this 900 feet was not available, no-passing zone markings should have been in place at this accident location. Thus, in this particular incident, the State of Missouri was not in compliance with the MUTCD. The Missouri Highway and Transportation Commission's policy as furnished by letter from its chief engineer states:

> No Passing Zones are placed on main line routes with an Average Daily Traffic of 1,000 or more. Local collector roads such as outer roadways, service roads, etc., are considered on an individual basis as to need, considering the type of traffic, speed of traffic, access points, terrain, and other factors for all types of stripings.

Since it is considered necessary to have uniform markings and signing on the highway for safety purposes, the Board finds it is also necessary to have uniform laws and ordinances increase the likelihood that drivers will respond similarly and expectedly to the same conditions in any jurisdiction, thereby increasing the safety of the driving public. That is the purpose of the Uniform Vehicle Code (UVC) published by the National Committee on Uniform Traffic Laws and Ordinances. The National Highway Traffic Safety Administration's Highway Safety Program No. 6, Codes and Laws requires that each of the States have a program to achieve uniformity of traffic codes and laws that have the comparable provisions of the rules of road section of the UVC.

UVC Section 11-307(b) states that "Where signs or markings are in place to define a no-passing zone—no driver shall at any time drive on the left side of the roadway within such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length." The "Rules of Road Rated, Volume 9, Traffic Laws Commentary No. 1" rates compliance of the States to the rules of the road found in the UVC for the year 1978. In this rating, Missouri was 51st out of the 52 U.S. jurisdictions and had the greatest number of regulations that were substantially different from the UVC.

Although the Safety Board could not determine if the lack of no-passing zone markings or laws directly contributed to this accident, the Board believes that marked no-passing zones and uniform markings and laws may have reduced the accident potential.

In view of these findings, the Safety Board has issued the following recommendations:

H-80-58 to the Federal Highway Administration

Review the pavement markings policies in each State to evaluate compliance with the MUTCD, and require the State to revise any policies which are found to be substantially not in compliance. (Class II, Priority Action) (H-80-58)

H-80-59 through -62 to the Governor of Missouri

Enact legislation to establish a regulation prohibiting driving on the left side of the roadway within marked no-passing zones and insure that the regulation conforms with section 11-307 of the Uniform Vehicle Code as published by the National Committee on Uniform Traffic Laws and Ordinances as required by Highway Safety Standard No. 6, Codes and Laws. (Class I, Urgent Action) (H-80-59)

Develop and implement a continuing program to bring all of the State's laws, particularly the rules of the road, into substantial conformity with the Uniform Vehicle Code as published by the National Committee on Uniform Traffic Laws and Ordinances. (Class II, Priority Action) (H-80-60)

Revise the State's pavement marking policy, particularly the provisions for making no-passing zones, to be consistent with the U.S. Department of Transportation's Manual on Uniform Traffic Control Devices for Streets and Highways. (Class I, Urgent Action) (H-80-61)

Re-mark all of the streets and highways within the State's jurisdiction so that the pavement markings, in particular the no-passing zone markings, comply with the U.S. Department of Transportation's Manual on Uniform Traffic Control Devices for Streets and Highways. (Class I, Urgent Action) (H-80-62)

H-80-63 to the National Highway Traffic Safety Administration

Review State laws for conformity to the Uniform Vehicle Code rules of section 11-307 and require States with nonconforming laws to implement a program to achieve uniformity. (Class II, Priority Action) (H-80-63)

Intermodal Safety Recommendation Letters

Also on October 21, the Safety Board forwarded three more recommendation letters, these relating to the derailment last November 8 of cars 25 through 49 of Conrail freight train IHEN-8 one mile east of Inwood, Indiana. The train consisted of three locomotives, 89 cars (76 loaded and 13 empty), and a caboose. Twenty-four of the 25 derailed cars were transporting hazardous materials, and six derailed cars were involved in product spills.

Tank car GATX 26024, containing vinyl chloride, came to rest completely overturned with the man-way dome and associated valves buried so that they could not be examined. A severe dent, caused by a similar car striking the tank, was evident from the center to one end. The dent volume was estimated at 1,000 gallons, or approximately 4 percent of the car's volume. The only information available from the freight waybill was the weight of the product which was loaded in the car and the volume of the tank car shell.

After GATX 26024 was set upright, the internal pressure was 27 psi. After it was unloaded at the derailment site, GATX 26024 was moved to a tank car repair facility and pressure tested until it failed. The failure pressure was 205 psi. Metallurgical data and dent geometry data were also obtained from the tank car. From the data made available by the tests performed on GATX 26024, the Safety Board believes that testing of damaged tank cars could result in sufficient information for the development of safe handling guidelines on damaged tank cars.

Further, the Board notes that no cracks or gouges were found in the magnaflux and dye penetrant tests. However, during the pressure test, a fracture occurred in the heat-affected zone of a fillet weld between the left side of the saddle plate and the tank.

As a result of its investigation, the Safety Board has issued the following "Class II, Priority Action" recommendations

I-80-1 to the Research and Special Programs Administration, U.S. Department of Transportation

Amend 49 CFR 174.25 to include a requirement that the volume, in gallons, and the temperature at which the pressurized liquefied gases were loaded in tank cars be entered on bills of lading, way-bills, and shipping orders. (I-80-1)

I-80-2 to the Federal Railroad Administration

Develop guidelines for handling tank cars containing pressurized liquefied gases at accident sites based on research and tests of a representative sample of damaged tank cars. (I-80-2)

I-80-3 to the Association of Amercia Railroads

Examine ruptured tank cars to determine what effect current design and welding practices for welded tank attachments may have on the structural integrity of tank cars loaded with pressurized liquefied gases in the derailment environment and report the resultant findings. (I-80-3)

Responses to Safety Recommendations:

Aviation

A-77-43 and -44, from the Federal Aviation Administration, October 14, 1980.—Letter is in response to the Safety Board's July 28 request for an updated status report and supplements FAA's response of January 31, 1979 (44 FR 11625, March 1, 1979). These recommendations were developed as a result of investigation of several Teledyne Continental Motors (TCM) I0-520 series engine crankshaft failures. On March 9, 1979, the Board noted in reply to FAA's earlier response that FAA has issued Advisory Circular AC No. 20-103 on the subject of "Aircraft Engine Crankshaft Failure," the product improvements made by TCM and the manufacturer's ultrasonic testing of crankshafts. The Board asked to be informed when the field inspection technique is completed and the problem of the I0-520 series crankshaft failures is fully identified and resolved. The Board again, on July 28, 1980, asked to be advised of this information.

FAA in its October 14 letter reports that the situation is essentially the same as described in its January 31, 1979, response. TCM has continued to manufacture and deliver the redesigned crankshafts, which undergo an ultrasonic inspection prior to assembly of the engine. FAA notes that more than 3,200 I0-520 engines having crankshafts of this new design have been delivered since its introduction in June 1978 and no crankshafts have failed. "This record convinces us that the corrective measures adopted by TCM have been successful," FAA states.

However, FAA reports that it has not yet arrived at a satisfactory procedure for inspecting the old design crankshafts in the field. TCM has concluded that the ultrasonic inspection is too sophisticated a process, requiring too much specialized expertise to be used by repair stations. FAA has not accepted the TCM conclusion at this time and has not yet determined a satisfactory alternate procedure for use by repair stations. FAA is reviewing the reported failure rate in order to determine the effect, if any, of the practices recommended in Advisory Circular AC-20-103, and whether further action is necessary.

A-79-21 and -22, from the Federal Aviation Administration, September 29, 1980.—Letter supplements FAA's initial response of July 16, 1979 (44 FR 45497, August 2, 1979) to recommendations related to the malfunction of a magnetic clutch assembly used in the autopilot pitch axis servos of aircraft manufactured by Gates Learjet Corporation. The Safety Board on August 14, 1979, replied to FAA's July 16 response, and indicated that, predicated on FAA's intended actions to implement the recommendations as noted in that response, the recommendations would be held in "Open—Acceptable Action" status.

Recommendation A-79-21 called on FAA to initiate a program immediately to expedite the determination of cause for the clutch malfunction in JET Electronic part No. 2380066, servo drive unit, devise a means to detect potential problems, and define corrective action. FAA's September 29 response refers to FAA's initial response, which indicated that the Gates Learjet Corporation was testing an improved magnetic clutch in preparation for a retrofit program. In letters directed to its Service Centers and to Owners and Operators during November 1979, Gates Learjet urged compliance with Airplane Modification Kit No. AMK 79-4, "Replacement of Clutch Assemblies in the Autopilot Pitch Axis Servo." FAA states that this kit provides for replacement with an improved magnetic clutch assembly for in-service Model 23, 24 and 25 airplanes having the autopilot servo actuator with the older magnetic clutches. AMK 79-4 called for compliance within the next 75 flight hours. This kit does not remove the 600-hour overhaul compliance of the pitch servo.

Further, FAA reports that on January 8, 1980, Gates Learjet advised FAA's Central Region that there were sufficient numbers of the DC torquer/capstan used on later production airplanes to make

them available as replacements for the magnetic clutch assemblies. Gates Learjet subsequently issued its Airplane Modification Kit No. AMK 80-3, "Replacement of Pitch Servo Actuator and Capstan." FAA notes that installation of either of these Airplane Modification Kits is voluntary on the part of the operator since the possibility of FAA Airworthiness Directive action was ruled out earlier in the investigation related to recommendation A-79-21. The investigation showed that on Gates Learjet airplanes the stall warning stick pusher system is preflight tested prior to each flight, which verifies the integrity of the magnetic clutches. In addition, FAA states, should the magnetic clutch "freeze" and lock the continuously running autopilot/stick pusher servo motor to the elevator cable drum, a mechanical slip clutch is provided in the cable drum to permit the pilot to override the malfunction.
Power can then be removed from the servo motor by turning off the autopilot and stall warning systems. The Airplane Flight Manual provides emergency procedures for operation of the airplane with the stall warning systems off. Based on the above, FAA says it could not identify any unsafe condition that would result from a magnetic clutch becoming frozen and, therefore, could not justify mandatory corrective action under the requirements of 14 CFR Part 39 "Airworthiness Directives." (FAA provided copies of the above referenced documents.)

With respect to recommendation A-79-22, which called on FAA to restrict the operation of all Learjet aircraft equipped with this servo drive unit if defining and implementing the corrective action described in recommendation A-79-21 will require prolonged effort, FAA notes that its initial report indicated that it was not considered necessary to restrict operations in this case and that a Temporary Airplane Flight Manual Supplement had been issued, specifying emergency procedures in the event of autopilot pitch axis malfunction or complete stall warning failures. FAA states that these identified temporary revisions are being incorporated into permanent revisions as they are made to the various flight manuals.

A-80-56 through -58, from the Federal Aviation Administration, October 14, 1980.—Response is to recommendations issued July 16 following the Safety Board's special investigation of inadvertent landing gear retraction accidents between 1975 and 1978. Recommendation A-80-56 asked FAA to require after a specified date that all newly manufactured Beechcraft Baron and Bonanza models conform to 14 CFR 23.777 with respect to landing gear and flap control locations and that they have an adequate latch or guard to minimize inadvertent landing gear retraction. Recommendation A-80-57 called for requiring that, after a specified date, previously manufactured Beechcraft Baron and Bonanza aircraft which do conform to the landing gear and flap control arrangements outlined in 14 CFR 23.777 be equipped with an adequate guard or latch mechanism to prevent inadvertent actuation of the landing gear controls. Recommendation A-80-58 asked FAA to require that after a specified date; the landing gear control switch on the pre-1963 model Beechcraft Bonanzas be modified to incorporate a wheel-shaped knob as outlined in 14 CFR 23.781. (See 45 FR 49410, July 24, 1980.)

FAA's response indicates that a review has been made of the Board's special investigation report, "Design-Induced Landing Gear Retraction Accidents in Beechcraft Baron, Bonanza and Other Light Aircraft." FAA agrees that, where appropriate, cockpit control configurations should be standardized. However, these recommendations introduce a number of questions and will require further study before a sound conclusion can be reached. For example, FAA cites, the landing gear operating switches in current production on Bonanzas and Barons have center lock detents which require two separate motions to actuate the switch in either direction. This is in effect a latch. FAA is concerned that more complex latching arrangements could interfere with emergency procedures and perhaps create a more serious accident potential than now exists.

In regard to recommendation A-80-58, FAA states that Beech Bonanza models up to the D35 (1953) used a secondary latch requiring a separate action to retract the landing gear, and shape-coded switches were used on the D35 and later models. Although the pre-1963 controls were not shape-coded, the majority of these airplanes are in the hands of private owners who are familiar with the controls which were originally installed. FAA says it currently has no information which indicates that these older airplanes have significant inadvertent gear retraction problems.

FAA says it intends to examine this entire subject in depth to determine what alternatives are available to deal with these less serious (non-fatal or minor injury) accidents. As part of the effort, FAA may consider the use of procedures which will help alert aircraft owners, and potential purchasers, of accident statistics which are higher than normal for specific aircraft models.

Highway

H-79-46 and -47, from the Ohio Department of Transportation, October 6, 1980.—Letter is in response to the Safety Board's inquiry of September 10, 1980, concerning disposition of these recommendations, developed following investigation of the cross-median collision of a van with two passenger automobiles on State Route 2 near Cleveland, Ohio, on May 6, 1979. The recommendations, issued September 26, 1979, concerned installation of median barriers on State Route 2 near the accident site. The Board's September 10 letter acknowledged receipt of Ohio DOT's October 19, 1979, response (44 FR 62974, November 1, 1979) which indicated that careful review was being given to the Board's investigation findings and recommendations. The Board also noted that on October 9, 1979, the City of East Lake, Lake County, Ohio, passed a resolution recognizing the need for protection against median crossover accidents. A copy of the resolution was forwarded to Ohio DOT.

In response, Ohio DOT reports that its District Planning and Design office is currently preparing plans for a safety upgrading project (PF 701, LAK-2-0.00) on State Route 2 from Interstate 90 easterly to the City of Painesville. The plans propose construction of parallel concrete median barriers, located 10 feet off the inside edges of both directional pavements, from Interstate 90 easterly to a point approximately 4,000 feet east of Lost Nation Road when the median widens from 36 feet to 60 feet. The change in median width occurs at the Willoughby-Mentor corporation line; therefore, the proposed design "will provide protection from cross-median accidents through Wickliffe, Willowick, Eastlake, *and Willoughby,*" Ohio DOT states.

Ohio DOT notes that the Board's recommendations refer to two cross-median accidents in the last 3 years having occurred in the segment of State Route 2 *"within Willoughby where the median width is 60 feet."* Ohio DOT says this is obviously in error since the median through Willoughby is 36 feet wide. Ohio DOT further states that accident data for State Route 2 provided by the Mentor Police Department shows no cross-median accidents occurring within Mentor during the past 5 years. A 5-year history of accidents within Painesville Township provided by the State Highway Patrol also shows no cross-median accidents. The median

through both areas is 60 feet wide; consequently, Ohio DOT has concluded that median barriers are not warranted within the segment of State Route 2 with the median width of 60 feet.

H-80-9 through -11, from the Federal Highway Administration, October 8, 1980.—Response is to recommendations issued last February 11, calling on FHWA to take certain actions to improve work zone safety. (See 45 FR 11630, February 21, 1980.)

With respect to recommendation H-80-9, which asked FHWA to expand the emergency final rule, 23 CFR 630.1010 to apply to all construction and maintenance zones on divided Federal-aid roads, FHWA says it does not agree that it is appropriate to take this action, since this was a revision to previously adopted regulations concerning traffic safety in highway and street work zones and is intended to apply only to Federal-aid projects. An alternative approach has already been initiated by FHWA. An advance notice of proposed rulemaking was published in the Federal Register on January 3, 1980, announcing proposed changes to the Manual on Uniform Traffic Control Devices (MUTCD). One of the proposals (Request VI-14) is to include provisions similar to the emergency rule as part of the MUTCD. This will make the provisions applicable to all roadway work zones, Federal-aid as well as non-Federal-aid. The comment period closed on July 1.

FHWA concurs in recommendation H-80-10 which called for development and dissemination of a manual which will compile past operational experience and current research findings related to channelizing traffic which is rerouted in work areas. FHWA reports the recent publication of a guidance handbook, "Work Zone Traffic Control—Standards and Guidelines" which includes Part VI of MUTCD and guidelines for implementing Part VI. This handbook has developed and published in recognition of a special need for "why" and "how to" information in handling traffic through work zones. The first part of the two-part handbook is a reprint of Part VI, Traffic Controls for Street and Highway Construction and Maintenance Operations of MUTCD. It sets forth basic principles and prescribes standards for the design, application, and maintenance of the various types of traffic control devices. Included are requirements for color, size, shape, location, and need for the devices. The second part contains guidelines that supplement the standards. It was prepared to meet the special need for additional operational and application guidance on handling traffic through work zones. The guidelines explain how to apply the standards to various work zone situations. It also has numerous illustrations and various examples of traffic control and common conditions and problems encountered.

In addition to internal FHWA use, 60 handbooks have been sent to each State highway agency and 4,000 copies reserved for training courses conducted by FHWA's National Highway Institute. Beginning this summer, informal training will introduce FHWA field engineers to the new handbook. FHWA notes that the U.S. Government Printing Office will also have the handbook for sale.

Recommendation H-80-11 asked FHWA to promote the development of a traffic control device to fill the gap between shaped concrete barrier and traffic cones to serve as a continuous visual barrier to separate traffic in work zones. In response, FHWA, states, "It is very difficult to promote a device which has not been clearly identified and possibly not invented." FHWA says it continues to identify needs and develop solutions to improve work zone safety, citing as an example report FHWA-TS-78-222, "Construction Zone Delineation (Raised Pavement Markers)," published in 1978. The report was based on a study of a series of construction projects in which raised pavement markers were used to guide traffic through the work sites. The general conclusion of the nine-State study was "that raised reflective markers provide excellent nighttime temporary delineation, particularly when the road is wet, at a low cost with little or no maintenance." Two of the projects reported a reduction in the number of accidents with the use of raised pavement markers. The delineation included pavement markings as well as signs, barricades, and other appropriate traffic control devices. About 4,500 copies of the report have been distributed.

Further, FHWA reports that current research is aimed at improving devices and methods. "Development of Safer Barriers for Construction Sites" is intended to develop proposals for guidelines for the use and delineation of temporary traffic barriers in highway work zones. This work is scheduled for completion in late 1980. A future research study titled "Geometric Design Requirements for Highway Work Zones," which is in the procurement process now, will look into ways to improve the safety of two-lane, two-way detour operations and is expected to identify ways to improve work zone safety.

Marine

M-79-34 and -36, from the United States Coast Guard, September 29, 1980.—Letter is in response to the Safety Board's comments of June 26 concerning Coast Guard's response of last April 29 (45 FR 34479, May 22, 1980). The recommendations were developed following investigation of the M/V *George Prince* collision with the SS *Frosta* in the Mississippi River above New Orleans, La., October 26, 1976.

With respect to recommendation M-79-34, the Board's June 26 letter restates the belief expressed in the Board's letter of last February 6; namely, that the application of the Navigation Safety Regulations (33 CFR 164.15) may achieve the results desired from the recommendation. The Board asked to be notified of action taken concerning the four possible solutions to the problems surrounding the definition of "confined or congested waters." Coast Guard's September 29 response reports that the project is in staff discussion and review process. The Board will be notified when the necessary internal Coast Guard clearances have been obtained to allow the project to advance to the notice of proposed rulemaking stage.

As indicated in the Board's June 26 letter, the Board believes that the Coast Guard may have misinterpreted the intent of recommendation M-79-36 and its February 6, 1980, letter. The Board did not suggest that modifications be made to accepted chart symbols. The concern is that the dashed line used to portray ferry crossings is too light and that the word "ferry" is lost in the chart's land coloring. The Board is searching for greater emphasis on the current symbol and label used to designate ferry crossings on nautical charts. Also, the Board notes that a firm emphasis is placed on the illustration and lettering associated with items such as roads, railroads, etc., which are not navigational hazards and have relatively little importance to vessel navigation. It is agreed that pilots should be aware of ferry crossings and that they should take appropriate precautions at such crossings; however, the Board is firm in its conviction that a vessel's navigation bridge watch should use local charts to verify a pilot's actions to insure that all necessary precautions are taken to avoid mishap. If extraneous non-nautical features were eliminated or played down on the navigation charts, there would be a more suitable opportunity for a greater emphasis on ferry crossing symbols and lettering. The Board suggested in its June 6 letter that Coast Guard and the National Oceanic and Atmospheric

Administration critically review current nautical charts to determine the most necessary and important information related to the safe navigation of vessels.

Coast Guard reports in its September 29 response that it has conveyed to NOAA the concern expressed by the Safety Board that the particular "ferry" chart symbol is not conspicuous enough on NOAA chart 11370. NOAA has stated that it will attempt to make the ferry crossing more obvious while using the internationally accepted symbol. Regarding review of nautical charts, Coast Guard believes the Safety Board should be aware that Coast Guard passes on information to NOAA and offers suggestions. NOAA, in turn, keeps the Coast Guard informed of any proposed or actual changes in cartography pertaining to navigational safety.

M-80-42, from the United States Coast Guard, September 25, 1980.—Response is to a recommendation issued June 20 as a result of investigation of the collision of the Spanish Freighter M/V *Pola de Lena* with two Mississippi River ferry boats and the Gretna Ferry Landing, New Orleans, La., February 3, 1979. The recommendation asked Coast Guard to require each self-propelled vessel of 1,600 gross tons or greater navigating in confined or congested waters of the United States to have operating instructions and a block diagram that clearly and simply explain the changeover procedures for the remote steering gear control systems and steering gear power units on the vessel; the instructions and block diagram should be permanently displayed both on the navigation bridge and in the steering engineroom. (See 45 FR 45421, July 3, 1980.)

Coast Guard states that the discussion contained in its letter of August 28, 1980, regarding recommendation M-78-81 is response to M-80-42, and believes that the provisions of regulatory project Docket No. 79-038B will satisfy the intent of recommendation M-80-42. Recommendation M-78-81 resulted from investigation of the SS *Sitala* collision with a number of moored vessels in the Mississippi River in New Orleans, La., July 28, 1977. (Coast Guard's response of August 28 was reported at 45 FR 65370, October 2, 1980.)

M-80-9 through -13, from the United States Coast Guard, September 29, 1980.—Response is to recommendations issued March 20 as a result of investigation of the collision of Greek bulk carrier M/V *Irene S. Lemos* and Panamanian bulk carrier M/V *Maritime Justice* on the Mississippi River, November 9, 1978. (See 45 FR 22311, April 3, 1980.)

With respect to recommendation M-80-9, which asked Coast Guard to determine which bends on the lower Mississippi River present difficult navigational problems and should be limited to one-way traffic during conditions of reduced visibility, and promulgate appropriate restrictions, Coast Guard notes that the recommendation addresses the area of investigation in the Lower Mississippi River Safety Study which was mandated by Congress and funded by Coast Guard through the National Oceanographic and Atmospheric Administration. Louisiana State University, through the Sea Grant Program, will do the study, which will develop recommendations concerning the manner in which applicable techniques such as communications, electronic surveillance, aids-to-navigation, and traffic management can best contribute toward enhancing marine transportation safety, protection of the environment and effectiveness of the New Orleans Vessel Traffic Service. Coast Guard states that this recommendation, along with M-80-13, below, will be considered after the results of the study have been evaluated and full consideration given to the study recommendations. The study is scheduled for completion by March 1981.

Coast Guard concurs with recommendation M-80-10, which asked that New Orleans Vessel Traffic Center be required to inform participating vessels routinely of important weather information, such as dense fog, and that current instructions requiring vessels to request such information specifically be withdrawn. Coast Guard notes that special and/or significant weather information covering a specific area will be passed on to vessels automatically.

Coast Guard does not concur with recommendation M-80-11, which called for accelerated rulemaking (Docket No. 75-112) to make participation in the New Orleans Vessel Traffic Service mandatory. The Commandant, U.S. Coast Guard, has chosen to delay any decision to proposed mandatory participation in VTS New Orleans until after the results of the Lower Mississippi River Safety Study have been evaluated and full consideration given to the safety recommendations. This decision was made after consultation with representatives of the maritime industry. As a result, Docket No. 75-112 was closed and the proposal withdrawn.

Recommendation M-80-12 called on Coast Guard to develop and implement a plan of action for the Captain of the Port of New Orleans and the New Orleans Vessel Center that will insure prompt action to control traffic movements in the Lower Mississippi River during conditions of limited visibility. Coast Guard states that the discussion in M-80-9, above, is responsive to this recommendation, as it is to recommendation M-80-13. Recommendation M-80-13 asked Coast Guard to reevaluate the proposed level of vessel traffic service on the Lower Mississippi River, and determine if an external surveillance system is needed to overcome the severe limitations of the present VTS to provide useful, accurate information to participants.

Railroad

R-76-34 and R-79-59, from the National Railroad Passenger Corporation (Amtrak), October 6, 1980.—Letter is in response to the Safety Board's inquiry of September 17, 1980, as to implementation of these recommendations, since no response had been received by the Board as of September 17.

Recommendation R-76-34 resulted from investigation of the collision of two Penn Central passenger trains near Wilmington, Dela., October 17, 1975; the Board recommended that the Southeastern Pennsylvania Transportation Authority and Amtrak include in their agreements with Consolidated Rail Corporation requirements that will provide for the safe transportation of passengers as well as for their protection and care in the event of an accident. (See 41 FR 32794, August 5, 1976.) Recommendation R-79-59 was issued following investigation of the derailment of Amtrak train No. 8, the Empire Builder, operating on Burlington Northern track, at Lohman, Mont., March 28, 1978. The Board recommended that the Burlington Northern and Amtrak establish quality control over standards for the servicing of rolling stock maintained by contractual agreements or by Amtrak's own facilities, and correct any existing discrepancies. (See 44 FR 48003, August 16, 1979.)

In response, Amtrak feels that it now complies with recommendation R-76-34. Amtrak's existing contract with Conrail, Section 3.2., states in part ". . . shall give due regard to Railroads speed, weight and similar operating restrictions and rules and safety standards." This section further states that "recognition shall be given to the importance of fast and convenient schedules and passenger comfort and convenience."

Amtrak notes that at the time of the accident, the Penn Central owned the tracks, signals *and entire Northeast Corridor.* Also, Amtrak's forces reviewed Penn Central's Operating

Rules and all other aspects pertinent to a safe operation. Amtrak accepted all facets until April 1, 1976, when Amtrak took over the Corridor. Amtrak developed its own Operating Rules, Work Timetables, Special Instructions, Electrical Operating Instructions, Brake and Train Air Signal Instructions, Safety Rules, and a special Manual of Instructions for Conductors and Trainmen in Amtrak Service. These are all designed for the safe transportation of passengers. The special manual is designed specifically to instruct conductors and trainmen as to their responsibilities. This includes the care and handling of passengers. Amtrak says that another relevant item is the fact that On-Board Service employees are now given classes in first aid, which, again, is for the benefit of passengers.

Amtrak's October 6 letter notes that a reply to recommendation R-79-59 was submitted to the Safety Board on September 23, 1980 (see below).

R-79-59 and R-80-30, from Amtrak, September 23, 1980.—Response notes that Amtrak actively pursues, as standard equipment maintenance policy Safety Board recommendations R-80-30 and R-79-59 (see above). Recommendation R-80-30 resulted from investigation of the derailment of Amtrak train No. 7, the Empire Builder, which occurred while the train was moving through a curve on the Burlington Northern track at Glacier Park, Mont., last March 14. The recommendation, issued August 15, asked Amtrak to prohibit the use in revenue service trains of passenger train cars with defective conditions that may affect their safe operation. (See 45 FR 57606, August 28, 1980.)

Amtrak's September 23 response further notes that, similarly, established standards for equipment maintenance conform with Federal Railroad Administation, Association of American Railroads, and equipment builders' requirements and recommendations. Compliance with these standards is required of Amtrak and contractual railroad facilities. Amtrak says it regularly performs quality control inspections of these important functions to ensure compliance. This enables Amtrak to recognize and correct any discrepancies in servicing procedures below set standards which could contribute to unsafe conditions. For example, a complete systemwide inspection, including intermediate points, was completed in April. Variances from standard policy were handled with facilities and contract railroads for correction. A similar inspection is currently under way. In addition, in July 1980, Amtrak initiated a baggage car heavy overhaul program at its Beech Grove, Ind., shop. This program is producing six to eight overhauled cars per month, which will enable Amtrak to maintain its baggage car fleet in top operating condition. Amtrak said it will continue to monitor these functions and increase efforts to improve the safety and reliability of passenger service.

Note.—Copies of the Safety Board's recommendation letters, as well as responses and related correspondence, are provided free of charge. All requests for copies must be in writing, identified by recommendation number. Address requests to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594.

(49 U.S.C. 1903(a)(2), 1906)

Margaret L. Fisher,

Federal Register Liaison Officer.

October 27, 1980.

[FR Doc. 80-33836 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-58-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee for Screening of Licensing Board Candidates; Meeting

Notice is hereby given in accordance with Section 10 of the Federal Advisory Committee Act that the NRC's Advisory Committee for Technical Members will hold a meeting on November 13 and 14, 1980. The meeting will begin at 9:00 a.m. and will be held at East-West Towers, 4350 East West Highway, Room 415, Bethesda, Maryland 20014.

The Committee will meet in closed session in order to interview and consider the qualifications of candidates to part-time positions as technical members of the Atomic Safety and Licensing Board Panel.

I have determined in accordance with Subsection 10(d) of Pub. L. 92-463 that it is necessary to close these meetings in order to protect information, the release of which would represent an unwarranted invasion of personal privacy under 5 U.S.C. 552b(c)(6). Any discussion not involving personal privacy will be inextricably intertwined with discussion of Exemption 6 matters.

For further information, contact Charles J. Fitti, Assistant Executive Secretary, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (telephone 301/492-7814).

Dated this 24th day of October 1980, Washington, DC.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-33772 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-364]

Alabama Power Co.; Issuance of License No. NPF-8

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has issued License No. NPF-8 to Alabama Power Company authorizing fuel loading and low power testing of the Joseph M. Farley Nuclear Plant, Unit 2. Joseph M. Farley Nuclear Plant, Unit 2, is a pressurized water reactor located in Houston County, Alabama. Prior public notice of the overall action involving the proposed issuance of a license for fuel loading and low power testing was issued in the Federal Register on November 29, 1973 (38 FR 29907).

The application complies with the standards and requirements of the Act and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license.

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

The license is effective as of its date of issuance and shall expire on year after the date, unless extended for good cause shown, or upon earlier issuance or denial of a subsequent licensing action.

A copy of (1) License No. NPF-8, complete with Technical Specifications (NUREG-0697) and Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards dated June 12, 1979; (3) the Office of Nuclear Reactor Regulation's Safety Evaluation Report (NUREG-75/034) dated May 1975, Supplement 1 dated October 1975, Supplement 2 dated October 1976, Supplement 3 dated June 1977 and Supplement 4 dated September 1980 (supplements are NUREG-0117); (4) and Final Safety Analysis Report and amendments thereto; (5) the applicant's Environmental Report and supplements thereto; (6) the Draft Environmental Statement dated July 1974; (7) The Final Environmental Statement dated

December 1974, the Environmental Assessment dated April 1977, and the Addendum dated September 1980 (NUREG-0727); and (8) the NRC Flood Plain Review of the Joseph M. Farley Nuclear Plant site dated September 17, 1980, are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and the G. S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

A copy of the license may be obtained upon request addressed to the United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

Copies of the Safety Evaluation Report and Supplements, and the Final Environmental Statement and addendums may be purchased at current rates, from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing the U.S. Nuclear Regulatory Commission, Attention: Sales Manager, Washington, D.C. 20555. GPO deposit holders can call 301-492-9530.

Dated at Bethesda, Md., this 23rd day of October 1980.

For the Nuclear Regulatory Commission.

B. J. Youngblood,

Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 80-33776 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. STN 50-528-OL, STN 50-529-OL, STN 50-530-OL]

Arizona Public Service Co., et al. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3); Order Scheduling Prehearing Conference

October 23, 1980.

On July 25, 1980, the U.S. Nuclear Regulatory Commission published in the Federal Register a notice of receipt of an application for facility operating licenses for Palo Verde Nuclear Generating Station Units 1, 2 and 3 and notice of opportunity for hearing (45 FR 49732).* Such licenses would authorize Arizona Public Service Company, Salt River Project Agricultural Improvement and Power District, Southern California Edison Company, El Paso Electric Company, and Public Service Company of New Mexico (Joint Applicants) to possess, use and operate Palo Verde Nuclear Generating Station, Units 1, 2 and 3, three pressurized water nuclear reactors (the facilities) located on the Joint Applicants' site in Maricopa County, Arizona, approximately 36 miles west of the City of Phoenix.

The notice of opportunity for hearing provided that any person whose interest may be affected by this proceeding may file a petition for leave to intervene in accordance with the Commission's Rules of Practice (10 CFR 2.714). In response to this notice, on August 11, 1980, Patricia Lee Hourihan (Petitioner) submitted a timely petition for leave to intervene and a request for hearing for herself as well as on behalf of two other persons, Kevin Dahl and Christopher Shuey.

Please take notice that this Atomic Safety and Licensing Board has scheduled a prehearing conference in this proceeding at 9:30 a.m. Tuesday, December 2, 1980, at the following location:

Grand Jury Hearing Room, 5th Floor, Federal Building, 230 North First Avenue, Phoenix, AR 85025

The purpose of the prehearing conference is to consider the petition for leave to intervene filed by the Petitioner and to permit identification of the issues in this proceeding.

On or before November 14, 1980, Petitioner shall file a supplement to her petition for leave to intervene which must include a list of the contentions which are sought to be litigated in this proceeding and the bases for each contention set forth with reasonable specificity. In order to advance the purposes of the prehearing conference, Joint Applicants and the NRC Staff are directed to file their responses to Petitioner's supplemental petition on or before November 24, 1980.

Dated at Bethesda, Md., this 23rd day of October 1980.

It is so ordered.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman.

[FR Doc. 80-33775 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

[NUREG-0487 Supplement 1]

Mark II Containment Lead Plant Program Load Evaluation and Acceptance Criteria; Issuance and Availability

The Nuclear Regulatory Commission (NRC) staff and our consultants have prepared a report entitled "Mark II Containment Lead Plant Program Load Evaluation and Acceptance Criteria" (NUREG-0487 Supplement 1), dated September 1980. The Report provides the staff's partial resolution of the NRC's Generic Technical Activities A-8, "Mark II Containment Pool Dynamic Loads" and A-39, "Determination of Safety-Relief Valve (SRV) Pool Dynamic Loads and Temperature Limits for BWR Containment." These are "Unresolved Safety Issues" pursuant to Section 210 of the Energy Reorganization Act of 1974.

The suppression pool hydrodynamic loads associated with a postulated loss-of-coolant accident (LOCA) were first identified during large scale testing of the Mark III containment system design in the period 1972 through 1974. These newly identified loads, that had not been explicitly considered in the original design of the Mark II containment, result from the dynamic effects of drywell air and steam being rapidly forced into the suppression pool, during a postulated LOCA. In addition, recent experience at operating plants demonstrates that the dynamic effects of safety/relief valve (SRV) discharges to the suppression pool can be substantial.

As a result of these concerns, the Mark II owners formed a group to develop a program consisting of both analytical and experimental tasks to support their pool dynamic loads application methods. In May 1977, Mark II owners divided the overall program into two parts: A Lead Plant Program (LPP) and a Long Term Program (LTP). The LPP was developed to establish a conservative design basis appropriate for the anticipated 40 year life of each Mark II BWR facility.

The United States Nuclear Regulatory Commission reviewed the LPP and issued the Mark II Containment Lead Plant Program Load Evaluation and Acceptance Criteria Report (NUREG-0487) in October 1978. That report included an evaluation of the Mark II Owners' proposed methodology for establishing pool dynamic loads for the lead Mark II plants and a description of the bases for load methodologies that we find acceptable for use in the individual plant unique assessments. Since that report was issued, the Mark II owners submitted additional reports in which they proposed alternative load methodologies for use in the evaulation of Mark II plants. We have completed our evaluation of these alternative load specifications. The staff's evaluation of these alternative loads is presented in this Supplement 1 to NUREG-0487.

In implementing the criteria described in NUREG-0487 and Supplement 1, all applicants are required to document conformance with staff's criteria, deviations from the criteria and bases for the deviations in their Design Assessment Report during the FSAR review.

Additional refinement of selected Mark II loads recently proposed by the

*The July 25, 1980, notice is a clarification of an earlier notice published in the Federal Register (45 FR 46941-43) on July 11, 1980.

Mark II owners is under review by the staff and will be documented in a future NRC report. There are no operating BWR plants with Mark II containments in the United States.

Copies of the report will be available after September 1980. Copies will be sent directly to utilities, utility industry groups and associations and environmental and public interest groups. Other copies will be available for review at the NRC Public Document Room, 1717 H Street, NW, Washington, D.C.; and the Commission's local public document rooms located in the vicinity of existing nuclear power plants. Addresses of these local public document rooms can be obtained by contacting the Chief, Local Public Document Rooms Branch, Mail Stop 309, Nuclear Regulatory Commission, Washington, D.C. 20555, telephone (301) 492-7536. A single copy of NUREG-0588 will be provided free of charge, while the supply lasts, upon written request of a full participant in an ongoing NRC proceeding. This request must identify the requester as a participant and should be addressed to Director, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Bethesda, Md., the 3d day of September 1980.

For the Nuclear Regulatory Commission.

Frank Schroeder,

Acting Director, Division of Safety Technology, Office of Nuclear Reactor Regulation.

[FR Doc. 80-33774 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

Regulatory Guide; Withdrawal

The Nuclear Regulatory Commission has withdrawn Regulatory Guide 3.23, "Stabilization of Uranium-Thorium Milling Waste Retention Systems," that was issued in November 1974 to describe the principal stabilization, maintenance, and long-term control criteria that should be considered in connection with the construction and use of tailings retention systems at uranium and thorium mills containing radioactive materials in concentrations exceeding those specified in Appendix B of 10 CFR Part 20.

In amendments to 10 CFR Parts 30, 40, 70, and 150 that were published in the Federal Register on October 3, 1980 (45 FR 65521), the Commission has upgraded its requirements for uranium and thorium milling activities, including its requirements concerning tailings and wastes generated from these activities. These amendments take into account the requirements mandated in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, as well as other recent information on these milling activities. The guidance provided in Regulatory Guide 3.23 does not reflect these new requirements.

Regulatory guides are developed to describe and make available to the public methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems. Guides may be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made them obsolete.

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

Dated at Rockville, Md. this 22nd day of October 1980.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

Director, Office of Standards Development.

[FR Doc. 80-33773 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

Advisory Panel for the Decontamination of Three Mile Island, Unit 2

An Advisory Panel for the Decontamination of Three Mile Island, Unit 2, was established by the Nuclear Regulatory Commission of consult with and provide advice to the Commission on major activities required to accomplish expeditious and safe cleanup of the TMI-2 facility.

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel will hold its first meeting on November 12, 1980, from 7:00 p.m.-10:00 p.m. at The Forum—Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. The meeting will be open for public observation.

At this meeting the Panel will hold preliminary discussions to establish communications and to clarify the role of the panel and the scope of its activities.

Further information on the meeting may be obtained from Dr. William Travers, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301/492-7811.

Dated: October 28, 1980.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 80-33982 Filed 10-29-80; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

October 27, 1980.

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Some forms listed as revisions may only have a change in the number of respondents or a reestimate of the time needed to fill them out rather than any change to the content of the form. The agency clearance officer can tell you the nature of any particular revision you are interested in. Each entry contains the following information:

The name and telephone number of the agency clearance officer (from whom a copy of the form and supporting documents is available):
The office of the agency issuing this form;
The title of the form;
The agency form number, if applicable;
How often the form must be filled out;
Who will be required or asked to report;
An estimate of the number of forms that will be filled out;
An Estimate of the total number of hours needed to fill out the form; and
The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved

promptly. Our usual practice is not to take any action on proposed reporting requirements until at least ten working days after notice in the Federal Register but occasionally the public interest requires more rapid action.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. The agency clearance officer will send you a copy of the proposed form, the request for clearance (SF83), supporting statement, instructions, transmittal letters, and other documents that are submitted to OMB for review. If you experience difficulty in obtaining the information you need in reasonable time, please advise the OMB reviewer to whom the report is assigned. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Jim J. Tozzi, Assistant Director for Regulatory and Information Policy, Office of Management and Budget, 726 Jackson Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF DEFENSE

Agency Clearance Officer—John V. Wenderoth—697-1195

Extensions

- Department and other Report of Inventions and Subcontracts, DD 882 on occasion Department of Defense Contractors, 2,000 Reponses; 1,000 hours, Kenneth B. Allen, 395-3785
- Departmental and Other Industrial Plant Equipment Replacement Analysis Work Sheet, DD 1106 on occasion Industrial Plant Equipment Replacement Analysis Worksht, 47 Responses, 1,880 hours, Kenneth B. Allen 395-3785

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency Clearance Officer—Joseph J. Strand—245-7488

New Forms

- Alcohol, Drug Abuse and Mental Health Administration
Survey of Discharges From Non-Federal General Hospital Psychiatric Impatient Units
Adm 186-8
Single time
Non-Federal General Hosp. Prov. Psych. Impat. Serv., 300 responses; 1,750 hours
Eisinger, Richard, 395-6880
- Health Services Administration
Supplemental Information Collection Requirements for Black Lung Clinics Program
Annually
Public and private nonprofit entities, 100 responses; 1,000 hours
Eisinger, Richard, 395-6880
- Office of Human Development
National Survey of Spousal Abuse
Single time
Women presently married or living with a male, 5,000 responses, 2,500 hours
Barbara F. Young, 395-6880

Revisions

- Health Care Financing Administration (Departmental)
End-Stage Renal Disease Medical Information System
HCFA-2742 thru HCFA-2746
On occasion
Fac. certified to prov. ESRD serv., 411,340 responses; 26,137 hours
Eisinger, Richard, 395-6880
- National Institutes of Health
Hanes Inepidemiologic Followup: Tracing Items
Single time
Neighbors, family mbrs. phys. other knowl. of respd. loca., 27,000 responses, 3,602 hours
Off. of Federal Statistical Policy and Standard, 673-7974
- National Institutes of Health
Breast Self-Examination Questionnaire
Other (see SF-83)
Female students and their mothers, 3,473 responses; 2,449 hours
Off. of Federal Statistical Policy and Standard, 673-7974

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masarsky—755-5184

Revisions

- Housing Management
Loan Management Report
HUD-4370A/ 4370-PFL
On occasion
Municipalities and other spec. units of loc. govt., 1,500 responses; 750 hours
Richard Sheppard, 395-6880

DEPARTMENT OF LABOR

Agency Clearance Officer—Paul E. Larson—523-6341

New Forms

- Employment and Training Administration
Survey of Employment Services to Disabled Veterans
MT-312
Single time
Young disabled veterans, 10,000 responses; 2,500 hours
Arnold Strasser, 395-6880

ACTION

Agency Clearance Officer—Dana Rodgers, Acting—254-8501

New Forms

- Refugee Resettlement Program Process and Outcomes
Evaluation
Single time
Volunteer service providers, MAA's local councils, 165 responses; 159 hours
Arnold Strasser, 395-6880
- Youth Employment Support Attitude and Process Documentation
Evaluation
Single time
Youth partic., comp. grp yth, volu, etc. and non-prof. orgs., 1,775 responses; 1,443 hours
Arnold Strasser, 395-6880

ENVIRONMENTAL PROTECTION AGENCY

Agency Clearance Officer—Mr. Mel Kollander—287-0747

Revisions

- Information Required From Stationary Air Sources for Noncompliance Penalties
Single time
Major violators of the Clean Air Act, 174 responses, 5,568 hours
Edward H. Clarke, 395-7340

OFFICE OF PERSONNEL MANAGEMENT

Agency Clearance Officer—John P. Weld—632-7737

Revisions

- Mid-Level Data Sheet
CSC-1056A and CSC-1056B
On occasion
Applicants for Federal Employment, 14,000 responses; 7,000 hours

Veeder, Robert N., 395-4814

C. Louis Kincannon,

Acting Deputy Assistant Director For Reports Management.

[FR Doc. 80-33837 Filed 10-29-80; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

Boston Stock Exchange, Inc.; Applications for Unlisted Trading Privileges and of Opportunity for Hearing

October 24, 1980.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Metro-Goldwyn-Mayer Film Co.
Common Stock, No Par Value (File No. 7-5771)

Sunshine Mining Company (Del.)
Capital Stock, $.50 Par Value (File No. 7-5772)

These securities are listed and registered on one or more other national securities exchanges and are reported on the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 17, 1980 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33825 Filed 10-29-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17244; SR-CBOE-80-24]

Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change

October 24, 1980.

In the matter of Chicago Board Options Exchange Incorporated, LaSalle at Jackson, Chicago, Illinois 60604 (SR-CBOE-80-24).

On September 8, 1980, the Chicago Board Options Exchange Incorporated filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which eliminates the requirement that members submit monthly reports of certain uncovered short positions, and requires instead that such reports be submitted only if requested by the CBOE.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17143, September 12, 1980) and by publication in the Federal Register (45 FR 62598, September 19, 1980). No written statements with respect to the proposed rule change were filed with the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33826 Filed 10-29-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 17245; SR-PSE-80-14]

Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

October 24, 1980.

In the matter of Pacific Stock Exchange, Incorporated, 301 Pine Street, San Francisco, California 94104 (SR-PSE-80-14).

On September 4, 1980, the Pacific Stock Exchange, Incorporated ("PSE") filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change which establishes procedures for the execution of cross transactions on the options floor of the PSE.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 17144, September 12, 1980) and by publication in the Federal Register (45 FR 62241, September 18, 1980). No written statements with respect to the proposed rule change were filed with the Commission.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 80-33827 Filed 10-29-80; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-17242; File No. SR-NYSE-80-36]

New York Stock Exchange, Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s (b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given on September 25, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's Statement of Terms of Substance of the Proposed Rule Change

The proposed rule change requires Exchange approval of member and member organization bank loan agreements which are given capital value for otherwise non-allowable fixed assets and securities with no ready market value.

Purpose of Proposed Rule Change

SEC Rule 15c3-1 allows certain fixed assets and limited liquidity securities which would not ordinarily qualify for capital purposes to be given capital value when money is actually loaned by

banks on these assets as collateral. However, Rule 15c3-1 does not require approval of these loan documents. Present Exchange Rule 328 does require approval of some such loans, but does not cover all possible types. Exchange administrative practice has been to have member organizations obtain Exchange approval before entering into any such agreement where value is to be allowed for capital purposes. The proposed amendment to Rule 328 reinforces this practice by incorporating it into a Rule. The Exchange will not require approval of agreements where the member or member organization does not seek to be allowed value for capital purposes.

The proposed amendment to Rule 325 is a cross-reference to Rule 328.

Basis Under the Act

The basis under the Act for this proposed Rule change is Section 6(b)(5) to insure adequacy of member and member organization net capital, thus protecting investors and the public interest.

Comments Received From Members, Participants or Others

No comments were solicited or received with respect to the subject rule change.

Burden on Competition

The Exchange does not believe the proposed rule change imposes any burden on competition.

Until December 4, 1980, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted by November 20, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

October 23, 1980.

[FR Doc. 80-33834 Filed 10-29-80; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 06/06-5240]

Southern Orient Capital Corp., Application for a License as a Small Business Investment Company

Correction

In FR Doc. 80-3311(appearing on page 70365 in the issue of Thursday, October 23, 1980, the heading should have read as set forth above.

BILLING CODE 1505-01

DEPARTMENT OF TRANSPORTATION

Federal highway Administration

Intent To Prepare Environmental Impact Statement; Fulton-DeKalb Counties, Ga.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Fulton-DeKalb Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: David H. Densmore, Development Engineer, Federal Highway Administration, Suite 700, 1422 West Peachtree Street, N.E., Atlanta, Georgia 30309, telephone (404) 881-4758, or Peter Malphurs, State Environmental Analysis Engineer, Georgia Department of Transportation, Office of Environmental Analysis, 65 Aviation Circle, Atlanta, Georgia 30336, telephone (404) 696-4634.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportation (Georgia DOT) will prepare an environmental impact statement (EIS) on a proposal to extend the Lakewood Freeway in the City of Atlanta from near Interstate 75 in Fulton County to Interstate 20 KeKalb County. Included in the proposal is a connection between this facility and Interstate 675. The proposed project is identified as I-420-1(68) and represents the construction of a limited-access highway facility for a distance of approximately five (5) miles. Extension of this freeway is considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration include: (1) taking no action; and (2) the study of three general corridor locations extending easterly to and including a corridor positioned in a north-south direction between Interstate 285 and Interstate 20.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A series of public meetings will be held in Atlanta and DeKalb County in the latter part of 1980, and in the Spring and Summer of 1981, for input on the local level. A formal scoping meeting will also be held within this time period to receive input from interested State and Federal agencies. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. No additional scoping meetings are planned at this time.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

The Catalog of Federal Domestic Assistance Program Number is 20.205, *Highway Research, Planning and Construction.* The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.

Issued on: October 23, 1980.

David H. Densmore,

Development Engineer, Atlanta, Ga.

[FR Doc. 80-33815 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-22-M

Intent To Prepare Environmental Impact Statement; Stewart, Webster, Sumter, Terrell, Lee and Dougherty Counties, Ga.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project

in Stewart, Webster, Sumter, Terrell, Lee and Dougherty Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: David H. Densmore, Development Engineer, Federal Highway Administration, Suite 700, 1422 West Peachtree Street, N.E., Atlanta, Georgia 30309, telephone (404) 881-4758, or Peter Malphurs, State Environmental Analysis Engineer, Georgia Department of Transportation, Office of Environmental Analysis, 65 Aviation Circle, Atlanta, Georgia 30336, telephone (404) 696-4634.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Georgia Department of Transportation (Georgia DOT) will prepare an environmental impact statement (EIS) on a proposal to widen existing portions of S.R. 50 and S.R. 55 or alternate parallel routes from two lanes to four lanes separated by a grassed median, between Richland, Georgia, and Albany, Georgia, a distance of about 51 miles. The project, known as Corridor "Z", will include urban bypasses on new location in some areas and certain sections will be constructed as four lane with a flush median to reduce required right-of-way.

Alternatives under consideration include two major alternate routing locations and the no-build alternative. The alternate locations have common termini but follow different existing roads between them and are separated by as much as 15 miles. Additional minor location alternatives will be considered in some areas where short new location bypasses around small cities are deemed appropriate.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Formal scoping meetings are not anticipated, since the probable environmental impacts are not great and all interested parties have been given ample opportunity for preliminary input. Should a need for such meetings arise, appropriate notice will be given. Several public meetings have been held in the area already to obtain citizen comments. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

The Catalog of Federal Domestic Assistance Program Number is 20.205, *Highway Research, Planning and Construction.* The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and Federally assisted programs and projects apply to this program.

Issued on: October 23, 1980.

David H. Densmore,

Development Engineer, Atlanta, Georgia.

[FR Doc. 80-33817 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Consolidated Rail Corporation (Amtrak); Hearing

The Consolidated Rail Corporation (Conrail) has filed an application with the Federal Railroad Administration (FRA) under section 406 of the Rail Passenger Service Act, 45 U.S.C. 566, for approval to dispose of certain railroad facilities between Miami, Indiana and Indianapolis. Section 406 provides that a railroad may not downgrade or dispose of any facilities that were in use in connection with the operation of rail passenger services by Amtrak on February 1, 1979 without obtaining the approval of the Secretary of Transportation. Because Amtrak has filed an objection to this application, the Federal Railroad Administrator, through delegation from the Secretary, is required to make a determination of the costs Conrail could avoid if it were not required to retain the facilities. If Amtrak does not agree to pay such avoidable costs, the Administrator is required to approve Conrail's application.

Pursuant to 49 CFR 200.9, the Administrator has appointed a panel to make the avoidable cost determination. The panel has decided to hold a public, fact-finding hearing before making that determination, and, accordingly, a public hearing is hereby set for 10 a.m. on November 6, 1980 in Room 8240 of the Nassif Building located at 400 7th Street, S.W., Washington, D.C. 20590.

The hearing will be informal and will be conducted in accordance with the provisions of section 200.9 of the Federal Railroad Administration Informal Rules of Practice for Passenger Service (49 CFR Part 200). The chairman of the panel will conduct this hearing, and the issues will by limited to the quantification of the avoidable costs. The panel expressly waives the thirty day advance receipt of written direct evidence, but continues to require that copies of such evidence be furnished to all parties concurrently with the submission to the Docket Clerk.

The hearing will permit oral presentations but will not be an adversary proceeding, and, therefore, except for the panel, no cross-examination of persons presenting statements will be permitted. The chairman of the panel will make an opening statement outlining the scope of the hearing and will provide interested persons with an opportunity to make statements or rebuttal statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the start of the hearing.

This notice is issued under authority of section 406 of the Rail Passenger Service Act, 45 U.S.C. 566, and section 1.49(1) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(1).

Issued in Washington, D.C., on October 24, 1980.

Robert S. Vermut,

Chairman, 406 Panel.

[FR Doc. 80-33850 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-06-M

National Highway Traffic Safety Administration

National Accident Sampling System Advisory Committee; Public Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., App. I), notice is hereby given of meetings of the National Accident Sampling System (NASS) Advisory Committee to be held on November 17 and 18, 1980. The meetings will be held at the DOT Headquarters Building, 400 Seventh Street, S.W., Washington, D.C., in room 2230. The meetings will start at 9:00 a.m. on both days and the agenda will consist of NHTSA staff briefings on the NASS Program status on the first morning, followed by special interest subcommittee meetings thereafter.

Attendance is open to the interested public, but limited to the space available. With the approval of the Chairperson, members of the public may present a written statement to the Committee at any time.

This meeting is subject to the approval of the appropriate DOT officials. Additional information may be obtained from the NHTSA Executive Secretary, Room 5221, 400 Seventh Street, S.W., Washington, D.C. 20590, telephone 202-426-2872.

Issued in Washington, D.C., on October 24, 1980.

Wm. H. Marsh,

Executive Secretary.

[FR Doc. 80-33837 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-59-M

Office of the Secretary

[Notice No. 80-19]

Construction of Interstate 69 Between Lansing and Charlotte, Mich.; Public Hearing

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice of public hearing.

SUMMARY: The purpose of this Notice is to announce a public hearing to be held on November 24, to consider the proposed route for Interstate 69 between Lansing and Charlotte, Michigan.

DATE: November 24, 1980.

FOR FURTHER INFORMATION CONTACT: Mrs. Camille Cleveland, (202) 426-4396, Office of Environment and Safety, Department of Transportation, Room 9422, 400 7th Street SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: The Department of Transportation has approved two environmental impact statements and authorized right-of-way acquisition for construction of I-69 between Charlotte and Lansing, Michigan. Section 327 of Pub. L. 96-400, "The Department of Transportation and Related Agencies Appropriations Act, 1981", states that no funds shall be available for Interstate 69 between Charlotte and Lansing for 90 days after enactment of that statute (October 9, 1980). The legislative history indicates that it was anticipated that during this 90-day period, the Department would review the matter and conduct a public hearing with respect to the highway location. The legislative history also recognizes that the final decision on project location must be made by the Michigan Department of Transportation.

In order to fulfill the Department's responsibilities under section 327, the Department of Transportation has established a task force to review the proposed highway and its effects, as well as alternative locations, and to conduct a public hearing. The task force will consist of Douglas Wright, Associate Deputy Secretary, Leon Larson, Director, Office of Environmental Policy, Federal Highway Administration, and Roberta Gabel, Office of the General Counsel.

The public hearing will be held on Monday, November 24, 1980, at a location in the project vicinity to be announced shortly in notices in local media. The afternoon session of the hearing is tentatively scheduled to begin at 2:00 p.m. and an evening session will begin at 7:00 p.m. (Eastern Standard Time).

Interested citizens, representatives of civic organizations and public officials are invited to present their views. Participants are encourged to limit each presentation to 10 minutes. Written copies of presentations will be helpful but are not required. Additionally, written presentations by any interested persons may be submitted directly to the Office of Environment and Safety (P-20), Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590, and indicate "I-69 Presentation" on the envelope. Such written presentations should be received no later than December 2, 1980.

Individuals wishing to testify at the hearing may sign up to do so at the beginning of either the afternoon or evening session or may be scheduled in advance by writing to the above address ("I-69 Hearing" on the envelope) to be received by November 20, or by phoning 202-426-4396 by that date. It would be helpful if persons wishing to speak provided the following information:

1. Name
2. Address
3. Phone number during normal working hours
4. Capacity in which presentation will be made (i.e. private individual, public official or civic, public interest or industry group representative, with name of group represented)
5. Time desired for presentation
6. Session (afternoon or evening) desired for presentation

The public and the press are invited to the hearing.

Copies of the approved final environmental impact statements for I-69 are available for public inspection at the following locations:

Michigan Department of Transportation, Public Involvement Section, Transportation Building, 425 West Ottawa, Lansing, Michigan

Grand Ledge City Clerk's Office, 200 East Jefferson Street, Grand Ledge, Michigan

Potterville City Clerk's Office, 223 West Main Street, Potterville, Michigan

Eaton County Clerk's Office, County Court House, 1045 Independence Boulevard, Charlotte, Michigan

Issued in Washington, D.C., on October 27, 1980.

Mark G. Aron,

Deputy General Counsel.

[FR Doc. 80-33882 Filed 10-28-80; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

State of Rhode Island Rules and Regulations Governing the Transportation of Liquified Natural Gas and Liquefied Propane Gas Intended To Be Used by A Public Utility, Inconsistency Ruling (IR-2); Notice of Decision on Appeal

I. Introduction

On December 1, 1978, the State of Rhode Island, Division of Public Utilities and Carriers applied for an administrative ruling on whether the State's "Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas Intended to be Used by Public Utility"(Rules and Regulations) were inconsistent with the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1801 *et seq.*) or regulations issued thereunder. The ruling was sought pursuant to procedures at 49 Code of Federal Regulations (CFR) 107.201 to 107.211.

Notice of the Rhode Island application was published in the Federal Register on March 12, 1979 (44 FR 13617). On December 13, 1979, the Associate Director for Operations and Enforcement, Materials, Transportation Bureau (MTB) issued his ruling (IR-2) (44 FR 75566; December 20, 1979). In that ruling, the Associate Director determined that certain of the Rhode Island requirements were inconsistent with Federal requirements under the HMTA and thus were preempted.

Specifically, sections II, III, V, part of VI, VII and IX of the Rhode Island Rules and Regulations were found to be inconsistent with the HMTA or regulations issued thereunder. These sections would impose the following requirements: 1) the obtaining of a permit prior to the performance of subject transportation (§§ II and III); 2) a limitation on permissible hours of travel (§ V); 3) the filing of a written notice after "any accident, mishap, or any safety irregularities" (part of § VI); 4) a rear bumper sign (§ VII); and 5) a frangible shank-type lock on trailers (§ IX). The remaining Rhode Island requirements were determined to be not inconsistent and therefore not preempted.

II. The Rhode Island Appeal

A. *Scope of the appeal.* The procedural regulations at 49 CFR 107.211 provide for an administrative appeal of the Associate Director's decision to the Director of the MTB. On January 21, 1980, the Division of Public Utilities and Carriers (Division) submitted a notice indicating that the Division was appealing the Associate Director's decision as to all of the Rhode Island requirements found inconsistent, with the exception of the requirement of a frangible lock on trailers. On June 24, 1980, the Division perfected its appeal. In this final filing, the Division abandoned its appeal with regard to rear bumper signs. The remaining Rhode Island requirements found inconsistent in IR-2, the permit system, hours of travel restrictions and notice of accidents (sections II, III, IV, and part VI), are the subject of this decision on appeal.

B. *Contentions on appeal.* The HMTA at § 112(a) (49 U.S.C. 1811(a)) preempts those State or local requirements that are inconsistent with Federal requirements. The administrative procedures, under which the original ruling and this appeal were sought, set forth at 49 CFR 107.209(c) the criteria for determining inconsistency:

(1) Whether compliance with both the State political subdivision requirement and the HMTA or the regulations issued under the HMTA is possible; and

(2) The extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the HMTA and the regulations issued under the HMTA.

The criteria in the regulations are based on case law criteria developed by the U.S. Supreme Court for determining the existence of conflicts.

The ruling by the Associate Director found that sections II and III of the Rhode Island Rules, involving application for and the obtaining of a permit prior to subject transportation, and section IV which would prohibit subject transportation between 7:00-9:00 a.m. and 4:00-6:00 p.m. Monday through Friday would result in delays in transportation that he deemed to be unnecessary, and therefore inconsistent with 49 CFR 177.853.

Section VI, to the extent that it requires written notice to two Rhode Island agencies within twenty-four hours of "any accident, mishap, or any safety irregularities" was found to be inconsistent in light of the Federal incident reporting requirement at 49 CFR 171.16.

On appeal, the Division of Public Utilities and carriers argues that the Associate Director in IR-2 incorrectly applied the criteria at 49 CFR 107.209(c) to the Rhode Island requirements in question. Specifically, the Division contends that MTB's interpretation of the permit requirements was incorrect in that permits are valid for up to two weeks no matter how many trips are made and that the permit application and issuance process does not result in delays in transportation. With regard to the curfew provision, the Division states that the delays assumed by MTB were only conjectural and that the prohibition on transport during certain hours lessens the possibility of accidents and, to the extent that accidents do occur, reduces impacts that might be associated with rush hour traffic. Finally, the Division urges that their written accident report serves purposes that MTB's report does not and that the information provided by the report is needed to determine which vehicles to reinspect.

III. Decision on Appeal

A. *Inconsistency Ruling versus Nonpreemption Determination.* It is essential that the distinction between an inconsistency ruling, which is the procedure involved here, and a nonpreemption determination be understood. The inconsistency ruling is tied to § 112(a) of the HMTA and involves a decision as to whether or not a State or local requirement is inconsistent with and therefore preempted by a Federal requirement. The opinion in IR-2 noted that such decisions have traditionally been made by the courts, but went on, at 44 FR 75567, to point out the reasons for MTB's administrative procedure:

An inconsistency ruling provides an alternative to litigation for a determination of the relationship of Federal and State or local requirements. If a State or political subdivision requirement is found to be inconsistent, such a finding provides the basis for a determination, which can only be made by the Secretary of Transportation or his delegate, as to whether there is to be a waiver of preemption pursuant to § 112(b) of the HMTA.

Section 112(b) (49 U.S.C. 1811(b)) provides that an otherwise inconsistent and thus preempted State or local requirement is "nonpreempted" if it is determined by the Department of Transportation that the State or local requirement provides an equal or greater level of safety as that afforded by the Federal requirements and does not unreasonably burden commerce. Procedures for implementing § 112(b) are at 49 CFR 107.215 to 107.225. The distinction between § 112(a) and § 112(b) is important because at several points the Division argues the level of safety provided by their requirements. Level of safety is one of the criteria for nonpreemption set out in the HMTA. The fact that equal or greater level of safety is provided is a prerequisite for a determination of nonpreemption to be made. The level of safety, however, is not conclusive nor even necessarily relevant in the initial preemption decision.

B. *Application of the Rhode Island requirements.* A major thrust of the Division's appeal was that the permit and travel time limitations did not *in actual practice* result in the unnecessary delays that IR-2 found would occur. In the processing of this appeal. I have had two occasions to communicate with the Division in writing regarding the scope of the issues to be addressed in its appeal. In a letter dated May 19, 1980, to Mr. Edward F. Burke, Administrator of the Division of Public Utilities and Carriers, I stated *inter alia,* the following:

In responding to your concerns about the procedures for issuing inconsistency rulings, I must reiterate to you that such a ruling is an advisory opinion of the Department of Transportation. As is evident from our procedures, it is not the product of formal adjudication under the Administrative Procedure Act, or any other type of adversary proceeding. An inconsistency ruling generally turns on legal issued. The process was not designed for the resolution of factual disputes, but rather to indicate to affected parties, including concerned State and local jurisdictions, the Department's view as to the propriety of specific State of local hazardous materials transportation requirements under the Federal statute and regulatory scheme.

You contend, for example, that "no delay, at any time, has resulted or will result in the future, from the permit requirement or the application thereof." To the extent that this can be shown by legal arguments concerning the plain meaning or interpretation attributed to the Division's rules and regulations in IR-2, I would welcome your addressing this in your appeal. However, the processing of an inconsistency ruling does not turn on how a precisely worded State or local requirement may differ from the intent of its drafters or the manner in which it is administered.

I would like to elaborate and provide a specific example of what I was referring to in my letter. Our procedures for inconsistency rulings make it difficult for factual disputes between commenters to be raised, much less aired and resolved. This is not a flaw, however. The value in our procedure goes beyond the resolution of an individual controversy. At a time when hazardous materials transportation is receiving a great deal of public attention, the forum provides MTB an opportunity to express its views on the proper role of State and local vis-a-vis Federal regulatory activity in this area.

Any benefit is greatly eroded to the extent that the ruling depends on the facts of a subject requirement's administration rather than the specific written requirements themselves. The extreme example would be the nonimplementation or nonenforcement of a directly conflicting State or local requirement. Obviously, it makes no sense for MTB to say that since there is no enforcement there is no conflict. By the same token, it is illogical and inappropriate for MTB to look at the actual administration of a requirement, rather than the requirement itself, when determining whether or not there is an inconsistency.

The Rhode Island Rules and Regulations at section II list what must be included in a permit application. Two of the requirements, at paragraphs 10 and 11, involve separate certifications from the shipper and the carrier "that the load *is* in compliance with the applicable regulations * * *" (emphasis added). In IR-2, it was noted that the information to fulfill these two application requirements, as well as a third, could not be met until after loading was completed. In its appeal, the Division claims that the required certifications are "forward looking expressions" and illustrates this by quoting the requirements. The required carrier certification (called an affirmation by the Division) is:

> I hereby affirm that the above-described cargo *will be* loaded, placarded and transported in full compliance with the applicable motor carrier safety regulations published by the Federal Department of Transportation. (emphasis added).

The change, from the present tense in the Rules and Regulations themselves to the future tense in the Division's application of those rules, cannot be the basis its opinion on the plain meaning of the subject requirement and where that meaning is unclear on the most logical interpretation possible. Strained interpretations are no more acceptable for MTB's purposes than clearly wrong ones.

C. *Permit requirement.* In IR-2, it was noted, at 44 FR 75571, that the Rhode Island Rule regarding the permit application was ambiguous in that the sentence "[t]he application for a permit may be submitted for a period of use of up to two weeks duration prior to utilization of said permit" could be interpreted to allow an application for a permit to be made up to two weeks prior to a given movement or could be interpreted to mean that a single permit would be valid for up to two weeks for either a single movement or multiple movements. The wording is so inarticulate that it admits of no real logical interpretation. However, in IR-2 it was interpreted to mean that a separate permit would be required for each transportation movement. This interpretation was bolstered by the fact, noted previously, that as written certain of the permit application requirements called for information that could only be provided for each movement after the cargo tank was loaded and ready for transportation.

The Division's appeal, however, states that the application and permit provisions have been applied in such a manner as to allow for a permit to be issued for up to two weeks duration durings which any number of separate transportation movements may be made. This interpretation does not account, however, for the movement specific application requirements. Even accepting, for the sake of argument, that the Division's interpretation that a permit may be valid for two full weeks does not dispose of the matter. While the specific language quoted above may be ambiguous, not all the permit requirements have that susceptibility.

As mentioned earlier, a permit application, according to the Rules and Regulations, must include two loading certifications stated in the present tense. The Division, to support its contention of no actual delays in transportation, has quoted its "forward looking" affirmations. These affirmations are not the certifications required by the Rules and Regulations. The fact that the Division has chosen not to implement the Rules and Regulations as written cannot provide the basis for a decision that there is not inconsistency. *As written,* the application requirements themselves require information that is movement specific. The required provision of this information prior to the issuance of a permit would result in delays in transportation that the Associate Director, in IR-2, found to be unnecessary. The record clearly supports this determination.

Another matter raised in IR-2 was the problem of duplicative requirements. Uniformity is the touchstone of an effective program for regulating the interstate transportation of hazardous materials. When individual States and localities impose their own separate requirements, a number of readily envisioned difficulties arise. While there may be benefits to be realized from such additional requirements in certain instances, there are absolutely none to be gained from a system that essentially duplicates a Federal requirement, but requires for compliance that an additional form differing from the Federally-mandated one be carried aboard the transport vehicle.

In IR-2, it was stated that "[n]o matter what the form, any State or local requirement that asks for an additional piece of paper that supplies the same information as is required to be on the DOT shipping paper would be inconsistent with the requirements contained in the Hazardous Materials Regulations." (44 FR 75571). The Division objects to this contention and cites cases for the proposition that highway safety is within the ambit of historic State police powers which are not to be superseded without a clear indication that such was the intent of Congress.

This matter was addressed thoroughly in IR-2, which included the following discussion at 44 FR 75568 (citations omitted):

> There is a longstanding Federal-State relationship in the field of highway transportation safety that recognizes the legitimacy of State action taken to protect persons and property within the State, even where such action impacts upon interstate commerce. However, certain areas of transportation safety demand a strong, predominant Federal role. In the HMTA's Declaration of Policy and in the Senate Committee language reporting out what became § 112 of the HMTA, Congress indicated a desire for uniform national standards in the field of hazardous materials transportation and with the HMTA gave the Department of Transportation the authority to promulgate those standards. Although the HMTA has not totally precluded State or local action in this area, it is the MTB's opinion that to the extent possible Congress intended to make such State or local action unnecessary. The comprehensiveness of the MTB's Hazardous Materials Regulations severely restricts the historical scope of permissible State or local activity. The nature, necessity and number of hazardous materials shipments make uniform standards extremely important.

With regard to the historic Federal-State relationship in the transportation of hazardous materials, the passage of the HMTA clearly altered the historic relationship in favor of a stronger Federal role. The primary purpose of the HMTA's preemption provision, as expressed by its drafters, was "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rept. No. 1192, 93d Cong., 2d Sess. 37 (1974). Redundant requirements present the clearest example of the kind of multiplicity that the HMTA was enacted to prevent. As such redundant requirements pose an obstacle to the accomplishment and execution of the HMTA, even if there is

no direct conflict with an individual Federal requirement.

Striking down redundant information disclosure requirements does not prevent State or local jurisdictions from obtaining and filing the information it seeks, but they must obtain it from the document that meets the Federal requirement, without requiring the truck driver to carry another document with identical information on it.

Certain of the Rhode Island permit application requirements ask for the same information as is contained on the Federally required shipping papers. If such information is required to be carried aboard the vehicle either to obtain a permit further down the road or as part of the information on the permit itself, and the information is the same or very similar to that required by the Federal rules, there exists a redundancy which is inconsistent. In the Rhode Island process, the permit application itself is not a separate document required to be carried aboard the vehicle, and the permit itself presumably does not contain duplicative information. Under these circumstances, I find that the permit application process does not impose redundant requirements.

The fact that there is no redundancy, however, does not alter the fact that the permit provisions of the Rhode Island Rules and Regulations on their face result in delays in transportation that are unnecessary and hence inconsistent with the HMTA and specific Federal requirements, most notably 49 CFR 177.853.

D. *Time of Day Restriction.* Section V of the Rules and Regulations prohibits travel for subject vehicles between the hours of 7:00–9:00 a.m. and 4:00–6:00 p.m., Monday through Friday. In its appeal, the Division maintains that

> [T]he very heart of the travel ban is to lessen the possibility of a mishap occurring within our State during rush hour traffic. Based on information received from the Rhode Island State Police, the probability of an accident occuring during rush hour traffic is greater than during non-peak travel hours. Notwithstanding the greater potential for an accident during these hours there were also two other concerns that played an important role in establishing a travel ban from 7 to 9 AM and 4 to 6 PM. First, the ability of emergency response personnel attempting to reach the scene of the incident could be severely hampered by slow moving or traffic totally stopped. Secondly, should a vehicle transporting LEG [Liquified Energy Gases—be releasing the gas through a leak of some type, the gas would not be dispersed sufficiently into the air if the vehicle is sitting in stopped traffic. Given enough time, the gas surrounding the vehicle could build up enough whereby a small spark from a slowly moving automobile could ignite the gas.

There are several things that need to be pointed out with regard to this line of reasoning. As noted earlier, level of safety is not dispositive of the question of inconsistency. An "equal or greater level of protection to the public than is afforded by the [Federal] requirements" is but one of two criteria at § 112(b) of the HMTA that must be satisfied to obtain a nonpreemption determination. This is not the action being sought here. The difficulty with safety considerations is that there are often untoward aspects that tend to be overlooked. For an extreme example, the greatest possible positive safety impact would be achieved by completely banning the transportation of these materials, but the burdens on commerce and negative safety impacts on neighboring jurisdiction would be enormous. Actions such as the one Rhode Island has taken should be the result of careful study of all the effects of such action, and must be drawn as narrowly as possible to achieve the desired result.

In IR–2, it was stated at 44 FR 75568 that "[t]o the extent that nationwide regulations do not adequately address a particular local safety hazard, State or local governments can regulate narrowly for the purpose of eliminating or reducing the hazard." (Footnote omitted.) I believe this concept is supported by the history and language of the HMTA. The basis for the Associate Director's decision in IR–2 was the fact that Section V of the Rules and Regulations effects a statewide ban which cannot be supported by safety concerns that are essentially local in character. At 44 FR 75569, IR–2 discusses the fact that Rhode Island's relatively high statewide population density does not, of itself, present a unqiue local safety problem.

The broad geographic scope of the Rhode Island requirement means that vehicles are not allowed to move even in areas where rush hour traffic and other safety concerns would not justify such a stoppage. The result of this broad brush approach with no underlying safety analysis is that in a significantly large number of instances, the requirement can produce delays that are unnecessary. Therefore, I agree with the Associate Director that such a requirement is inconsistent with the purposes of the HMTA and the specific provisions of 49 CFR 177.853(a).

E. *Written Accident Reports.* One part of Section VI of the Rules and Regulations requires a written notice to be submitted to two specified State agencies within 24 hours of any "accident, mishap or any safety irregularities." This requirement was found inconsistent in IR–2 with MTB's written incident reporting requirement at 49 CFR 171.16. Another part of Section VI, requiring immediate notice to the State Police was determined to further the State's necessary role in emergency response, and hence was found to be not inconsistent.

Let me begin by correcting a misconception. The Division's appeal states that "[a] carrier covered by the Hazardous Materials Transportation Act must report an incident to the DOT if an incident listed in 49 CFR 171.15(a) occurs. No other incident need be reported." This is not the case. The serious incidents listed under 171.15(a) are those that require immediate notification to DOT. However, 49 CFR 171.16 requires that, in addition to 171.15(a) incidents, *any* unintentional release of a hazardous material be reported to DOT in writing within 15 days.

The Division argues that some of the incidents it requires to be reported are not required to be reported under the Federal regulations. It also maintains that one of the purposes for its requirement, determining which vehicles to reinspect, makes the 15-day filing time for the Federal form too long for the information to be useful to the State.

If the HMTA is to serve its stated purpose and preclude a multiplicity of requirements, its preemptive effect cannot be obviated by a State or locality enacting a similar requirement on the same subject, but with minor variations in purpose or form. The HMTA itself does not preempt the field of hazardous materials transportation regulation. It does, however, authorize MTB to regulate in the area of accident reporting requirements and MTB has so regulated. The narrower field of written accident report requirements directed to hazardous materials carriers has been preempted.

In *National Association of Regulatory Utility Commissioners* v. *Coleman,* 542 F.2d 11 (3d Cir. 1976), the court found that the Federal Railroad Safety Act authorized the issuance of regulations establishing a uniform national accident reporting scheme and specifically preempting States from prescribing accident/incident reporting requirements for rail transportation. I believe that the HMTA provides similar authority in the realm of hazardous materials transportation. Although the MTB requirement does not specifically state its preemptive effect, as did the requirement in *NARUC,* the preemptive effect is clearly stated in the HMTA itself.

The Division believes that the different treatment in IR–2 of the written

and immediate notitification requirements is itself inconsistent. I do not agree. Notwithstanding the fact that MTB has an immediate reporting requirement for certain incidents, emergency response to accidents is principally a State and local function. Therefore, there is more room—indeed, more reason—for State and local governments to regulate when emergency response activities are involved.

There are other mechanisms already in place by which the Division could obtain the information it desires. By coordinating with the State Police, the Division can obtain the information submitted as a result of the immediate notification requirements of Section VI. Some of the information may also be available from State accident reports required of all vehicles. Finally, as pointed out in IR-2, the Division can gain access to the DOT incident reporting system.

IV. Conclusion

For the reasons indicated above, I find that the determination by the Associate Director, in IR-2, that the Rhode Island Rules and regulations' requirements regarding permits, limitation on hours of travel and written notification of accidents are inconsistent with the HMTA and regulations issued thereunder is correct. I therefore deny the appeal of the State of Rhode Island, Division of Public Utilities and Carriers, in its entirety.

This decision on appeal constitutes the final administrative action in this proceeding.

(49 U.S.C. 1811(a), 49 CFR 107.211)

Issued in Washington, D.C., on October 17, 1980.

L. D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 80-33519 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-60-M

UNITED STATES RAILWAY ASSOCIATION

[Docket 211-26]

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 opportunity to comment thereon.

Conrail submitted a Borrowing Application dated October 17, 1980 requesting new borrowings of $2,931,000.00 Conrail states that it will used the funds to pay the following obligations: (1) Of the Penn Central Transportation Company; Federal Employer's Liability Act (FELA) claims of $2,000,000.00, and wage claims FELA claims of $231,000.00; and (3) of the Erie Lackawanna Railway Company; FELA claims of $500,000.00. 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 SW., Washington, D.C. 20595, on or before November 7, 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 27th day of October 1980.

David Kleyps,

Assistant Secretary, United States Railway Association.

[FR Doc. 33836 Filed 10-29-80; 8:45 am]

BILLING CODE 8240-01-M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 212
Thursday, October 30, 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

[M-298 Amdt. 1; Oct. 27, 1980]

CIVIL AERONAUTICS BOARD.

Notice of addition and closure of an item to the October 29, 1980 meeting.

TIME AND DATE: 9:30 a.m., (after the regularly scheduled Board Meeting), October 29, 1980.

PLACE: Room 1012, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 25. Docket 38608, Application of Aeroservicios Ecuatorianos, C.A. (AECA), for an exemption, from section 402 of the Act to permit it to engage in limited nonscheduled all-cargo service between Miami, Houston and Ecuador. (Memo 021, BIA).

STATUS: Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1997-80 Filed 10-28-80; 3:21 pm]

BILLING CODE 6320-01-M

2

COUNCIL ON ENVIRONMENTAL QUALITY.

October 28, 1980.

TIME AND DATE: 11:30 a.m., November 6, 1980.

PLACE: Conference room, 722 Jackson Place NW., Washington, D.C. 2006.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Old Business.
2. Summary of the Findings of the Institutional Barriers Work Group at the Santa Cruz Summer Workshop on Building Efficiency.

CONTACT PERSON FOR MORE INFORMATION: John F. Shea III (202) 395-4616.

[S-1992-80 Filed 10-28-80; 10:37 am]

BILLING CODE 3125-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of changes in subject matter of agency meeting.

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, October 27, 1980, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director John G. Heimann (Comptroller of the Currency), concurred in by Director William M. Issac (Appointive), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Memorandum and Letter re: Farmers Bank of the State of Delaware, Dover, Delaware.
Recommendation regarding the initiation of administrative enforcement proceedings against an insured bank and a director of an insured bank.
Memorandum re: Accounting for Sales of Mortgage Loans.
Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:
Case No. 44,516-L—Gateway National Bank of Chicago, Chicago, Illinois.
Case No. 44,519-NR (Amended)—United States National Bank, San Diego, California.
Memorandum and Resolution re: The Drovers National Bank of Chicago, Chicago, Illinois, Drovers' National Bank v. Michigan Avenue National Bank.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

Dated: October 27, 1980.

Federal Deposit Insurance Corporation.

Alan J. Kaplan,

Assistant Executive Secretary.

[S-1996-80 Filed 10-28-80; 3:20 pm]

BILLING CODE 6714-01-M

4

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 71037, October 27, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., October 29, 1980.

CHANGE IN THE MEETING: The following item has been added:

Item Number, Docket Number, and Company

CAP-9. ER77-485 and ER77-551, Carolina Power & Light Co.

Kenneth F. Plumb,

Secretary.

[S-1989-80 Filed 10-27-80; 4:08 pm]

BILLING CODE 6450-85-M

5

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 71037, October 28, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., October 29, 1980.

CHANGE IN THE MEETING: The following items have been added.

Item Number, Docket Number, and Company

CAM-8. QF80-17, Vermont Marble Co., *et al.*
ER-6. ER80-567, Wisconsin Electric Power Co.
CP-9. TC81-6-000, Southern Natural Gas Co.

Kenneth F. Plumb,

Secretary.

[S-1998-80 Filed 10-28-80; 3:45 pm]

BILLING CODE 6450-85-M

6

NATIONAL MEDIATION BOARD.

TIME AND DATE: 2 p.m., Wednesday, November 5, 1980.

PLACE: Board hearing room, eighth floor, 1425 K Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Ratification of Board actions taken by notation voting during the month of October, 1980.

(2) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Rowland K. Quinn, Jr., Executive Secretary; Tel: (202) 523–5920.

Dated: October 28, 1980.

[S-1994-80 Filed 10-28-80; 2:08 pm]

BILLING CODE 7550-01-M

7

OVERSEAS PRIVATE INVESTMENT CORPORATION.

Meeting of the Board of Directors.

TIME AND DATE: Meeting of the OPIC Board of Directors: Thursday, November 6, 1980 at 9 a.m. (closed portion); 10 a.m. (open portion).

PLACE: Offices of the Corporation, seventh floor board room; 1129 20th Street NW., Washington, D.C.

STATUS: The first part of the meeting from 9 a.m. to 10 a.m. will be closed to the public. The open portion of the meeting will start at 10 a.m.

MATTERS TO BE CONSIDERED: (Closed to the Public; 9 a.m. to 10 a.m.):

1. Country Concentration: fiscal year 1981 Underwriting and Reporting Procedures.
2. Overseas Investment Reinsurance Group: Terms for Three-year Extension.
3. Insurance Project in Middle East Country.
4. Insurance Project in Mediterranean Country.
5. Claims Report.
6. Information Reports.

FURTHER MATTERS TO BE CONSIDERED: (Open to the public; 10 a.m.):

1. Approval of Minutes of Previous Board Meeting.
2. Confirmation of Scheduled Board Meetings.
3. Proposed Personnel Action.
4. Investors' Communications Program.
5. Financial Statements.
6. Information Reports: Finance.
7. Information Reports: Insurance.
8. Information Reports: General.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 632–1839.

October 27, 1980.

Elizabeth A. Burton,

Corporate Secretary.

S-1990-80 Filed 10-27-80; 5:18 pm]

BILLING CODE 3210-01-M

8

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, October 22, 1980.

CHANGES IN THE MEETING: Additional item. The following additional item will be considered at a closed meeting scheduled for Tuesday, October 28, 1980, at 10 a.m.

Personnel security matter.

Commissioners Loomis, Evans and Friedman determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272–2092.

October 27, 1980.

[S-1998-80 Filed 10-28-80; 10:50 am]

BILLING CODE 8010-01-M

9

UNITED STATES RAILWAY ASSOCIATION.

TIME AND DATE: 9 a.m., November 6, 1980.

PLACE: 955 L'Enfant Plaza North, S.W., Board Room, room 2–500, fifth floor, Washington, D.C.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED BY THE BOARD OF DIRECTORS: Portions closed to the public (9 a.m.):

1. Consideration of internal personnel matters.
2. Review of Conrail proprietary and financial information for monitoring and investment purposes.
3. Litigation report.

Portions open to the public (10:30 a.m.):

4. Approval of minutes of the October 2, 1980 Board of Directors meeting.
5. Conrail drawdown request for November.
6. Report on Conrail monitoring.
7. Review of Delaware and Hudson financial information.
8. Consideration of loan application for the 211(h) program.
9. Contract Actions (extensions and approvals).
10. Administrative Committee Pension Plan Modification.

CONTACT PERSON FOR MORE INFORMATION: Alex Bilanow (202) 426–4250.

[S-1995-80 Filed 10-28-80; 2:08 pm]

BILLING CODE 8240-01-M

Thursday
October 30, 1980

Part II

Department of Transportation

Federal Aviation Administration

Special Federal Aviation Regulation No. 29-3; Limited IFR Operations of Rotorcraft

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 27, 29 and 91

[Docket No. 14287; SFAR No. 29-3]

Special Federal Aviation Regulation No. 29-3; Limited IFR Operations of Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment extends the effectivity of Special Federal Aviation Regulation No. 29-2 which allows for limited operations under instrument flight rules (IFR) for certain normal and transport category rotorcraft that are limited by their type certificates to operations under visual flight rules (VFR). The extension is necessary to provide time for further study to determine whether the airworthiness requirements should be revised.

EFFECTIVE DATE: January 1, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Roger E. Riviere, Regulatory Review Branch (AVS-22), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Ave, S.W., Washington, D.C. 20591, telephone (202) 755-8714.

SUPPLEMENTARY INFORMATION: Under Part 27 or 29 of the Federal Aviation Regulations (FAR) a rotorcraft is certificated for visual fight rules (VFR) operation only, unless it is shown that the rotorcraft fully complies with all of the airworthiness requirements for IFR operations. Certain IFR operations can be safely conducted with rotorcraft that do not meet all of the present flight characteristic requirements. Special Federal Aviation Regulation (SFAR) No. 29 was adopted to allow the Administrator to issue approvals for these operations on an interim basis pending the conclusion of a study to determine whether a "limited" IFR category should be established for these rotorcraft, including flight characteristcs and equipment requirements, operating procedures and limitations, flightcrew requirements, and training requirements. SFAR No. 29, as amended by SFAR No. 29-2 (44 FR 2362), expires December 31, 1980.

The FAA has established a Rotorcraft Regulatory Review Program which involves a comprehensive review and upgrading of rules regarding rotocraft airworthiness standards and operating requirements. This program will consider the development of IFR airworthiness standards for rotorcraft certification in Parts 27 and 29 of the FAR. It is the intent of the FAA to rescind this SFAR upon adoption of the new rotocraft IFR certification standards in Parts 27 and 29 as part of the Rotorcraft Regulatory Review Program. This program will not be concluded by the December 31, 1980, termination date of SFAR No. 29 as amended. If the SFAR expires before the completion of the rulemaking action generated by the program, an undue burden could be placed on certain operators of helicopters meeting the criteria specified in the SFAR because it would prohibit IFR operations with those helicopters which might be allowed when the Rotorcraft Regulatory Review Program is completed. This is consistent with Executive Order 12044 issued by President Carter in that it minimizes compliance costs and burdens on the public. Results have not shown any adverse safety effect during the time that it was in effect and none are expected in the future should this SFAR be extended. Thus, the FAA has determined that it is in the public interest to extend the effectivity of SFAR 29, as amended, pending a determination of whether or not new standards should be developed.

Adoption of the Amendment

Since this amendment temporarily relieves a restriction in connection with operations conducted as part of an FAA study and imposes no additional burden on any person, I find that notice and public procedure are unnecessary.

Accordingly, Special Federal Aviation Regulation No. 29, as amended by SFAR 29-2, is reissued, effective January 1, 1981, to read as follows:

Special Federal Aviation Regulation SFAR No. 29-3

1. Contrary provisions of Parts 21, 27, and 29 of the Federal Aviation Regulations notwithstanding, an operator of a rotorcraft that is not otherwise certificated for IFR operations may conduct an approved limited IFR operation in the rotorcraft when—

(a) FAA approval for the operation has been issued under paragraph 2 of this SFAR;

(b) The operator complies with all conditions and limitations established by this SFAR and the approval; and

(c) A copy of the approval and this SFAR are set forth as a supplement to the rotorcraft flight manual.

2. FAA approval for the operation of a rotorcraft in limited IFR operations may be issued when the following conditions are met:

(a) The operation is approved as part of the FAA study of limited rotorcraft IFR operations.

(b) Specific FAA approval has been obtained for the following:

(i) The rotorcraft (make, model, and serial number).

(ii) The flightcrew.

(iii) The procedures to be followed in the operation of the rotorcraft under IFR and the equipment that must be operable during such operations.

(c) The conditions and limitations necessary for the safe operation of the rotorcraft in limited IFR operations have been established, approved, and incorporated in the operating limitations section of the Rotorcraft Flight Manual.

3. An approval issued under paragraph 2 of this Special Federal Aviation Regulation and the change to the Rotorcraft Flight Manual specified in paragraph 2(c) of this Special Federal Aviation Regulation constitute a supplemental type certificate for each rotorcraft approved under paragraph 2 of this SFAR. Each approval issued under this SFAR terminates on December 31, 1982, unless sooner suspended, rescinded, or otherwise terminated by the Administrator.

4. Notwithstanding § 91.23(a)(3) of the Federal Aviation Regulations, a person may operate a rotorcraft in a limited IFR operation approved under paragraph 2(a) of this Special Federal Aviation Regulation with enough fuel to fly, after reaching the alternate airport, for not less than 30 minutes, when that period of time has been approved.

This Special Federal Aviation Regulation terminates on December 31, 1982, unless sooner superseded or rescinded.

(Sections 313(a), 601(a), and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421(a), and 1423) and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—The Federal Aviation Administration has determined that this document is not significant in accordance with the criteria required by Executive Order 12044, as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Washington, D.C., on October 21, 1980.

Langhorne Bond,
Administrator.

[FR Doc. 80-33471 Filed 10-29-80; 8:45 am]
BILLING CODE 4910-13-M

federal register

Thursday
October 30, 1980

Part III

Department of Transportation

Consumer Programs

71922	Coast Guard
71934	Federal Aviation Administration
71925	Federal Highway Administration
71922	Federal Railroad Administration
71931	National Highway Traffic Safety Administration
71931	Office of the Secretary
71934	Research and Special Programs Administration
71922	Saint Lawrence Seaway Development Corporation
71932	Urban Mass Transportation Administration

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 80-062]

Coast Guard Consumer Program

AGENCY: Coast Guard, DOT.

ACTION: Notice of delay in the publication of the Coast Guard's final consumer program.

SUMMARY: The Coast Guard published its draft Consumer Program in the Federal Register on June 9, 1980 (45 FR 39192). Interested persons were invited to submit comments on the draft Consumer Program. The comment period closed on August 8, 1980. The draft Consumer Program noted that, after review of the public comments, the Coast Guard would revise the Program as necessary and publish a final Consumer Program in the Federal Register by October 31, 1980. The Coast Guard has received 117 public comments on the draft Consumer Program. Due to the relatively large number of comments received and the number of revisions being made in the final Consumer Program, publication of the final Consumer Program will be delayed. The Coast Guard expects to publish the final Consumer Program by December 1, 1980. Persons desiring to have a copy of the Coast Guard final Consumer Program mailed directly to them should contact Commander Neal Mahan at the address or telephone number listed below.

FOR FURTHER INFORMATION CONTACT: Commander Neal Mahan, Office of Boating, Public and Consumer Affairs (G-BA), Room 4224, U.S. Coast Guard Headquarters, 2100 Second St. S.W., Washington, DC 20593. Telephone: (202) 426-1080.

V. W. Driggers,

Captain, U.S. Coast Guard, Acting Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 80-33567 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-14-M

Federal Railroad Administration

Consumer Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of delay.

SUMMARY: On June 9, 1980, FRA published in the Federal Register (45 FR 39171) its draft consumer progrram for public review and comment. The June 9 notice indicated that FRA's final consumer program would be published by October 30, 1980. Unfortunately, Agency work burdens have prevented FRA from meeting the October 30 publication date. It is anticipated that the final consumer program will now be published on November 13, 1980.

FOR FURTHER INFORMATION CONTACT: Michael T. Haley, Deputy Chief Counsel, Federal Railroad Administration, Room 8211, 400 7th Street, S.W., Washington, D.C. 20590. Telephone: (202) 472-9042.

SUPPLEMENTARY INFORMATION: FRA's consumer program is being developed to comply with the requirements of Executive Order 12160 directing Federal agencies to develop progams to ensure consumer involvement in agency policy and decision making.

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

John M. Sullivan,

Administrator.

[FR Doc. 80-33568 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-06-M

Saint Lawrence Seaway Development Corporation

Final Consumer Program

AGENCY: Saint Lawrence Seaway Development Corporation ("Corporation"), U.S. Department of Transportation (DOT).

ACTION: Adoption of Corporation's Consumer Program as required by Executive Order 12160 and the final DOT consumer program.

SUMMARY: The Corporation's final Consumer Program has been developed in response to Executive Order 12160, addressing the five consumer functions identified in the Order, and in response to the final DOT Consumer Program.

EFFECTIVE DATE: December 1, 1980.

ADDRESS: Office of Communications and Consumer Affairs, Saint Lawrence Seaway Development Corporation, Room 814, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Dennis E. Deuschl, Director, Office of Communications and Consumer Affairs, 202/426-3574. Use the above address and telephone number of inquiries about consumer complaint-handling procedures, technical assistance for consumers, and consumer participation in the decisionmaking process. Consumer informational materials may be ordered by calling 315/764-0271 and asking for the Public Information Officer, or by writing to that person at: Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662.

SUPPLEMENTARY INFORMATION: On June 9, 1980, the Corporation published its draft Consumer Program for public review and comments. The draft program was developed in response to Executive Order 12160 and the final DOT Consumer Program which requires Federal agencies and DOT operating administrations to be responsible for five consumer functions: representing the consumers' perspective in the development of rules, policies, programs and legislation; providing for consumer participation; developing consumer information materials; educating and training agency staff about consumer policy; and establishing systematic procedures for complaint handling. In addition, each agency and DOT operating administration must provide oversight for its consumer programs.

The Corporation's draft Consumer Program was widely publicized through mailings, telephone notifications, announcements at meetings of Great Lakes maritime groups, and through Corporation news releases to those newspapers and periodicals most frequently read by those affected by the Seaway. A total of 34 individuals and organizations requested copies of the draft but no public comments were received.

Although no public comments were received during the comment period, the following minor changes have been made as a result of administrative review within the Corporation:

- Section III 1(c) has been rewritten to more clearly identify the role of the Corporation's Advisory Board as set forth in the statutory language which established it. (33 U.S.C. 982)
- Section III 2(b)(2) has been rewritten to prevent the possible interpretation that Seaway tolls might be

established at levels calculated to produce for the Corporation revenues in excess of those authorized by legislation.

• Section IV 2(c) has been rewritten to reflect that "Seaway Regulations," rather than being a separate special publication, is part of the contents of "The Seaway Handbook."

• A new Section IV 3 has been inserted to indicate an additional report produced annually for consumers by the Corporation for which a fee charged by the National Technical Information Service. That report is entitled "U.S. Great Lakes Ports Statistics for Overseas and Canadian Waterborne Commerce."

• Sections I, II, III and IV have been combined into this Supplementary Information Section so that the numbering in the balance of this program coincides more closely with that of the DOT program.

Objectives of the Corporation's program are to further integrate consumer concerns into Corporation decisionmaking, to encourage effective consumer participation in the Corporation's decisionmaking processes, and to make the program responsible to the needs of St. Lawrence Seaway consumers insofar as it is consistent with the financial and operational responsibilities of the Corporation established by the Congress. These objectives are actively pursued by the Corporation in the U.S., recognizing that many Seaway rules, policies and programs must be agreed to jointly by the Corporation and its counterpart, the St. Lawrence Seaway Authority, a Canadian Crown corporation.

Directives applicable to the Corporation's Consumer Program are:

• Executive Order 12044, "Improving Government Regulations," March 23, 1978.

• Executive Order 12160, "Providing for Enhancement and Coordination of Federal Consumer Programs," September 26, 1979.

• White House Memorandum to the Heads of Executive Departments and Agencies, "Guidance Regarding the Development of Consumer Programs Required by Executive Order 12160, October 4, 1979."

•"U.S. Department of Transportation Consumer Program," Federal Register, June 9, 1980.

The scope of the Corporation's Consumer Program applies to significant consumer-oriented policies and practices which are under discussion and development other than those activities identified in Section 1-902(b) of Executive Order 12160 as being excepted from agency consumer programs. These activities deal with internal management, personnel and procurement matters of the Corporation, as well as activities which involve foreign affairs or are undertaken in response to an emergency or which must be completed within a short-term deadline imposed by statute or judicial order (Executive Order 12044, Section 6(b) (2), (3), (4) and (6)).

The Corporation is a wholly government-owned, self-sustaining enterprise responsible for the construction, development, operation and maintenance of the St. Lawrence Seaway jointly with the St. Lawrence Seaway Authority of Canada. Together with that Canadian agency, the Corporation operates locks and channels, provides traffic control assistance of vessels transiting between Montreal and Lake Erie, and maintains navigational aids in U.S. waters between Montreal and Lake Ontario. For these services, Seaway users are assessed tolls and other charges under a joint negotiated U.S.-Canadian tariff; the U.S. share being used to pay for the Corporation's operating, maintenance and development expenses, and construction debt.

A Seaway "consumer" is defined as any individual who uses, purchases, acquires, attempts to purchase or acquire, or is offered or furnished any real or personal property, tangible or intangible goods, services or credit for personal, family or household purposes, including individuals who own or operate commercial vessels or pleasure craft in the Seaway, exporters, importers and those who ultimately purchase goods and services shipped via the Seaway.

I. OVERSIGHT FOR CONSUMER AFFAIRS

1. The Corporation has renamed its Office of Communications the "Office of Communications and Consumer Affairs" and a Director has been designated.

2. Consumer affairs duties of the Director include:

a. Under the direction of the Administrator, exercising coordination and oversight of the Corporation's consumer activities.

b. Representing the consumer perspective within the Corporation on the development and review of significant rules, policies, programs and legislation.

c. Advising and informing the Administrator concerning emerging issues bearing on the five consumer functions identified in Executive Order 12160.

d. Serving on the Department of Transportation's Consumer Policy Coordination Council.

e. Supervising the compilation and submission of required Corporation reports on consumer activities to the Director of the DOT Office of Consumer Liaison.

f. Monitoring of liaison of Corporation office heads with Seaway consumers.

II. CONSUMER AFFAIRS PERSPECTIVE

1. The Director of Consumer Affairs reports directly to the Administrator.

2. The Director apprises the Administrator of the potential impact on consumers of particular policy initiatives under development or review within the Corporation, and carries out the duties prescribed in Para I2. above.

3. Office heads have been advised to include the Director in the early stages of the Corporation's internal review procedures for proposed rules, policies, programs and legislation, and assure that any comment by the Director is considered by the Administrator at the time he or she makes the decisions to which the comment is directed.

4. The Director is placed on all Corporation distribution lists to receive and comment on all proposed policies, programs and legislation within the scope of the consumer program.

5. When necessary, the Director is authorized by the Administrator to ask for assistance from the Corporation's Public Information Officer and Public Information Assistant, the Regulations Liaison Officer, the Director of Program Review and other office heads.

III. CONSUMER PARTICIPATION

It is Corporation policy to encourage effective consumer participation early in and throughout its decisionmaking process.

1. Consumer Participation in Rulemaking:

a. Consumer participation in Corporation rulemaking is governed by the Department of Transportation's Regulatory Policies and Procedures, issued in compliance with Executive Order 12044, published in the Federal Register February 26, 1979, and effective March 1, 1979.

b. Under these policies and procedures, the Corporation provides the public with advance notice of planned rulemaking activity through the Federal Register, mailings to

consumers and interest groups, briefings for members of the Congress and consumers, fact sheets, and press releases to publications most often read by Seaway consumers.

c. The views of Seaway consumers with respect to proposed rulemaking regarding the establishment of rules of measurement for vessels and cargo, and rates of charges or tolls, also are represented through the five members of the Corporation's Advisory Board which meets at least four times a year. They are appointed by the President, by and with the consent of the Senate. The members are prominent private citizens who convey the views of a wide cross-section of Seaway users to the Administrator.

d. The Director of Consumer Affairs has the responsibility for monitoring compliance with requirements for public participation by reviewing and commenting on opportunities for public participation provided for in Corporation Notices and Advance Notices of Proposed Rulemaking.

2. Consumer Participation in Decisionmaking on Policies and Programs:

a. When significant policies or programs are being developed by the Corporation, the Director identifies emerging issues which may have a major impact on Seaway consumers, and which have the potential for becoming matters of policy or leading to the development of a program. The Director then adheres to the Standard Procedure for Consumer Participation described below.

b. In identifying key emerging issues, the following criteria shall be considered:

(1) Does the issue involve a matter of interest or controversy among consumers or otherwise directly affect final users or purchasers of transportation services?

(2) Does the issue have a potential for imposing significant costs or other economic burdens on consumers apart from legislatively mandated tolls?

(3) Does the issue have a significant impact on matters of transportation safety?

c. As soon as practicable after a key emerging issue has been identified, the Director prepares a Plan for Consumer Participation that describes exactly what steps will be taken to:

(1) identify those consumers to be directly affected by the proposed policy or program;

(2) inform those consumers who will be affected that the policy or program is under consideration by the Administrator;

(3) provide opportunities for consumer participation in developing the policy or program under consideration by including at least one of the following substantial outreach techniques:

- polls and surveys
- field trips and interviews
- direct notification by telephone or use of mailing lists
- consultations, briefing sessions, and open conferences
- Advance Notices of Proposed Policy (ANPPs) and Notices of Proposed Policy (NPPs). (Publication of an ANPP or NPP in the Federal Register shall, after an adequate period for public comment, be followed by publication of a Notice of Policy, or a Notice of Withdrawal of Proposed Policy, whichever the case may be, and shall include an analysis and summary of comments received along with stated justification and rationales for accepting or rejecting submitted recommendations.)

d. The Director develops a timetable listing probable dates for initiating each substantial consumer participation technique that will be used in the policy or program development process. The timetable assures adequate time for the preparation and submission of consumer views.

e. Summaries and analyses of public comments prepared by Corporation offices are provided to the Director, as well as the Administrator, and adequate consideration is given to these comments in the course of decisionmaking.

f. Seaway consumers are informed of any final decision by the Corporation concerning a particular policy or program.

3. The Corporation shall host a minimum of four meetings/forums which shall be open to Seaway consumers of various levels representing a broad spectrum of Seaway consumer interests. These meetings/forums shall be held at approximately three-month intervals either in Washington, D.C., or in selected locations throughout the Great Lakes/St. Lawrence Seaway region. All such meetings shall be announced in the Federal Register at least 15 days in advance. These notices shall offer Seaway consumers the opportunity to present their views on agenda items either in person or in writing to the Corporation's highest level policy advisors. Formats for these meetings/forums shall consist of briefings followed by question-answer periods.

4. The Director of Consumer Affairs shall participate in DOT-sponsored consumer conferences and forums, as appropriate.

5. The Corporation shall continue to maintain a Seaway consumer mailing list of names that are categorized according to individuals' and organizations' primary area(s) of interest.

IV. INFORMATIONAL MATERIALS

1. The Corporation contributes information to the bi-monthly DOT consumer newsletter.

2. Single copies of the following Corporation consumer brochures, reports and special publications are available free, on request, from the Corporation's Public Information Officer by calling 315/764-0271 or writing: Public Information Officer, Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662.

a. Brochures

- "2,342 Miles into the Heart of a Continent—St. Lawrence Seaway." A general information publication that includes historical and tolls data.
- "Sail the Seaway and Save." A publication aimed specifically at Seaway shippers that details economic data about Seaway ports transportation advantages and the new level of toll charges.
- "Welcome to the Seaway." Produced jointly by the Corporation and the St. Lawrence Seaway Authority of Canada. Text in English and French. Diagrams Seaway locks and points out viewing locations for tourists traveling by automobile.
- "Pleasure Craft Guide Book." Produced jointly by the Corporation and the St. Lawrence Seaway Authority of Canada. Text in English and French. Provides pleasure boat owners/operators with information on tolls, required equipment, lock transit procedures and mooring points.

b. Reports

- "Traffic Report on the St. Lawrence Seaway." Annual publication with calendar year statistics on cargoes and vessels using the Seaway facilities on the St. Lawrence River and Canadian Welland Canal.
- "Saint Lawrence Seaway Development Corporation Annual Report." Annual document required by law that details calendar year financial status and operations of the Corporation.

c. "The Seaway Handbook." An operating manual issued jointly by the Corporation and the St. Lawrence Seaway Authority of Canada for use by vessel operators. The handbook includes Seaway regulations, the Tariff of Tolls, other navigational rules and procedures, and diagrams of each segment of the Seaway between Montreal and Lake Erie.

3. Each year, the Corporation publishes "U.S. Great Lakes Ports Statistics for Overseas and Canadian Waterborne Commerce." The report is based on U.S. Census Bureau data and covers the period of March through December of the previous year. It relates import and export data by port; origin and destination countries; trade routes; commodity codes, descriptions and dollar values; volumes; and types of vessel service. Printed or microfiche copies of the report may be obtained for a fee by writing: National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22161.

4. Throughout the Seaway navigation season (usually between April and mid-December), the Corporation and the St. Lawrence Seaway Authority of Canada jointly issue "Seaway Notices Affecting Navigation," "Seaway Bulletins," and "Seaway Radio Messages" to vessel operators/owners, and (as appropriate) to shippers and other Great Lakes maritime interests regarding opening dates and closing deadlines, navigation obstructions, special weather conditions, traffic congestion points, slowdowns or delays, etc. Those messages, notices and bulletins having a significant impact on Seaway traffic are supplemented with news releases to publications most often read by Seaway consumers.

5. When a new consumer brochure, report or special publication is issued by the Corporation, news releases introducing the publication are sent to the general media as well as the consumer press. The Director of Consumer Affairs will work with the DOT Consumer Policy Coordinating Council and the Public Affairs Council to assess the effectiveness of existing Corporation consumer publications and audio-visual materials.

6. The Director shall develop an inventory of upcoming consumer meetings/forums, and announce opportunities for consumers to attend these scheduled sessions. Where possible and cost effective, advance agendas and non-technical briefing papers shall be developed and disseminated in advance.

V. EDUCATION AND TRAINING

1. A Corporation directive on the management of its consumer programs shall be prepared to implement the Corporation's final Consumer Program.

2. The Director of Consumer Affairs shall brief Corporation officials on the new DOT Order and Corporation Directive.

3. The Director or his representative shall participate in specialized consumer training courses made available by the DOT Office of Consumer Liaison, and where appropriate and cost effective, DOT-sponsored conferences, work shops and other forums.

4. The Director shall be apprised by Corporation office heads of the availability of technical publications prepared by them.

5. When consumers contact the Corporation with technical, scientific or procedural questions, the Director shall provide assistance or refer the inquiries to the office head with the appropriate expertise in the matter.

VI. COMPLAINT HANDLING

1. The Director shall assure that consumer complaints are considered in Corporation policymaking.

2. The Corporation already is included in the DOT brochure "Finding Your Way in DOT," dated March 1978, which describes complaint handling procedures to heighten public awareness.

3. The Corporation shall update its section in this DOT brochure when it is revised.

4. The preponderance of Seaway consumer complaints or problems are addressed to the Administrator or Associate Administrator. Their respective secretaries log in the written complaints. These complaints are replied to in a timely manner.

5. All office heads, the Executive Assistant to the Associate Administrator and the Special Assistant to the Administrator shall be asked to submit to the Director of Consumer Affairs periodic statistical reports on consumer complaints received, the subjects of each, dates received, dates replies sent, and a brief summary of the reply.

6. The Director shall analyze the nature of complaints received and if they become concentrated on an ongoing concern that is not adequately covered in existing Corporation consumer materials, consideration shall be given to producing a new informational piece.

Issued at Washington, D.C. on October 23, 1980. Saint Lawrence Seaway Development Corporation.

D. W. Oberlin,

Administrator.

[FR Doc. 80-33569 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-61-M

Federal Highway Administration

FHWA Consumer Affairs Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of adoption of FHWA Consumer Program.

SUMMARY: This notice describes the FHWA's Consumer Affairs Program which has been developed to comply with the requirements of Executive Order (E.O.) 12160 directing Federal agencies to develop programs to ensure consumer/citizen involvement in agency policy and decisionmaking. The notice discusses each of the five major components of the Executive Order, describing FHWA consumer-related programs already in operation, as well as those activities planned by FHWA to comply with the Executive Order.

EFFECTIVE DATE: December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Mr. Werner Siems, Director, Consumer Affairs Program Staff, 703-557-0556, Federal Highway Administration, 1000 N. Glebe Road, Arlington, Virginia 22201; or Thomas P. Holian, Office of the Chief Counsel, 202-426-0761, Federal Highway Administration, 400 7th Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA was established to administer the Federal-aid highway program of financial assistance to the States for highway construction and improvement of efficiency in highway and traffic operations. This program has provided for the construction of the 42,500 mile Interstate Highway System and the improvement of other Federal-aid primary, secondary, and urban roads, with most of the Federal share of funding coming from the Highway Trust Fund. The FHWA also administers an emergency program to assist in the repair or reconstruction of Federal-aid highways and Federal roads which have suffered damage as a result of natural disasters. Current emphasis within the FHWA is on a number of special areas, including improving highway systems in urban areas, improving safety design of highways, replacing deficient bridges, facilitating the flow of traffic, highlighting energy consideration in transportation planning, providing relocation assistance to those displaced by highway construction, and preserving along highways the natural

beauty of the environment. The FHWA also administers a major direct Federal design and construction program for meeting the highway needs of other Federal agencies. Through its Bureau of Motor Carrier Safety (BMCS) FHWA is responsible for regulations governing the operational safety of vehicles (freight and passenger) and their drivers, operating in interstate commerce. These programs affect and should be of interest to most individuals.

In response to E.O. 12160, Providing for Enhancement and Coordination of Federal Consumer Programs, the DOT Consumer Program, and guidelines provided by the Secretary of Transportation, the FHWA has developed a plan to provide for a consumer affairs structure and mechanism to improve the effectiveness of consumer input to FHWA programs. A draft program was published in the Federal Register (45 FR 39167) June 9, 1980, for public review and comment.

In July a Consumer Affairs Program Staff (CAPS) was established to complete the task of program development and prepare for implementation. The public comments received were given careful study by CAPS in the preparation of the final program, as discussed below. The program is organized as follows:

1. Consumer Affairs Perspective
2. Oversight for Consumer Affairs
3. Consumer Participation
4. Informational Materials
5. Education and Training
6. Complaint Handling

Appendix—Standard Procedure for Consumer/Citizen Participation

SUMMARY OF PUBLIC COMMENTS

The FHWA received nine written comments: five from State and local government officials, three from individuals, and one from a consumer group. Of the written comments received, two were from county engineers who expressed the opinion that the program would create additional red tape and delay. The remaining seven were generally supportive and offered a number of suggestions and observations.

DISCUSSION

Following is a discussion of the comments received and issues considered in developing FHWA's final consumer program.

1. Consumer Affairs Perspective

One State transportation department believes the proposed program should result in a more effective system of communication with the consumer. Two county engineers believe it would create additional and unnecessary bureaucracy. The FHWA shares this concern for efficiency; it has adopted and is pursuing a policy to minimize red tape in all its programs. The FHWA feels its consumer program is designed to meet the requirements of E.O. 12160 without creating unnecessary delays in the conduct of its programs. The additional review and comment requirements can be carried out concurrently with the usual review procedure.

The Center for Auto Safety expressed concern over the proposed assignment of responsibility for an overall consumer perspective to the Associate Administrator for Administration, assisted by a Consumer Affairs Staff Office (now known as the Consumer Affairs Program Staff). The Center foresaw a potential for conflict between the judgment and perspective of the staff office and the Associate Administrator, and recommended consideration of an independent consumer office. The Center expressed similar concern with respect to responsibilities for overall policy guidance, as described in Section 2, Oversight for Consumer Affairs. The Center also suggested the need for standards by which to judge the adequacy of FHWA's consumer involvement effort.

The FHWA has revised its final program to provide that the Consumer Affairs Program Director will provide the consumer perspective within FHWA and will be responsible for overall policy guidance of the consumer program. A Consumer Affairs Program Staff (CAPS) has been established within the Office of the Associate Administrator for Administration. It will report directly to the Associate Administrator, and the Director will have direct access to the Federal Highway Administrator on significant consumer affairs matters. This arrangement will provide for a separate staff and director devoted exclusively to consumer affairs matters, along the example of the Office of Consumer Liaison (OCL) within the Office of the Assistant Secretary for Governmental Affairs. The adequacy of FHWA's efforts will be subject to oversight by OCL and the DOT Consumer Policy Coordinating Council, by periodic management evaluation within FHWA, and by consumers themselves, since they will have access to the CAPS.

Two other changes have been made in the section on Consumer Affairs Perspective. Paragraph 1a, Current Program has been revised to further describe the existing mechanisms for communication between the consumer and the agency. A new paragraph 1b(4) has been inserted to specifically note the development of procedures to enhance consumer participation in policy and program development.

2. Oversight for Consumer Affairs

Changes in this section relative to the CAPS Director's responsibility for policy guidance were discussed in the preceding section.

Several suggestions from the Center for Auto Safety were incorporated into the final program to expand the CAPS' responsibilities with respect to consumer involvement in the rulemaking process. These provide for review by the CAPS of petitions received from the public for rulemaking actions and of entries prepared for the Semi-Annual Regulations Agenda. The latter review will ensure that the consumer perspective is considered in the description of proposed regulatory actions and in the designation of significant and non-significant actions.

The Center took issue with a provision in the proposed program which calls for CAPS review of "all proposed significant rulemaking actions, policies and programs affecting the consumer * * *" The Center contends that the CAPS' participation should not be limited to "significant" actions. "Significant" is defined in the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and in E.O. 12044. The FHWA agrees and did not intend to limit the CAPS' review authority. Under paragraph 2c(4), the CAPS is responsible for the review of rulemaking actions significantly affecting the consumer regardless of their designation under E.O. 12044.

Several responsibilities listed in the Oversight section of the draft program have been moved to other sections of the final program. These include:

—The CAPS' responsibilities for consumer publications and program information, which are treated in Section 4, Informational Materials, and Section 5, Education and Training;

—Regional and Division Office responsibilities for consumer liaison, which are treated in Section 3, Consumer Participation; and

—The CAPS' responsibilities for handling consumer inquiries and complaints, which are treated in Section 6, Consumer Complaints.

3. Consumer Participation

A State highway agency supported FHWA's use of mailing lists to supplement the Federal Register in presenting information to consumers.

An individual commenter pointed out the FHWA's responsibility to provide a follow-up reply when soliciting public involvement in its decisionmaking. In this regard, rulemaking procedures require that when a DOT office prepares a significant final rule, it must also provide a summary of the public comments received and a response to those comments. A similar summary is included in the Federal Register preamble when the next action is taken. Also, in FHWA's Standard Procedure for Consumer/Citizen Participation the CAPS is charged with informing commenters about significant decisions on policies and programs made under this procedure.

—Another individual commented favorably on several aspects of FHWA's consumer program, but warned that it will not be effective until the philosophy behind it is taken seriously by those who carry it out. FHWA has designed its consumer program expressly to increase consumer/citizen input into its decisionmaking process. In monitoring the effectiveness of this program, FHWA welcomes comments from concerned consumers and groups.

Improvement of FHWA briefing sessions on legislative initiatives was discussed in another comment received. The FHWA's program provides for the CAPS to assist other offices in preparing effective meetings and briefings for consumer organizations.

Comments from two local government officials pointed up the importance of establishing confidence and trust in FHWA's Division Office personnel, as representatives of the agency at the State and local level.

Several changes have been made in the Consumer Participation section. A separate subsection on Local Involvement clarifies the opportunities available for citizen participation in planning and project decisions at the State and local level, and identifies the FHWA offices responsible for requirements in these areas. Another subsection treats citizen participation in development of motor carrier safety regulations.

The subsection on the Planned Program has been revised to include opportunities for participation in the rulemaking process as well as in the development of policies and programs.

The subsection on Consumer Forums was revised to permit the CAPS to explore the value and effectiveness of national and regional consumer meetings on a trial basis, and to solicit the suggestions of consumers and consumer groups.

A new subsection on State and Local Consumer Liaison was provided to outline the responsibilities of FHWA's Regional and Division Offices.

4. Informational Materials

The Informational Materials section of the final program was revised to include a reference to the use of news releases to convey information of interest to consumers.

5. Education and Training

The two State highway agencies stressed the importance of well-informed citizens to an effective consumer/citizen participation program. One State agency which offered a planning course for the public reported that the citizens involved made many constructive and knowledgeable contributions. The other State agency said consumer awareness of transportation issues is an essential objective of its organization.

The Education and Training section has been revised to clarify that FHWA's training program on public involvement in highway projects is designed for State and local officials. The FHWA training resources, however, can be used to provide new training for DOT personnel working in consumer affairs programs.

6. Complaint Handling

One comment was received from the Center for Auto Safety suggesting that the CAPS share responsibility with the appropriate FHWA program or staff office for responses to consumer complaints.

A determination on the CAPS role in complaint handling will be made after the completion of a DOT-wide study on the compliant handling process. However, FHWA believes that the consumer interest would be served through the review, within practical limits, by the CAPS of responses to correspondence involving major policy issues or issues with potentially significant consumer impact. Additionally, new procedures should enable the CAPs to advise appropriate officials of consumers' problems and opinions.

The text of the FHWA Consumer Affairs Program follows:

FHWA CONSUMER AFFAIRS PROGRAM

1. CONSUMER AFFAIRS PERSPECTIVE

This section describes how FHWA's Consumer Affairs Program Staff (CAPS) ensures FHWA decisionmakers are provided the consumer viewpoint when rules, policies, programs, and legislation are being developed.

a. Current Program

The FHWA has a responsibility to serve the consumer in the most efficient and effective manner possible. A number of mechanisms are used by the FHWA to facilitate communications between the agency and the consumer and to bring consumer views before the decisionmakers. These include:

(1) Solicitation of public comment on proposed rules.

(2) Use of mailing lists, as well as publication in the Federal Register, to inform interested individuals and organizations of proposed actions.

(3) Issuance of pulbications to explain various aspects of the Federal highway program to consumers.

(4) Use of news releases and other public information techniques to inform consumers about program developments.

(5) Responses to correspondence from consumers.

(6) Responses to consumer complaints.

All of these mechanisms will continue to be employed under FHWA's new Consumer Affairs Program.

In addition to these mechanisms, which relate to the administration of programs by FHWA, consumers have other opportunities to influence decisions at the State and local levels, i.e. in regard to the planning of local transportation systems and the development of specific federally aided highway projects. These opportunities are discussed in Section 3a(2), Local Involvement.

b. Planned Program

To provide an overall consumer perspective and to increase the input of the consumer during the development of

rules, policies, programs and legislation, the FHWA organizational structure has been revised and a management process developed to more fully respond to the needs of the consumer. The revisions include:

(1) Establishing a Consumer Affairs Program Staff (CAPS), headed by a senior level Consumer Affairs Program Director, who reports directly to the Associate Administrator for Administration. The staff will have expertise in FHWA programs and procedures, consumer/citizen participation, and management and editorial skills.

(2) Designating the FHWA Consumer Affairs Program Director to serve as consumer focal point in FHWA and to develop, implement and coordinate the Consumer Affairs Program. (See Section 2, Oversight for Consumer Affairs). In providing the consumer perspective within FHWA, the Director will identify and articulate the consumer interest in appropriate issues that fall within the authroity of FHWA, keep FHWA officials informed of consumers' opinions, concerns and needs, and make recommendations on consumer-related issues to the Administrator. The Director will maintain communications with consumers and consumer organizations on an informal basis as well as through the formal mehanisms identified elsewhere in this program.

(3) Integrating the CAPS into the FHWA regulations review process. This includes providing the CAPS an opportunity to comment on all rulemaking actions which have a significant impact upon the consumer.

(4) Establishing procedures to ensure that the CAPS and consumers have an opportunity to participate in the development of agency policies and programs.

(5) Ensuring that the CAPS' comments on proposed rules, policies, programs and legislation are included in the package which is provided the Administrator/decisionmaker for action.

2. OVERSIGHT FOR CONSUMER AFFAIRS

This section describes the responsibilities and authority of the Consumer Affairs Program Director and Staff.

a. Policy Direction

Policy and procedural guidance for the FHWA Consumer Affairs Program will be provided by the Consumer Affairs Program Director, the senior-level official whose sole responsibility is to oversee FHWA's consumer activities. The Director will head a Consumer Affairs Program Staff established within the Office of the Associate Administrator for Administration, and will report directly to the Associate Administrator for Administration. On matters significantly affecting consumers the Director will, as appropriate, have direct access to the Administrator. The CAPS will be responsible for the development, implementation and coordination of the FHWA Consumer Affairs Program, which incorporates the requirements of E.O. 12160 and the DOT Consumer Program as it relates to FHWA. The Director will serve as the FHWA liaison with the DOT on all consumer-related activities and will serve on the DOT's Consumer Policy Coordinating Council.

b. Resources

While the CAPS has overall responsibility for the FHWA Consumer Affairs Program, other offices in FHWA will be involved in carrying out the different elements of the program. These duties and functions, which are indicated in the other sections of this document, will be assigned in an implementing FHWA directive. The CAPS will provide guidance and assistance to FHWA personnel responsible for various consumer program activities. In general, all FHWA personnel will be expected to be aware of consumer impacts in the development of FHWA policies and procedures and in the overall conduct of agency business.

c. Coordination of Consumer Affairs Program

The CAPS will develop and coordinate a program to ensure that consumers are kept informed of proposed agency actions and that they are given maximum opportunity to become involved in the rulemaking/decisionmaking process. Specifically, the CAPS will:

(1) Prepare, or assist in preparing, and distribute materials to explain the consumer participation process in agency policy and program development and rulemaking;

(2) Review petitions from the public requesting rulemaking actions to identify the consumer interest;

(3) Review and comment during their development on entries for the FHWA Semi-Annual Regulations Agenda, which reports the status of all proposed rulemaking actions, to ensure:

(a) That appropriate opportunities are provided for the consumer to participate in proposed actions;

(b) That descriptions of proposed actions are presented in language understandable to consumers;

(c) The designation of significant and non-significant actions is consistent with the consumer interest;

(4) Review all proposed rulemaking actions, policies, and programs significantly affecting the consumer to ensure they:

(a) Adequately consider the consumer;

(b) Clearly explain the impact of proposed actions;

(c) Clearly advise the consumer of what is required in a response;

(5) Review the distribution of rulemaking actions and proposed policies and programs significantly affecting the consumer to ensure that the mailing/distribution lists utilized reach potentially interested individuals or consumer groups;

(6) Review decision packages developed for rulemaking actions, policies and programs significantly affecting the consumer to ensure the consumer viewpoint is clearly presented.

3. CONSUMER PARTICIPATION

This section describes the procedures and techniques to be used in carrying out the DOT and FHWA policy of encouraging effective citizen participation early in and throughout the agency's decisionmaking processes.

a. Current Program

(1) *Rulemaking.*

Since 1979, the FHWA has been operating in accordance with the DOT Regulatory Policies and Procedures, which establish requirements governing consumer/citizen participation in rulemaking and specifically provide the opportunity to comment on proposed rules.

The FHWA has developed mailing lists to reach a greater number of interested individuals and groups and to provide prompt notification of rulemaking proposals. A brochure, "You and the Rulemaking Process," was distributed to 10,000 individuals and groups inviting them to request inclusion on mailing lists for copies of various subjects of rulemaking actions. After the initial mailing, 2000 responses were received and new mailing lists established. The brochure may be requested from the Office of Public Affairs, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Other mailing lists are maintained to disseminate information on subjects ranging from highway beautification to highway safety.

Another technique which has been employed in the development of policies, programs and legislative initiatives is the briefing session or informal meeting. Public hearings also have been used to obtain comments on significant rulemaking or policy issues.

(2) *Local Involvement.*

Other opportunities for consumer/citizen participation in decisionmaking, while not directly concerned with rulemaking or policy and program development, are provided by the Federal-aid highway program at the State and local level. Under the Federal-aid program, State highway or transportation agencies have primary responsibility for planning transportation systems and developing specific highway projects. To qualify for financial assistance, States must comply with Federal-aid requirements. In the planning process, Federal regulations encourage the use of public involvement techniques. In the project development process, States must consider the social, economic, and environmental impacts, and must conduct public hearings and/or provide other opportunities for consumer/citizen participation. Regulations covering consumer/citizen participation in planning are the responsibility of FHWA's Office of Highway Planning, and those covering consumer/citizen participation in project development are the responsibility of FHWA's Office of Environmental Policy. The CAPS will work with these responsible offices in responding to any issues which may arise regarding consumer participation at the State and local level.

(3) *Motor Carrier Safety.*

Regulations governing the operational safety of trucks and buses in interstate commerce are the responsibility of the FHWA's Bureau of Motor Carrier Safety (BMCS). Consumers have access to the BMCS rulemaking activities under provisions of DOT's Regulatory Policies and Procedures and the Administrative Procedure Act. The BMCS maintains a public docket in Room 3402, 400 Seventh Street SW., Washington, D.C. 20590. Any person may petition the BMCS for rulemaking. The BMCS publishes notices of all rulemaking actions in the Federal Register, distributes copies of its notices to impacted groups, and issues news releases to the general media and to motor carrier industry publications. When considering rules of wide public interest, the BMCS holds hearings in the various regions of the country. It has held hearings, for example, on proposed rules to change the hours of service of motor carrier drivers, to permit intercity bus drivers to use citizen band radios, and to ban smoking on intercity buses. The BMCS maintains mailing lists, adding anyone upon request, for three types of publications: annual statistical reports, published accident reports, and technical bulletins.

b. Planned Program

(1) *Rulemaking: Policy and Program Development.*

In the rulemaking process, FHWA will continue to adhere to the DOT Regulatory Policies and Procedures, which are designed to increase public awareness of planned regulatory actions and to enhance opportunities for public participation. To further enhance these opportunities, the CAPS will take the steps described in the preceding Section 2c, Coordination of Consumer Affairs Program. The FHWA Directives System Handbook will be revised to incorporate the CAPS' role in the rulemaking process. The procedures provide advance notice to the public of FHWA's planned rulemaking actions through publication by DOT of a Semi-Annual Regulations Agenda. To be placed on the distribution list for the Regulations Agenda, contact DOT's Office of General Counsel, C-50, 400 Seventh Street SW., Washington, D.C. 20590.

To ensure consumer input into the development of policies and programs, FHWA has developed a Standard Procedure for Consumer/Citizen Participation, which is published in the Appendix to this Notice. Briefly, it requires each Associate Administrator and Staff Office Director to identify key emerging issues which could lead to development of a policy or program of significance to consumers. Each Associate Administrator and Staff Office Director will designate an individual to be responsible, in coordination with the CAPS, for developing a plan which will identify members of the public who may be affected by an issue originating in his/her office and determine how they can be made aware of the issue and become involved in the development of the proposed policy or program. A summary of consumer responses will be included in the decision package for the Administrator.

(2) *Consumer Forums.*

The FHWA believes that opportunities for more effective consumer participation might be realized as a result of meetings of consumers and their representatives with FHWA officials. These include opportunities for consumers to become better informed about FHWA programs and issues, to gain better access to FHWA decisionmakers, to offer suggestions for future actions, and to exchange ideas and views among themselves. For planning purposes, the CAPS will consider holding one national consumer forum in Washington, D.C., and one or more regional forums on a trial basis during the first year of program operations. In its consideration, the CAPS will evaluate the experience of DOT's Office of Consumer Liaison with its consumer meetings. Also, suggestions from consumers and consumer organizations as to possible topics and format will be considered.

(3) *State and Local Consumer Liaison.*

The FHWA field organization consists of Division Offices located in each State (usually in the capital city) and reporting to nine Regional Offices. These offices monitor the administration of the Federal-aid highway program by the State highway agencies. They are involved in the program at the project level, where it has the greatest consumer/citizen impact. Similarly, the Division and Regional Offices provide the most convenient access to FHWA for the affected public. To utilize this resource for more effective consumer participation, each Regional and Division Administrator will designate an individual who will coordinate liaison activities with consumers in his/her office's jurisdiction and report consumer concerns to the CAPS.

4. INFORMATIONAL MATERIALS

a. Current Program

The FHWA publishes informational material to describe its programs in general terms or to explain some of the specific programs or elements. Many are designed primarily for the consumer. These materials are distributed to a wide variety of individuals and groups and are available upon request from the Office of Public Affairs, Federal Highway Administration, Washington, D.C. 20590. Some of the pamphlets and brochures currently available to the consumer include:

(1) "Ridesharing: An Easy Way to Save Gas and Money;"
(2) "Safety Rest Area—The Traveler's Haven;"
(3) "America on the Move—The Story of the Federal-Aid Highway Program;"
(4) "Cost of Owning and Operating an Automobile;"
(5) "Your Guide to the Freedom of Information Act;" and

(6) "Interstate Transfer Provisions."

FHWA also uses news releases to the mass media, the consumer press, and selected mailing lists to convey information of interest to consumers. Those releases of particular interest, such as those reporting opportunities for public participation, are labeled "Consumer Advisory."

b. Planned Program

The CAPS will coordinate the preparation and maintenance of a list of FHWA consumer-interest publications. The list will be published and distributed periodically.

In cooperation with the DOT Consumer Policy Coordinating Council, the CAPS will prepare an annual consumer publication plan which includes a timetable for the preparation and distribution of new materials. Plans for the preparation, distribution and promotion of consumer publications will be coordinated with the FHWA Public Affairs Office.

The CAPS will assist the DOT Consumer Policy Coordinating Council in maintaining an inventory of all FHWA meetings which are open to the public. To obtain informed consumer participation, the FHWA office conducting a meeting will provide an agenda and background or other supporting materials of interest to attendees. Before the meeting the CAPS will review the material to ensure that it is presented in a non-technical matter and will consult with the initiating office on plans for distribution of the material. Individuals or groups who have not received advance materials may request them from the CAPS or the office conducting the meeting.

5. EDUCATION AND TRAINING

a. Current Program

The FHWA maintains a strong training program to equip its personnel with the skills needed to carry out new and changing responsibilities of the highway program. Recently, for example, the Office of Chief Counsel arranged a training session for FHWA staff on the Federal Register process. Similarly, the Office of Environmental Policy has provided training to State highway employees and FHWA personnel in the citizen participation techniques needed to carry out its project development requirements. The FHWA's training resources will be available to meet the needs of the new consumer affairs program as they are identified.

Assistance to consumers regarding their involvement in the rulemaking process is currently available from the Office of Chief Counsel or the FHWA Regulations Officer.

b. Planned Program

All FHWA personnel will be kept informed by the CAPS of individual responsibilities relating to the agency's consumer affairs program through briefings and the distribution of materials explaining FHWA's consumer-related programs.

The CAPS will cooperate in the DOT Consumer Policy Coordinating Council's training activities, and staff members will attend available interagency training courses.

The CAPS will assist in consumer education by:

(1) Coordinating with FHWA's Office of Public Affairs consumer requests for information and technical assistance on FHWA policies and programs;

(2) Participating with the Office of Chief Counsel in meetings with consumers to discuss the rulemaking process;

(3) Preparing materials necessary to explain the consumer/citizen participation process in agency policy and program development and rulemaking; and

(4) Explaining the consumer/citizen participation process as appropriate at consumer meetings and forums.

6. COMPLAINT HANDLING

a. Current Program

Consumer complaints received by the FHWA are handled under normal correspondence procedures. Correspondence is forwarded by the Executive Secretariat to the appropriate office for response. Responses to complaints involving significant policy or program issues are coordinated among offices with related responsibilities and are prepared for the Administrator's signature. The FHWA believes this procedure works well.

b. Planned Program

The FHWA is awaiting the results of a DOT study on the complaint handling process before revising its current procedures. The DOT study is intended to design a system that will provide helpful and timely answers to consumers' inquiries and complaints, and assure that management officials are informed about consumers' problems and opinions so these can be considered during policy discussions. The FHWA will provide for the review of draft responses to consumer complaints involving major policy issues or significant consumer impact, where practicable, by the CAPS.

APPENDIX—FHWA STANDARD PROCEDURE FOR CONSUMER/CITIZEN PARTICIPATION [1]

Introduction

The FHWA Standard Procedure for Consumer/Citizen Participation is designed to ensure that consumers have meaningful opportunities to participate in the development of major policies and programs which involve decisions by the Administrator, and which are of significance to consumers. To this end, the Consumer Affairs Program Staff is responsible for ensuring that the agency's development of programs and policies are effectively communicated to and coordinated with consumers/citizens and their organizations through the use of Plans for Consumer/Citizen Participation.

Requirements

1. Each Associate Administrator and Staff Office Director is responsible for identifying and notifying the Consumer Affairs Program Director of emerging issues being developed in his/her office having a significant impact on consumers, and which:

a. Involve matters of policy which require a major policy decision or major involvement by the Administrator; or

b. Have the potential for leading to the development of major programs or initiatives within FHWA.

In identifying significant issues, the following criteria will be considered:

(1) Does the issue involve a matter of interest or controversy among consumers or otherwise directly affect final users or purchasers of transportation services?

(2) Does the issue have a potential for imposing significant costs or other economic burdens on consumers?

(3) Does the issue have a significant impact on matters of transportation safety?

2. Each Associate Administrator and Staff Office Director will designate one individual to act as coordinator for all significant consumer matters or issues arising within his or

[1] This procedure will be incorporated into FHWA's implementing directive.

her respective organizational areas. The names of these individuals will be provided to the Consumer Affairs Program Director, who will brief them on their responsibilities and will consider these designees the primary consumer contact point in their respect offices.

3. For each identified emerging issue originating in his/her jurisdiction the coordinator will prepare a Consumer/Citizen Participation Plan. The Plan will include a determination of what members of the public may be affected by the consumer matters or issues, how they can best be made aware of the issues or matters, and how the consumer/citizen can participate in the proposed policy and program development as well as in the decisionmaking process. The Plan will include provisions to clearly and simply explain the impact of proposed policies or programs, clearly advise consumers of what is required in a response, and give consumers sufficient opportunity to respond.

4. The Plan will utilize, as appropriate, one or more of the following techniques to inform citizen/consumers and to obtain their views:

a. Polls and surveys

b. Consultations, field trips and interviews

c. Mailing lists and telephone contact

d. Public meetings (national or regional), briefing sessions and open conferences

e. Notification in the Federal Register.

5. The listing of affected individuals or groups, method(s) of consumer notification, and elements of the Plan, including an implementation timetable, will be coordinated with the Consumer Affairs Program Director before any action is taken.

6. An analysis and summary of consumer comments on the proposed policy or program will be prepared by the initiating office, reviewed by the CAPS and included with the final proposal to the Administrator.

7. The initiating office and the Consumer Affairs Program Staff will coordinate efforts to inform commenters on policy and program decisions made at the conclusion of this procedure.

Issued on: October 24, 1980.

R. D. Morgan,

Associate Administrator for Engineering and Traffic Operations.

[FR Doc. 80-33715 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

National Highway Traffic Safety Administration Consumer Program

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Notice of delay in the publication of the NHTSA's final Consumer Program.

SUMMARY: The NHTSA published its draft Consumer Program in the Federal Register on June 9, 1980 (45 FR 39192). Interested persons were invited to submit comments on the draft Consumer Program. The comment period closed on August 8, 1980. The draft Consumer Program noted that, after review of the public comments, the NHTSA would revise the Program as necessary and publish a final Consumer Program in the Federal Register by October 31, 1980. The NHTSA has received 20 public comments on the draft Consumer Program. Due to the comprehensive nature and length of these comments, and the NHTSA's interest in responding fully to all points raised, publication of the final Consumer Program will be delayed. The NHTSA expects to publish the final Consumer Program by November 30, 1980. Persons desiring to have a copy of the NHTSA final Consumer Program mailed directly to them should contact Ann Mitchell at the address or telephone number listed below:

FOR FURTHER INFORMATION CONTACT: Ann Mitchell, Office of Consumer Participation, Room 5232, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone: (202) 426-0670.

Issued on: October 24, 1980.

Frank Berndt,

Acting Administrator.

[FR Doc. 80-33716 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-59-M

Office of the Secretary

DOT Operating Administrations' Consumer Programs

AGENCY: Department of Transportation (DOT), Office of the Secretary.

ACTION: Notice of Publication of DOT Operating Administrations' Final Consumer Programs; Notices of Delay in the Publication of Certain DOT Operating Administrations' Final Consumer Programs.

SUMMARY: On June 9, 1980, the Department of Transportation (DOT) published its final Consumer Program (45 FR 39144). The program, developed in response to Executive Order 12160 ("Providing for Enhancement and Coordination of Federal Consumer Programs"), addresses the five consumer elements identified in the Order. An appendix to this Program contained draft consumer programs of DOT's eight operating administrations: Federal Aviation Administration (FAA); Federal Highway Administration (FHWA); Federal Railroad Administration (FRA); National Highway Traffic Safety Administration (NHTSA); Research and Special Programs Administration (RSPA); St. Lawrence Seaway Development Corporation (SLSDC); United States Coast Guard (USCG); and Urban Mass Transportation Administration (UMTA).

Each of these draft programs was subject to a 60-day public comment period and, as specified in the DOT Consumer Program, final versions of these plans were to appear in today's Federal Register. The Office of Consumer Liaison in the Office of the Secretary has played a continuing role in the development of both draft and final consumer programs of each operating administration.

This Part contains the final consumer programs of FHWA, SLSDC, and UMTA. Operating administrations not issuing final consumer programs in today's Federal Register have instead issued notices of delay of publication. Final programs for these operating administrations will be published shortly.

For further information on reasons for delay, anticipated publication dates, and contact persons please refer to notice of delay of publication entries in this Part.

EFFECTIVE DATE: Operating administrations' consumer programs appearing in this Part will become effective by December 1, 1980; consumer programs which will be published at a later date will become effective no later than 30 days after publication.

FOR FURTHER INFORMATION CONTACT: Judith L. Stone, Director, Office of Consumer Liaison, U.S. Department of Transportation, 400 Seventh Street, SW, Room 9402, Washington, D.C. 20590, (202) 426-4518; for further

information about specific operating administrations, see contact person listed in each of the following notices.

Issued in Washington, D.C. on October 23, 1980.

William B. Bonvillian,

Deputy Assistant Secretary for Governmental Affairs.

[FR Doc. 80-33717 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-62-M

Urban Mass Transportation Administration

[Docket No. 80-K]

Consumer Program

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Announcement of Final Consumer Program.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is publishing its final Consumer Program. The program has been prepared in response to Executive Order 12160, "Providing for Enhancement and Coordination of Federal Consumer Programs." The Consumer Program will be responsive to the needs and wishes of the public concerning UMTA.

DATES: The Consumer Program is effective on December 1, 1980.

FOR FURTHER INFORMATION CONTACT: Irvin Chor, Consumer Affairs Specialist, Office of Public Affairs, 400 Seventh Street, SW, Washington, D.C. 20590 Rm. 9330. (202) 426-4043.

SUPPLEMENTARY INFORMATION: A draft Consumer Program was published for comment on June 9, 1980 (45 FR 39196). Interested persons were given until August 8, 1980 to submit comments. There were no substantive comments received from the public. Two minor changes in the Program have been made based on comments received from within the Federal Government. As part of the U.S. Department of Transportation, the Urban Mass Transportation Administration (UMTA) administers grant programs to improve public transit service, including grants to assist local governments and other public bodies in financing mass transit facilities, operations and equipment. The Administration's authority, responsibilities and programs are found in the Urban Mass Transportation Act of 1964, as amended.

Executive Order 12160 and the DOT Consumer Program require the DOT operating administrations to review and revise their procedures to ensure that consumer needs and interests are adequately addressed. Following is the UMTA Consumer Program which represents the required review and includes appropriate revisions designed to bring the UMTA Consumer Program into accord with Executive Order 12160 and Department standards. The UMTA Consumer Program will be implemented by an UMTA Order.

The UMTA Consumer Affairs Division represents consumers by participating in the development and review of UMTA policies, rules, programs and legislation which significantly affect consumers. The Consumer Affairs Division is responsible for assuring that citizens have adequate opportunities to participate in the development of UMTA rules, policies, and programs and for encouraging citizen participation in local transit activities. The Consumer Affairs Division shares responsibility with the Public Affairs Office for developing informational materials for consumers and programs that improve the transit industry's ability to work with citizens. Finally, the Consumer Affairs Division is responsible for UMTA Consumer complaint handling.

The Consumer Plan explains how these five program elements are addressed and describes several other functions of the UMTA Consumer Affairs Division that are also among its responsibilities.

CONSUMER AFFAIRS PERSPECTIVE

The UMTA Consumer Affairs Division (CAD) is located within the Office of Public Affairs, and is responsible for working within the public transit industry to improve the relationship between transit operators and the public. The CAD is also responsible for assuring the public access to the policies and programs of the Urban Mass Transportation Administration.

This latter responsibility is performed by implementing the five level Consumer Affairs Specialist. The CAD professional staff will have education, experience and training in transit issues, consumer affairs programs, writing and general administrative procedures.

The CAD participates in the Departmental Consumer Policy Coordinating Council which is responsible for coordinating DOT consumer policies and advising the Secretary on consumer issues.

The CAD is responsible for establishing and maintaining liaison with transit industry community relations professionals and assisting them in improving the relationship between local transit operators and the public. An example of this is the Transit Community Relations Group formed at the initiative of the UMTA CAD. Meeting regularly to discuss problems, solutions, community involvement techniques and experiences, that group has proven to be a valuable resource to the rail transit community. Participating in the activities of the American Public Transit Association Marketing and Community Relations Committees is another method of advancing the interests of transit community relations.

OVERSIGHT FOR CONSUMER AFFAIRS

Although reporting to the Director of Public Affairs, when issues involve significant consumer interest or concern, the Senior Consumer Affairs Specialist has direct access to the UMTA Administrator. The Senior Consumer Affairs Specialist is responsible for carrying out the review and comment functions described in the previous section, as well as monitoring and overseeing the Administration's consumer programs and citizens participation efforts. The Senior Consumer Affairs Specialist is responsible for developing and implementing the Administration's Standard Procedure for Citizen Participation (see Appendix I).

In addition to the functions and responsibilities previously described, the Senior Consumer Affairs Specialist reviews and programs elements described in Executive Order 12160. Additionally, the CAB is authorized to make recommendations to the UMTA Administrator on proposed rules, policies, programs and legislation of significant consumer impact.

The CAD has authority and responsibility for reviewing and commenting on all proposed UMTA regulations having significant consumer impact (as defined in Appendix I). In order to accomplish this task, the CAD is on the UMTA Chief Counsel's distribution list for review and comment on proposed and final regulations. Comments from the CAD receive consideration from the Chief Counsel before a proposed or final rule is published in the Federal Register.

The CAD will be notified by the heads of UMTA offices when policies involving significant consumer impact are under consideration. The CAD is responsible for providing opportunities for citizens to participate in the development of

those policies (see Standard Procedure for Citizen Participation).

The CAD will be notified by the heads of UMTA offices when a program is under consideration which involves significant consumer impact (see Standard Procedure for Citizen Participation). The CAD participates in Administration work groups, task forces and committees engaged in planning or evaluating programs containing elements of significant consumer impact.

Similarly, the CAD will be on the distribution list and have an opportunity to review and comment on proposed legislation developed by the Administration, when that legislation contains elements of significant consumer interest or concern.

The CAD represents an identifiable, accessible professional staff of consumer personnel, including at least one full time senior evaluates applications (received by the Office of Policy Research) for UMTA university research grants when those applications focus on consumer issues. Also, the CAD proposes consumer subjects for consideration as research topics.

The Senior Consumer Affairs Specialist paticipates in the DOT Consumer Policy Coordinating Committee and the interagency programs and activities of the DOT Office of Consumer Liaison.

CITIZEN PARTICIPATION

In addition to exercising its responsibility to review and comment on proposed regulations, policies, programs and legislation, the CAD is similarly responsible for assuring that citizens have adequate opportunities to participate in the UMTA decisionmaking in these areas.

Citizen participation in UMTA rulemaking is the responsibility of the UMTA Chief Counsel and is governed by EO 12044 and the DOT Order on Improving Government Regulations. This responsibility applies to all proposed regulations.

The CAD is responsible for citizen participation in the development of UMTA programs and policies containing elements of substantial consumer interest. Employing techniques and devices outlined in the Standard Procedure for Citizen Participation, the CAD is responsible for timely public notification about the issues, opportunities to comment and an explanation of the processes to be employed in their development.

In addition to assuring citizen access to UMTA program and policy initiatives of significant consumer interest, the CAD is responsible for holding or participating in public forums on transportation issues. Examples of this involvement include the DOT Consumer Conference and the December, 1978, "Workshop on Consumer-Related Issues in Public Transit," co-sponsored by UMTA and the Transportation Research Board.

The UMTA Regional Offices continue to have responsibility for working with citizen and community groups to assist them in developing public transportation proposals. Meetings of this type occur almost continuously and provide an ongoing opportunity for citizens to learn about the federal transit program from high ranking transit officials located in their regions of the country.

It is intended that addition public forums, meetings or conferences will be held on consumer oriented issues. These will be scheduled in Washington, D.C. and around the country, will involve senior level UMTA staff, but will be called as relevant issues arise, rather than on a regularly scheduled basis. An example of this type of activity is the recent series of local briefings on the rail transit accessibility studies held in twelve cities around the country.

INFORMATIONAL MATERIALS

The CAD is responsible for working with the Office of Public Affairs in providing informational materials for citizens on the federal public transit program. This responsibility includes periodic review of existing materials to insure accuracy as well as proposing additional materials. A list of existing publications is attached (Appendix II). All informational materials can be obtained by writing the UMTA Office of Public Affairs; 400 Seventh Street, S.W., Washington, D.C. 20590. In addition, many general publications can be obtained from the UMTA regional offices and are available at UMTA or DOT sponsored meetings and conferences.

When new publications are introduced, the CAD is responsible for notifying the general media (usually via press release) and for utilizing the DOT consumer mailing list for wider distribution.

In cooperation with the lead offices within the Administration, the CAD is responsible for developing informational materials in advance of public meetings, hearings, briefing, etc., whenever an issue of substantial consumer interest is the subject. The summary document prepared to accompany the detailed studies of rail accessibility cost estimates is an example of this type of material. The CAD, and the DOT Consumer Policy Coordinating Council are responsible for informing the public about open meetings that UMTA holds. When the Administration schedules a series of meetings, the CAD will disseminate the schedule to the public.

EDUCATION AND TRAINING

The CAD is responsible for developing within UMTA and local transit agencies fundamental expertise in citizen participation techniques. In part, this will be accomplished by establishing training programs for UMTA headquarters and regional staff and local transit officials. The CAD will also work with transit industry groups and other UMTA offices in developing educational aids and programs. For example, the APTA Marketing Committee is developing a grade school transit educational kit. The Senior Consumer Affairs Specialist is a member of that Committee. Additionally, the CAD has worked with other UMTA offices, consultants and grantees in developing another information kit currently being used by the California DOT and schools in other jurisdictions.

The CAD will meet with and explain the DOT and UMTA Consumer Programs to UMTA program offices. Training opportunities in consumer affairs and citizen participation techniques will be explored and developed in cooperation with the UMTA Office of Personnel and Training as well as other program offices.

The CAD provides assistance to consumers on scientific or technical questions by referring them to appropriate staff or program specialists.

COMPLAINT HANDLING

Consumer complaints and other consumer correspondence are directed to the CAD for reply were it is either answered or referred to a more appropriate office. Frequently, consumer correspondence concerns a local transit authority rather than an element of the Federal transit program. In these instances, a referral is made to the local authority with a request that any assistance possible be provided to the complainant.

Correspondence related to UMTA projects or transit projects funded by UMTA is routed to the appropriate program office for reply. A majority of this correspondence is

treated as controlled mail and, therefore, logged in and monitored for timely reply. When correspondence on a specific subject suggests a widespread positive or negative public attitude (for example, 20 or more letters on the same subject), the UMTA office receiving the letters is required to notify the Administrator of that interest.

On issues where public comments are requested or where the likelihood of public comments is great, a public docket is established so that the comments are considered when decisions are made on that issue.

APPENDIX I—URBAN MASS TRANSPORTATION ADMINISTRATION STANDARD PROCEDURE FOR CITIZEN PARTICIPATION

This Standard Procedure for Citizen Participation indicates those actions and communications devices used to inform the public of developing programs and policies in the Administration and to stimulate public comments. The Standard Procedure is utilized whenever an issue of substantial consumer impact is being addressed and as a supplement to existing DOT public notification requirements for rulemaking actions.

Whenever a proposed program or policy contains elements of substantial consumer impact (as below), the head of the UMTA program office considering the proposal and the Office of Chief Counsel are responsible for notifying the CAD. The CAD and the program office will develop an outreach plan for citizen participation. The plan will include appropriate outreach devices such as the following:

a. polls and surveys,
b. field trips and interviews,
c. mailings,
d. briefing,
e. advance notices,
f. press releases to general interest media,
g. direct notification to consumer, environmental and other special interest groups,
h. distribution of issue papers,
i. public meetings.

The program office and the CAD will develop a timetable for implementing the elements of the outreach plan. The plan and timetable will be included with other public information on the proposal. The CAD and the program office are responsible for ensuring that pulbic comments are summarized and analyzed and that this information is utilized in the decisionmaking process.

The CAD will try to provide all commenters with information on developments significant to the policy or program they commented on.

In determining whether an issue contains elements of significant consumer impact, the following criteria should be used:

1. Does the issue involve a matter of interest or controversy among consumers or otherwise directly affect final users or purchasers of transportation services?
2. Does the issue have a potential for imposing significant costs or other economic burdens on consumers?
3. Does the issue have a significant impact on matters of transportation safety?

APPENDIX II—CONSUMER-ORIENTED PUBLICATIONS OF THE URBAN MASS TRANSPORTATION ADMINISTRATION

1. Federal Assistance for Urban Mass Transportation.
2. Innovative Transit Financing.
3. Transportation Programs for the Elderly and Handicapped.
4. This is Light Rail Transit.
5. Center City Environment and Transportation: Local Government Solutions.
6. Elderly and Handicapped Transportation: Local Government Approaches.
7. Transportation System Management—a bibliography.
8. Fact Sheets:

Paratransit,
Minority Business Enterprise,
Cities Are for Living,
Labor Policy,
Buy America,
Non-Discrimination,
Downtown People Mover Demonstration Program.

Dated: October 24, 1980.

Theodore C. Lutz,
Administrator.

[FR Doc. 80-33718 Filed 10-29-80; 8:45 am]
BILLING CODE 4910-57-M

Federal Aviation Administration

Consumer Program

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of delay in the publication of FAA's final Consumer Program.

SUMMARY: On June 9, 1980, FAA published in the Federal Register (45 FR 39165) its draft Consumer Program for public review and comment. The DOT final Consumer Program, also published on June 9, 1980 (45 FR 39144), indicated that each DOT operating administration, including FAA, would publish a final Consumer Program by October 30, 1980. Unfortunately, agency work burdens have prevented FAA from meeting the October 30 publication date. FAA expects to publish its final Consumer Program by November 6, 1980. Persons desiring to have a copy of the FAA final Consumer Program should contact Fred Pelzman at the address or telephone number listed below.

FOR MORE INFORMATION CONTACT: Fred Pelzman, Chief, Community and Consumer Liaison Division, APA-400, Room 906-A, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, D.C. 20591, 202/426-1960.

Issued in Washington, D.C., on October 27, 1980.

Jerome H. Doolittle,
Assistant Administrator Public Affairs.

[FR Doc. 80-33770 Filed 10-29-80; 8:45 am]
BILLING CODE 4910-13-M

Research and Special Programs Administration

Consumer Program

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of delay in the publication of RSPA's final Consumer program.

SUMMARY: On June 9, 1980, RSPA published in the Federal Register (45 FR 39186) its draft Consumer Program for public review and comment. The DOT final Consumer Program, also published on June 9, 1980 (45 FR 39144), indicated that each DOT operating administration, including RSPA would publish a final Consumer Program by October 30, 1980.

Unfortunately, Agency work burdens have prevented RSPA from meeting the October 30 publication date. RSPA expects to publish its final Consumer Program by November 10, 1980. Persons desiring to have a copy of the RSPA final Consumer Program should contact Jackie Gillan at the address or telephone number listed below.

FOR FURTHER INFORMATION CONTACT: Jackie Gillan, Director, Office of Public Affairs and Consumer Participation, Research and Special Programs Administration, 400 7th Street, S.W., Room 8414, Washington, D.C. 20590, (202) 426-9676.

Issued in Washington, D.C., on October 23, 1980.

Howard Dugoff,

Administrator, Research and Special Programs Administration.

[FR Doc. 80-33771 Filed 10-29-80; 8:45 am]

BILLING CODE 4910-60-M

federal register

Thursday
October 30, 1980

Part IV

Department of Transportation

Office of the Secretary

Final Policy and Proposed Guidelines on Citizen Participation in Local Transportation Planning

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice No. 80-17]

Final Policy and Proposed Guidelines on Citizen Participation in Local Transportation Planning

AGENCY: Office of the Secretary, DOT.

ACTIONS: Notice of Final Policy and Request for Public Comment on Proposed Guidelines.

SUMMARY: With this notice, DOT issues a Policy Statement on Citizen Participation in Local Transportation Planning, as well as Proposed Guidelines on that subject. The first three sections of this notice describe events leading up to this document, analyze the public comments received, and summarize the Department's decisions and actions. The final three sections present the Policy Statement and the Proposed Guidelines on Citizen Participation in Local Transportation Planning, as well as Appendixes which list DOT requirements for citizen participation. The Policy Statement clarifies and strengthens DOT's existing position of encouraging citizen participation in transportation planning. The Proposed Guidelines would support and amplify the Policy Statement by identifying and explaining key elements of active citizen participation; all concerned segments of the public are invited and urged to comment on these Proposed Guidelines. The Policy Statement will apply to all DOT requirements for citizen participation in the local transportation planning process. The Proposed Guidelines would also apply to the same requirements. These requirements are listed in the Appendixes. Appendix A lists Federal-aid progams; these are programs whose laws and regulations require State and local agencies using DOT funds to provide for public involvement in transportation planning and project development. Appendix A also includes brief explanations of how Federal-aid programs are administered in various DOT operating administrations. Appendix B lists other DOT requirements for citizen participation.

DATES: The Policy Statement takes effect October 30, 1980. Comments on the Proposed Guidelines should be received on or before December 29, 1980; to the extent possible, comments will be accepted and considered after this deadline.

ADDRESS: U.S. Department of Transportation, Office of Consumer Liaison (I-50), Proposed Guidelines File, Room 9402, 400 Seventh Street, S.W., Washington, D.C. 20590. All comments received on the Proposed Guidelines will be available for public inspection at the above address, from 8:15 a.m. to 5:45 p.m., on Mondays through Fridays. The receipt of each comment received will be acknowledged in writing, and all commenters will be sent the final guidelines after these have been published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Lee L. Gray, Coordinator for Citizen Participation, Office of Consumer Liaison, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590; (202) 426-4520. For specific information about the substance of DOT operating administrations' requirements for citizen participation, refer to the operating administration's contacts listed in Appendix A and Appendix B of this notice.

SUPPLEMENTARY INFORMATION: This notice was preceded by an Advance Notice of Proposed Policy (ANPP) on this subject, published in the Federal Register on August 9, 1979 (44 FR 46971). The ANPP announced that DOT planned to develop an overall policy statement on citizen participation in transportation planning, and requested public comment. In addition to circulating the ANPP widely, DOT staff conducted in-depth interviews in various areas of the country. A discussion of written comments and interviews is provided in Section (2) below. Both the Policy Statement and the Proposed Guidelines reflect the experiences, opinions, and concepts expressed in the written comments and the interviews.

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Appendix B: General Requirements for Citizen Participation in Local Transportation Planning

(1) Background

The need to clarify DOT's position on citizen participation in local transportation planning became apparent at a DOT conference on Transportation and the Consumer held in Washington, D.C., in May 1979. During informal discussion sessions, citizen conferees drafted recommendations which centered on requests for DOT to expand and improve opportunities for citizens to participate in local transportation planning. While the Department's position was to encourage effective citizen participation in the planning process, DOT had never issued a comprehensive policy statement which applied to all operating administrations in the Department and addressed specific aspects of how citizens should be involved when communities make transportation decisions. The Department agreed that such a statement was necessary.

In June 1979, the Department set up the DOT Work Group on Citizen Participation, charged with developing recommendations to the Secretary concerning DOT policy on citizen participation in local transportation planning. All appropriate elements within DOT were represented on the Work Group. As a first step, the group developed an Advance Notice of Proposed Policy (ANPP) which was published in the Federal Register on August 9, 1979 (44 FR 46971). The public was asked to comment, in particular, on five aspects of citizen involvement in transportation planning:

1. What opportunities do citizens in your area have to become involved in transportation planning? Are they adequate? How can they be improved?
2. How are citizens informed about transportation systems and facilities that are being planned in your area? Is this process adequate? How can it be improved?
3. What resources are provided to facilitate citizen participation in your area? Are they adequate? How can they be improved?
4. What methods are used to recognize and incorporate citizens' views into your area's decisionmaking process? How can these methods be improved?
5. What should be the DOT role in fostering public participation at the State and local levels?

An extensive outreach plan was developed for stimulating comments on the ANPP. Working with the Department's Office of Consumer Liaison, the Work Group identified the affected segments of the public as the

following: individual citizens and representatives of national, State, and local citizens' organizations concerned with transportation issues; groups dealing with environmental issues, with needs of the handicapped, and with minorities' concerns; officials and staffs of State transportation agencies, State and local government officials, regional and local planning agencies, transit operators; agencies serving minorities and low-income citizens; and officials and staffs of DOT headquarters and field offices. A total of 18,000 persons in these categories receiving a mailing about the ANPP which was also publicized through a news release, personal phone calls and letters, meetings, conferences, and newsletters of citizens' groups. In addition, the Work Group organized field trips to 20 cities in order to interview people representing the concerned segments of the public already identified; 193 people were interviewed.

After analyzing the 390 written comments received and the 193 interview reports, the Work Group identified the issues of concern to the affected segments of the public; these are described and discussed in Section (2) below. The Work Group examined a broad range of options available to the Department on each issue; draft recommendations for Departmental review were developed and were discussed with officials throughout DOT. During this process of developing and discussing options and recommendations, an emphasis was placed on giving consideration to the concerns and opinions of the various persons who had commented and been interviewed during the ANPP process.

The Work Group's final recommendations to the Secretary represent a comprehensive position on citizen participation in local planning that is accepted by all elements of the Department. This comprehensive position includes a DOT Policy Statement, Proposed DOT Guidelines, and supportive actions by the Department and its operating administrations. These supportive actions are described in Section (3) below.

(2) Summary of Public Comments

DOT received 390 written comments and interviewed 193 people in 20 cities on its Advance Notice of Proposed Policy on Citizen Participation in Local Transportation Planning. These commenters represented 45 States and included a wide range of government and community perspectives. The breakdown of commenters is as follows:

Individuals and citizen group representatives	285
Agencies representing elderly and low income individuals	31
State and local officials	212
Federal officials	32
Miscellaneous (e.g., consultants, professors)	23
Total	583

Commenters described many local situations and programs which are too numerous to summarize here. However, DOT did examine these specific descriptions to determine what implications they might have in terms of a DOT policy on citizen participation. This section summarizes the public comments received; it does not itemize each individual comment. This section is divided into four parts: How Citizens Participate; DOT Role in Transportation Planning; Education, Training, and Outreach; and Funding for Citizen Participation.

How Citizens Participate

As a whole, individuals and citizen group representatives were not satisfied with citizen participation opportunities in their communities or States. Their major problems revolved around not being involved early enough in the process to influence decisions, inadequate information efforts, ineffective use of advisory groups, lack of citizen representation on transportation committees and transit boards, and the perception that their comments were not taken seriously or used in the decisionmaking process.

On the other hand, most State and local transportation officials and metropolitan planning organization representatives stated that their citizen participation processes were adequate. However, a few indicated that their information efforts could be improved. Many government representatives mentioned public apathy and the dominance of special interest citizen groups in local proceedings as problems.

State and local officials described their local citizen participation programs indepth. Because they opposed any effort to establish new citizen participation rules, they offered only general suggestions for reform within the context of existing policies and regulations. However, a few officials suggested the need for a precise definition of citizen participation and a statement of DOT's objectives. (Both are provided in DOT's policy statement and proposed guidelines.)

Individuals and citizen group respondents described specific citizen participation problems and offered numerous suggestions which follow:

Notification

Comments: Citizens mentioned the selective notification of individuals as a problem. They described situations in which only business representatives were invited to participate at public hearings or only people on the primary proposed corridor were notified instead of residents of all alternative corridors under consideration. Citizens believed that there was insufficient use of the media. They did not blame the situation entirely on local officials but placed a portion of the blame on the media itself for not carrying items about transportation issues. Citizens also mentioned problems in the timing of information and participation efforts with some information being disseminated after plans were formulated. Most recommendations in this area concentrated on using the media more effectively, notifying individuals directly, and using available network and distribution channels. A few local officials acknowledged that they must provide for better and wider outreach efforts to notify citizens of pending proposals and actions.

Response: Nearly all of the specific suggestions by respondents are included in DOT's proposed guidelines.

Access

Comments: Several individuals claimed that they lacked access to information necessary for them to form opinions and respond to planning efforts. A few individuals believed that planning documents were too expensive for citizens and should be provided free or at nominal cost. Certain people stated that information on draft environmental impact statements was withheld and that citizens were made to feel guilty about going to highway departments to look at plans. One citizen complained that in her state no technical information is available until it is part of the official record and that is when contracts are advertised for bid—which made it much too late for citizens to impact decisions. A few individuals indicated that many citizens did not know that they had the right to review information in environmental impact statements.

Response: DOT has addressed these problems in its proposed guidelines.

Quality of Information

Comments: Several individuals criticized the clarity of planning information, indicating that it was sometimes written by staff who "do not speak the language of the people". Citizen respondents alleged instances of inaccurate or misleading information,

with one individual particularly irate when obviously low cost estimates were given in a draft environmental impact statement. One respondent stated that the language on local transportation plans was dull and academic and often seemed unrelated to tangible problems and aspirations of citizens.

Response: DOT's Proposed Guidelines include provisions for readability and accuracy.

Incorporating Public Comment

Comments: The failure to incorporate public comments in transportation planning decisions was perhaps the most significant problem mentioned by citizen respondents. It was mentioned by close to 100 individuals and was even given as one reason for public apathy in transportation issues.

Citizens believed that their comments were not given serious consideration and expressed anger that planning agencies did not explain why citizen suggestions could not be implemented. Phrases like—"they will not listen"; "it's a farce"; "only option is lawsuit"; a "cynical token gesture"; "officials tend to ignore advice of citizens"—illustrated citizen frustrations. A few commentees stated that DOT should require transit authorities to have a complaint handling process.

Response: While DOT recognizes that many local transportation decisions will not please all of the people all of the time, the Department firmly believes that citizens do have a right to expect that their suggestions should receive serious consideration, and they deserve an official government reponse. this commitment is reflected in DOT's proposed guidelines. To DOT's knowledge, all transit authorities already have some mechanisms for handling complaints.

Public Hearings and Meetings

Comments: Many individuals believed that local officials view a public hearing as a proforma waste of time, a formality to comply with the law. Some individuals observed that public hearings often occur late in the process after basic decisions have been made. Some respondents described biased hearing officers who intimidated citizens or belittled their testimony. Many citizens disliked the formal nature of hearings and wanted officials on hand who would answer questions about transportation plans accurately and not defensively. Some citizens criticized planning agencies for not keeping transcripts of hearings, and others claimed that hearing summaries were sometimes inaccurate. Notification about hearings, lack of information in advance of hearings, transportation to meetings, security arrangements, accessibility of buildings were all seen as problems by citizen respondents. Individuals and citizen group representatives expressed support for informational meetings on a neighborhood basis prior to formal public hearings. One individual recommended that public transit officials demonstrate a greater willingness to meet with citizens and groups at convenient times and places. It was also suggested that the offering of compensatory time or rearranged work schedules for planning staff might make them more amenable to after-hour meetings.

Response: In its proposed guidelines, DOT addresses the problems and suggestions noted by the commenters related to public hearings and meetings. Many DOT programs already require planning agencies to keep records of public hearings, and the proposed guidelines offer further suggestions in this area.

Advisory Groups

Comments: Citizen respondents mentioned a number of problems with advisory groups. Several commenters found advisory groups to be ineffective because local officials generally did not listen to their recommendations; commenters claimed that officials expect advisory groups to rubber stamp planning board decisions. These commenters recommended that planning agencies be required to respond to advisory group suggestions and to explain why they were or were not included in decisions. Those that did believe that their advisory groups were successful had staff support and funding available to them. Both citizen commenters and local government commenters expressed concern that general advisory and citizen advisory groups were sometimes not representative of the public at large. At the crux of the problem seems to be a difference in perception on the role of advisory groups with citizens believing that substantial weight should be given to their recommendations and local officials believing that the advisory group's role is strictly advisory.

One individual recommended that citizen advisory groups be formed at the Federal, State, and local levels. A few individuals recommended that planning agencies be required to form citizen advisory groups and to provide funding and staff assistance for such groups. Others suggested that citizen advisory groups should be required to have representation from specific segments of the community, including minority, low income, and handicapped individuals, and bicyclists. A few commenters recommended that citizen advisory groups be formed on a neighborhood basis; and one commenter recommended that any request for funding to DOT should include the recommendations of the local advisory group. A few commenters recommended that special advisory groups be formed for handicapped and minority individuals.

Response: Citizen participation techniques and programs should be geared to individual communities and the nature of the transportation planning effort. While advisory groups, when used properly, can be an important citizen participation mechanism, DOT does not consider it advisable to require transportation planning agencies to have advisory committees at all times. It also does not favor the establishment of a Federal Transportation Advisory Committee. DOT, however, does believe that when advisory groups are used, they should follow certain basic criteria. As a result, DOT has incorporated many of the suggestions made by commenters in its proposed guidelines.

Representation

Comments: Several individuals believed that transit boards and policy committees of metropolitan planning organizations did not represent citizen interests and called for a voting citizen representative on such boards and committees. A few city officials stated that the public had their chance to be represented at the ballot box, but citizen commenters seemed to anticipate this argument by saying that it is difficult to elect officials on the basis of one issue and it is not always possible to know the opinions of officials on every subject before an election. Some citizen commenters said that the metropolitan planning organizations (MPO) were at times composed of staff or appointed officials because MPOs had difficulty in getting elected officials to attend meetings. In a similar vein, one commenter said that transportation planning bodies are an invisible and unaccountable branch of government; and another person recommended that the composition of MPOs be examined. Two persons suggested that transit decisionmakers be elected, and one suggested that they be elected by district.

Response: Under Federal legislation, governors together with local elected officials have the responsibility for designating metropolitan planning organizations (MPO) [23 U.S.C. 134]. DOT regulations require that local elected officials have adequate representation on MPOs [23 CFR

450.106]. State and local laws and regulations often determine the structure of transit boards. As a result, changes in the make-up of these committees and boards are best addressed at the State and local levels. However, DOT believes that both transit boards and policy committees of MPOs might benefit from grassroots citizen representation, and this idea has been incorporated in DOT's proposed guidelines.

Timing of Citizen Participation Activities

Comments: Citizen respondents mentioned timing of their participation as a major problem. They indicated that they were involved too late in the process to have any influence on decisions and that often there was not enough time between the announcement of a public hearing and the hearing itself to really study the issues. Transportation agencies mentioned difficulty in generating citizen interest in the initial stages of planning.

Response: DOT's proposed guidelines and policy statement stress the importance of early involvement. The proposed guidelines also encourage planning agencies to describe clearly the implications of potential transportation activities as one way of stimulating early citizen involvement.

Surveys/Referendums

Comments: Some individuals and government officials favored the use of surveys in getting the public's ideas on transportation needs and on specific transportation proposals. A few individuals expressed support for user surveys on public transit needs. Some local officials believed that those who participated in transportation planning are often members of special interest citizen groups and not representative of the public at large. These officials believed that surveys could give them a better idea of how the public at large views specific proposals. A few individuals favored public referendums on controversial transportation issues.

Response: Surveys are one means of gauging public opinion on transportation needs and programs and as such are mentioned as a participation technique in DOT's proposed guidelines. However, to be conducted properly, surveys require more money and expertise than many commenters realize. DOT advises planning agencies to conduct careful investigation and planning before proceeding with surveys and never to rely on surveys as the only means of obtaining public views.

Public referendums can be useful in resolving public controversy on certain large transportation projects and have been used in a few communities. However, as a general matter, referendums are too costly and time-consuming for general use.

DOT Role in Transportation Planning

The nature and the extent of DOT involvement in local transportation planning was clearly controversial. Recommendations ranged from having U.S. DOT take control of local transportation planning to a call for no Federal involvement.

Rules/Guidelines

Comments: Approximately 75 commenters (mostly individuals and citizen group representatives) favored stronger DOT rules and sanctions governing citizen participation. A number of these commenters suggested that DOT establish effective standards for citizen participation and assure that those standards are met. Some commenters asked DOT to refuse to review, approve, or fund any projects which were planned without ground-level citizen participation; and a few called for a cutoff of DOT funds when a local transportation decision runs counter to the expressed will of the people. Two commenters suggested that DOT take control of the local transportation planning process when a State or local agency does not adequately provide for citizen participation.

While not recommending specific sanctions, another large group of commenters called for more stringent public participation requirements, covering such items as early citizen involvement, regularly scheduled public meetings, public hearings, incorporating public comments into decisions, the use of citizen advisory groups, etc.

Several people believed that citizen participation could be improved through the issuance of DOT guidelines. A few commenters suggested that such guidelines define specific responsibilities of Federal, State, and local transportation agencies.

Several State and local officials believed that existing requirements in citizen participation are sufficient. Many of these officials and a few individuals stressed the need for communities to have flexibility in funding allocations and in citizen participation requirements. Some respondents suggested that different criteria should be established for different types and sizes of communities and programs. Still others stated that communities which already have an active citizen participation program should be exempt from any new citizen participation requirements. One person stated that Federal specifications and rules need to be geared down for rural areas. A few commenters suggested that DOT merely require that a citizen participation process be in place and let local officials develop their own strategies for a given project in consultation with the State and U.S. DOT. One commenter suggested that the most effective rule would be a simple one requiring every planning document to contain a description of public involvement and its effect on the proposals.

A few State and local officials believed that Federal agencies should remove themselves completely from the citizen participation area stating that local officials know best what citizen participation is needed or appropriate for each project.

Response: DOT is determined to strengthen its support for citizen participation and has considered various approaches for improving citizen participation in local transportation planning. The blanket use of the regulatory approach was rejected because of the difficulty in preparing regulations that would be adaptable to all planning situations and the need for flexibility and innovation in citizen participation programs. This does not, however, rule out the strengthening of existing regulations on specific programs, and in fact, DOT's operating administrations in the next several months will be reviewing, and where necessary, revising existing regulations to reflect DOT's policy on citizen participation.

DOT is convinced that the best overall approach is to state clearly DOT's policy on citizen participation and to provide guidelines which will assist planning agencies in meeting the policy goals and objectives.

Comments regarding withholding of funds are treated below.

Comments: One commenter asked DOT to endorse Environmental Protection Agency guidelines on citizen participation in transportation air quality programs.

Response: DOT has published joint guidelines with EPA on transportation planning activities related to air quality [45 FR 42023; 6/23/80].

Monitoring/Complaint Handling

Comments: Several individuals called for stronger monitoring and enforcement of all DOT rules especially citizen participation and environmental rules. A few commenters mentioned problems in the enforcement of State Action Plans required by DOT's Federal Highway Administration, and criticized the enforcement of environmental rules.

alternative analysis requirements, and conflict of interest provisions. Others called for DOT's regional offices to be more receptive to citizen input and to serve as impartial information receivers on controversial projects with local polarization. A few recommended that regional DOT staff should monitor State and local citizen participation efforts regularly and attend public hearings on a regular basis. One State official recommended that citizen participation activities should be monitored as closely as expenditures and design criteria. He encouraged DOT to look at all citizen participation activities, not just public hearings, and to ask about citizen comments in any project review.

Several individuals and citizen group representatives called for some type of an appeals process through which citizens might report problems to DOT for review and investigation. They stated that if the citizen complaint appears to have merit that U.S. DOT should require an explanation from the State or local planning office. A few people asked that DOT be more responsive to citizen complaints and asked that there be a citizen focal point in each region.

DOT response: All DOT programs do provide for some type of review. For example, the Federal Highway (FHWA) and Urban Mass Transportation (UMTA) administrators periodically review the urban transportation planning process for each urbanized area. Following this review, the FHWA and UMTA administrators jointly determine if a transportation planning process complies with DOT's regulations and whether an urban area should be certified or whether conditions should be placed on the certification (for example, require corrective actions in certain areas and/or certify only specific projects or programs) [CFR 450.122].

In airport planning, the Federal Aviation Administration (FAA) reviews planning study designs before grants are awarded to assure that the designs provide for public participation and coordination. FAA also monitors the implementation of the airport planning studies. Grant recipients receive specific guidance on citizen participation through FAA's Advisory Circular on Citizen Participation [A.C. 150/5050-4].

Under laws administered by the Federal Railroad Administration (FRA), each State must develop a State Rail Plan and update it annually [49 U.S.C. 1654]. The plan must include the procedures and mechanisms used by the State to provide for public participation. FRA's Office of Federal Assistance reviews these plans annually.

DOT obviously has more leverage in those areas which have specific legislative mandates. However, it is often able to persuade local agencies to strenghten citizen participation elements through voluntary means. DOT places its emphasis on achieving voluntary compliance with its rules and guidelines and views the withholding of funds as an extreme measure.

For the most part, the Regional Administrators of DOT's operating administrations have prime responsibility for monitoring and enforcement of all DOT rules. Other DOT field and district offices may also share some monitoring responsibilities. DOT recognizes that additional training of regional staff may be required to enable them to improve their monitoring of the citizen participation elements of State and local transportation plans.

DOT already has procedures to handle complaints which allege violations in its rules or policies. However, it does not have and does not plan to have a formal appeals mechanism which would try to second guess specific transportation decisions made by local officials. Because there was concern over present monitoring and complaint handling procedures, Appendixes A and B list the places where citizens can report a violation in law or procedures and other channels to pursue if initial complaints have not been handled properly. In addition, under its Consumer Program, DOT is now conducting a complaint-handling study to determine if improvements are necessary in this area. After this study is completed and necessary improvements are implemented, DOT will revise its booklet, *Finding Your Way in DOT*, to help citizens identify the appropriate office to file a complaint or seek information.

Specific Programs

Comments: Many individuals expressed concern about environmental processes which are already covered by existing regulations. For example, two people recommended that contractors which prepare environmental impact statements should not be permitted to do a subsequent engineering study if a project is approved.

Response: Environmental procedures of DOT and the Council on Environmental Quality attempt to eliminate such potential conflicts of interest by requiring contractors who will prepare an environmental impact statement to sign a statement specifying that they have no financial or other interest in the outcome of the project [40 CFR 1506.5 and 44 FR 56420; 10/1/79].

Comment: Others stated that there should not be a separate environmental impact process for different segments of a highway when the segments have a tremendous impact as a whole.

Response: Federal Highway Administration (FHWA) regulations require that a project examined in an environmental impact statement have a logical ending point [23 CFR 771.3]. In addition, forthcoming regulations provide that a project considered in an environmental impact statement be a usable and reasonable transportation improvement even if no additional transportation projects are implemented. The intent of these rules is to prevent piece-by-piece consideration of interdependent transportation segments.

Comment: A number of people voiced concern about a pro-highway bias and stated that alternatives or the "no-build" option are not considered.

Response: DOT does have requirements on alternative analysis in many situations particularly for major transportation projects. For example, environmental rules require communities to look at various transportation alternatives, including the "no-build" option [40 CFR 1502.14 and DOT Order 5610.1c, 44 FR 56420; 10/1/79]. FHWA rules governing systems planning require an examination of alternatives including public transit alternatives [23 CFR 450]. And under interstate transfer procedures, urban communities may elect to substitute transit and highway projects for previously planned interstate projects under some situations [23 U.S.C. 103(e)(4), 23 CFR 476].

Comment: Commenters also alleged conflicts of interest at the local level.

Response: Such allegations should be reported to the proper authorities, for example, local enforcement officials or DOT's Inspector General, who is charged with detecting fraud and abuse in all programs administered or financed by DOT.

Comment: One commenter called on DOT to change its administrative requirements and also seek legislative changes to require that public hearings be held on all major reconstruction and renovation of highways especially those which have safety implications. Another commenter recommended specific changes in DOT's Federal Aid Urban Systems Program.

Response: DOT is currently developing legislative options for the Federal Aid Highway Program, and these comments have been forwarded to the Federal Highway Administration for its consideration.

Education, Training, and Outreach

Over 100 commenters addressed the issue of education, training, and outreach efforts to promote better citizen participation. Commenters mentioned the need for training of agency staff and for citizens.

Staff Training

Comments: Individuals and citizen groups cited a lack of sensitivity and objectivity of transportation planning staff. Commenters stated that too often the person responsible for citizen participation was skilled only in public information and not in the other important facets of citizen participation. Commenters recommended training for transportation planning staff at all levels. Government commenters did not mention sensitivity as a problem, but a few did say that they needed more training in specific citizen participation techniques, such as group dynamics and conflict resolution and looked to DOT to provide such assistance in the form of training or through increased financial assistance. State, regional, and local officials recommended that DOT improve its information channels to transportation planning staff at the State, regional, and local levels.

Response: DOT's Federal Highway Administration has for several years conducted intensive training in citizen participation techniques for Federal, State, and local officials; and DOT's Federal Aviation Administration recently developed a citizen participation training program for Federal staff and airport operators. DOT is interested in expanding these activities so that planning officials in every transportation mode and every level of government have the opportunity to participate. In addition, DOT plans to share with State and local officials summaries or case histories of successful citizen participation efforts to promote a greater awareness of citizen participation techniques and their potential for improving local transportation decisions.

Citizen Training

Comments: Individuals and State and local government representatives mentioned several needs in this area. A few people called for DOT to inform people at the grassroots level on transportation issues and to promote an educational program for children particularly in the public transit area. Commenters suggested information booklets and/or training sessions on Federal transportation programs, including the allocation of funds and how the funds may be used; and on the local and regional planning process, including how decisions are made and the limitations and requirements of transportation providers. A few commenters believed that such training should not be conducted by DOT but rather that DOT should provide funds to a coalition of environmental or citizen groups to provide such training. One person suggested that DOT regularly publish issue papers to acquaint citizens with transportation problems and alternatives.

One commenter suggested that DOT expand the mailing list for its consumer newsletter and that DOT's magazine *Transportation USA* be used as a vehicle for informing people about citizen participation programs and for letting people know about proposed regulations and programs.

Responses: DOT believes that citizen education in transportation issues is important and plans to do more work in this area. DOT recently published two documents which may be of interest to citizens—*Agenda for the 80s* and *Profile of the 80s*. For single free copies, write Facilities Management Branch, M-443, DOT, Washington, DC 20590. DOT also plans to develop a general guide to citizen participation in local transportation planning and is investigating the possibility of training sessions for grassroots citizen groups. A few years ago, DOT did publish consumer education materials in public transportation, transportation safety, bicycling, and transportation and the environment for use in the schools. There are still a limited number of copies available for those interested in promoting consumer education in the schools. (For copies write Office of Consumer Liaison, I-50, DOT, Washington, DC 20590. Please specify grade level and subject area.)

DOT is eager to expand the mailing list for its consumer newsletter and has placed increased emphasis on explaining proposed rules and reporting on legislative developments. People wishing to receive the newsletter should write to the Office of Consumer Liaison, I-50, U.S. Department of Transportation, Washington, DC 20590. *Transportation USA* is a quarterly magazine and as such serves a more limited role in advising people of proposed regulations and programs. The magazine, however, does list important new regulations and publications. The magazine has covered both citizen participation and consumer issues in the past and will continue to do so in the future. *Transportation USA* is available for $6.00 a year from the Government Printing Office, Washington, DC 20402.

Outreach and Communication

Comments: Several commenters recommended that U.S. DOT and State and local transportation planning agencies increase their contact with grassroots citizen groups. They asked U.S. DOT to increase its accessibility to citizens, to conduct town meetings, to establish a speakers bureau, to encourage and sponsor regional and national conferences such as the Transportation Consumer Conference, and to provide funding for citizens to attend such conferences. One person recommended that there be a citizen focal point for each region; and another commenter recommended that the regional offices publish a consumer newsletter. One person suggested that DOT and other agencies institute a two-way telephone system for sampling public reaction to proposed actions.

Response: Over the last few years, DOT has held a number of town meetings on various subjects. DOT's Office of Consumer Liaison (OCL), as part of its new Consumer Program, has placed increased stress on identifying and working with local citizen groups. OCL will hold regional meetings in Denver and Philadelphia this fall. Washington-based consumer groups have been invited to briefing sessions on energy conservation in DOT grant programs, the 1981 transportation budget, and the development of highway legislation. DOT also has held consumer briefings in Hartford, Atlanta, and Madison on options for Federal-aid highway legislation. OCL has daily contact with individuals and citizen/consumer groups on a wide variety of issues. DOT recognizes that these activities are only a beginning in building strong working relations with citizen/consumer groups across the nation. Through this building process, OCL hopes to create a climate for better cooperation and understanding which will spread throughout DOT and State and local transportation planning agencies. DOT's regional offices do handle requests for speakers and conduct some outreach efforts, but most regional offices do not have sufficient staff to pubish newsletters on a regular basis.

Funding and Technical Assistance

Over 130 commenters addressed the issue of funding and technical assistance for citizen participation. The majority of these comments came from individuals and citizen group representatives. Most favored some sort of financial and technical assistance, but their recommendations varied on the

type of funding which should be available.

Reimbursement of Expenses

Comments: Several commenters indicated that individuals should be reimbursed for expenses they incur for participation. The lack of funds for participation was seen as a deterrent to citizen participation, particularly on the part of low and moderate income citizens. Commenters had varying views on the types of expenses which should be reimbursed. Recommendations included: transportation to and from meetings, babysitting expenses; clerical and mailing expenses; any out-of-pocket expenses; scholarships to attend conferences on transportation, and meeting time away from work. Some commenters believed that planning agencies could provide some of these services directly rather than through reimbursement procedures. Only a few commenters opposed reimbursement of out-of-pocket expenses to individuals.

Response: DOT programs have varying requirements and limitations in this area, but many do permit planning agencies to use Federal planning funds to provide such services as babysitting and transportation to and from meetings as an aid to citizen participation. It is DOT's current belief, that, in most cases, providing the services needed for citizen participation is a more satisfactory way of keeping costs down for citizen participants than reimbursing for actual expenses, particularly when there are a large number of participants and reimbursement procedures are apt to be too cumbersome.

DOT and its operating administrations do not have a formal policy on paying citizens for time they spend away from work to participate in local transportation planning. However, porposed guidelines do recommend that meetings be held at times and places convenient to the general public. As a result, most citizen participants should not have to take time from work to attend meetings if DOT's guidelines are followed.

Funding to Citizen Groups

Comments: Seventy-two commenters (including eight State and local officials) supported funding for citizen groups for the hiring of their own technical and/or legal consultants. A few individuals and 20 State and local officials opposed such funding for citizen groups.

Those who favored funding offered the following arguments:

—there should be equal time and money spent for pro and con positions on transportation alteratives;
—citizens need professional advice to assist in the evaluation of specific planning proposals and to develop alternatives;
—citizens need technical and legal assistance to ensure enforcement of the law if Federal and State agencies fail to take the initiative; and
—citizens can help the government get the word out more effectively and with more credibility if they are funded to run information centers and conduct other information efforts.

A number of individuals and citizen group representatives favored direct funding for citizen participation from the Federal or State government rather than funds being channeled through a metropolitan planning organization (MPO). A few expressed the fear that a MPO might select only tractable groups that could be co-opted. Others felt that money could be channeled through the MPO but that choices concerning which groups would receive funding could best be made by an impartial board of community/citizen leaders. A few commenters suggested that DOT require a small matching contribution from citizen groups as a way of insuring that funds would not be misused. The few State and local officials who favored funding for citizen groups believed that such funding should be funneled through the State.

Those who opposed funding to citizen groups did so strenuously with claims that paid citizens lose their credibility and that if the government pays people to participate it might only attract people interested in the money and not the good of the community. Another commenter expressed the fear that money would go only to the most vocal special interest groups.

DOT Response: Providing funds to citizen groups to participate in local transportation planning is an extremely controversial issue among Federal, State, and local officials and even among some individual citizens active in transportation planning. It is also not an easy issue to resolve on a Departmentwide basis given the various legislative limitations on who may receive Federal transportation funds and the purposes for which such funds may be used; and there is some question within the Department as to whether DOT can or should seek to ease these limitations. These and other impediments limit near-term possibilities of DOT providing direct financial assistance to citizen groups to participate in transportation planning activities in specific communities. However, it is possible that citizen groups might receive such assistance indirectly through State governments or local public bodies (e.g., transit authorities, regional planning agencies, cities) and that DOT might fund certain citizen groups on a contractual basis for activities that benefit a number of communities.

DOT's goal is to enhance the quality and public acceptability of local transportation decisions by improving citizen participation in local transportation planning. DOT believes that a variety of mechanisms for such improvement should be explored before the Department could commit itself to specific policies on technical and financial assistance for citizen participation in local planning. While a number of innovative techniques have already been used for citizen participation, there has been little assessment of which methods work well in a variety of situations. As a result, the Secretary has asked each operating administration to establish, within its existing resources, a development project to explore innovative techniques for increasing the effectiveness of citizen participation in local transportation planning. These development projects are discussed in Section 3 of this Notice—DOT Decisions and Actions.

Technical/Staff Assistance

Comments: A few commenters felt that their needs for technical assistance and secretarial help could be met by transportation planning staff at the direction of the citizen group. This idea was most prevalent among members of advisory groups or those who worked cooperatively with the MPO. Nine government respondents supported increased funding for staff and other citizen participation activities within their agencies.

Response: Some local transportation planning agencies now provide technical assistance to citizen advisory groups and, in some cases, to citizen groups on local transportation planning issues. It seems that such support can be effective, and it is anticipated that DOT's development projects might further efforts in this are.

Miscellaneous Suggestions

Comments: Four commenters expressed support for the concept of a paid advocate for citizens. Two mentioned the Rail Public Counsel as an example. Eight people recommended that DOT earmark a specific percentage of its budget or the funds going to planning agencies for public participation.

Response: The idea of a paid advocate for citizens is an interesting one.

However, DOT questions whether a national paid advocate could function effectively with the myriad of local transportation planning issues. Any decision regarding State or local advocates would have to be made by State or local jurisidictions. Some jurisdictions now do have ombudsmen to assist citizens.

While DOT does believe that adequate funds and staff time should be devoted to citizen participation, it is not prepared at this time to earmark a specific percentage of its own funds or the funds transmitted to local transportation planning agencies. DOT has suggested a percentage of funds to be used for certain transportation planning activities relating to air quality. However, it does not believe it wise to establish such a goal for all transportation planning activities as the nature of the planning effort and the community should be the key determining factors for effective citizen participation, rather than establishment of a dollar goal that would be identical for the many different planning and project development activities that are implemented under the Federal-aid programs of DOT. At this stage, there is not enough data to make realistic judgments about how dollar goals can affect and be affected by the varying requirements, procedures, and purposes of the varying DOT Federal-aid programs. If planning agencies follow the spirit of DOT's guidelines, they will be meeting DOT's citizen participation goals without a prescriptive burden on expenditures.

(3) DOT Decisions and Actions

As the Summary indicates, four major issues surfaced in the written comments and interivews:

What should be DOT's role vis-a-vis requirements for citizen participation in local transportation planning? Specifically, what action—if any—should DOT take concerning such requirements? Issue new regulations? Issue guidelines? Do nothing?

If DOT does issue guidelines or regulations, what areas of citizen participation in local planning should be covered?

Should DOT provide funding for citizen participation in local transportation planning?

What actions, if any, should DOT take concerning technical assistance, education, training, and outreach programs in support of citizen participation in local transportation planning?

The Department has made the following decisions and is taking the following actions:

The Department is issuing a Policy Statement on Citizen Participation in Local Transportation Planning.

This policy Statement clarifies and strengthens DOT's existing position of encouraging citizen participation in local planning. For the first time, DOT now has a written policy based on a Departmentwide approach that calls for active citizen involvement in all aspects of local transportation planning. In issuing this comprehensive public statement, DOT is putting a single policy umbrella over many varying programs in all elements of the Department.

The Department has made a determined effort to accommodate the viewpoints of State, regional, and local officials; citizens' groups and individual citizens; and all elements in DOT. This policy reflects comments received from these affected segments of the public, all of whom responded to the Department's Advance Notice of Proposed Policy. The policy also points out specific responsibilities of all concerned parties, for DOT is convinced that citizen participation in local planning can be effective only through cooperative and responsible action by all concerned.

Because the Department made an unusually extensive effort to reach all interested segments of the public during the comment period—and because the public response was substantial and came from such a broad spectrum—DOT is issuing this Policy Statement as a final document, rather than as a proposal. In view of the substantial outreach and response, as described in Section (1) above, DOT believes than any benefit that might result from obtaining additional comments would not be worthwhile in view of the delay that would result in issuing this needed document. This Policy Statement thus takes effect on its date of publication.

The Department is issuing Proposed Guidelines on citizen Participation in Local Transportation Planning.

The Proposed Guidelines would support and amplify the Policy Statement by identifying and explaining key elements of active and effective citizen participation in local planning. The Department gave serious consideration to divergent options—the possibility of taking no action beyond the issuance of a policy statement; the possibility of issuing regulations; and the possibility of issuing guidelines. In examining these options, DOT took note of opposing positions that were apparent from the public comments. Citizens in many communities expressed dissatisfaction with a lack of opportunities to participate in local transportation planning decisions; many of these citizens asked for more stringent DOT requirements in the form of regulations. On the other hand, most officials of State, regional, and local transportation planning agencies expressed the conviction that additional regulations would place an undue burden on their agencies. These officials asked for more flexibility in dealing with existing DOT requirements for citizen participation, wishing to accommodate the special characteristics of their own communities. In view of these varying positions, DOT recognized the need to provide clear guidance—within a flexible framework—concerning ways to improve participation opportunities for citizens who wish to be involved in planning. The decision was made that guidelines, rather than regulations, are called for. The Proposed Guidelines now being published by the Department address areas of citizen participation which elicited significant comments: informing and involving the public; planning and holding public hearings; utilizing public advisory groups; and incorporating public comments when decisions are made After a 60-day comment period on the Proposed Guidelines, the Department will analyze the public comment and, as appropriate, revise its proposal and issue final Guidelines on citizen Participation in Local Transportation Planning.

Each operating administration in DOT will be supporting the Policy Statement by: (1) issuing its own guidelines on citizen participation in local planning; (2) revising its existing regulations, as needed to comply with the Policy Statement; and (3) designing and implementing its own development project on ways to provide technical and financial assistance to stimulate citizen participation in local planning.

(1) *Operating Administration's Guidelines:* In developing Departmental Proposed Guidelines, DOT was keenly aware of the need to provide effective guidance that is also flexible enough to apply to the citizen participation requirements in a broad range of programs with varying objectives, mandates, structures, and approaches. Examination of the requirements listed in the Appendixes to this notice will show the extent of this variety. It was agreed, therefore, that once the Department issues final guidelines, each operating administration will issue its own guidelines, consistent with the Department's final guidelines, to provide guidance on citizen participation in local planning which is specific to its own programs.

(2) *Operating Administrations' Regulations:* Publication of the DOT Policy Statement on Citizen

Participation in Local Transportation Planning may create the need for operating administrations to revise their existing regulations and internal procedures in order to comply with the Policy Statement. All DOT operating administrations will review their regulations in light of the policy Statement, to determine whether a need for revision exists. If a need exists, the operating administration will draft revised regulations which will be published as proposals, with a request for public comment. The administrations' reviews of their regulations will be completed no later than April 1, 1981; and any needed revised regulations will be published as proposals no later than October 1, 1981.

(3) *Operating Administrations' Development Projects:* The major objective of the development projects is to identify innovative approaches for providing technical assistance and financial assistance for activities that stimulate effective and representative citizen participation at the local level. Each project selected will relate to a program mandated by that particular operating administration's laws and regulations, and will be carried out in cooperation with appropriate planning agencies. The goal of each project will be to explore, test, and evaluate the most effective ways to use the existing resources available for citizen participation in local planning, under each administration's particular programs.

Much discussion and analysis went into this decision to launch development projects. The issue of providing financial assistance for citizen participation in local planning was clearly the most controversial question facing the Department during the development of this policy. The options examined by DOT ran the gamut from the possibility of taking no action to the possibility of setting aside a Departmental fund for a comprehensive program under which the Department would disburse money to citizen's groups qualified to participate in local planning. The latter option was examined because it was specifically proposed to DOT by various citizens' groups. DOT has decided that it would be neither appropriate nor feasible for the Department to provide direct funding to citizens' groups participating in local planning. DOT did, however, examine and discuss other methods whereby financial and technical assistance might be provided to help citizens participate in local planning. Specific and challenging questions arose during these discussions.

A few of these questions: Is participation in local planning noticeably enhanced if a local or regional planning agency reimburses citizens for certain expenses, such as baby-sitting services, transportation to meetings, or clerical costs? Or is participation equally effective if the planning agency provides the needed services, which is usually a less costly approach? Could planning agencies and citizens' groups work together to circulate information to the community, combining the agency's resources for printing, mailing, and so on, with the citizens' access to the residents of the community? Could planning agencies effectively work through neighborhood boards and grassroots activists' groups to stimulate citizen participation in local planning? Would planning agencies be willing to provide services and technical assistance to citizens' groups? Should planning agencies provide direct financial assistance to citizens' groups so that these groups can obtain professional and technical advice on key issues of importance to them? Would direct financial assistance enhance the quality of public participation in local transportation planning? Would direct financial assistance enhance the public acceptability of planning agencies' decisions? Is the effectiveness of a citizens' advisory group markedly increased if the members are provided with such specific resources as advocacy training, staff assistance, and financial assistance?

Since there are no ready answers to these questions, the Department has decided to launch development projects to test innovative approaches and to gather needed data on ways to provide technical and financial assistance to stimulate citizen participation in local planning. The development projects will be lodged in the operating administrations because each administration must work within the limits of its own programs, procedures, mandates, and requirements for citizen participation in local planning. Each operating administration will fund its project through existing resources. In order to avoid costly duplication, coordination among the administrations' development projects will be the responsibility of the Office of Consumer Liaison (OCL), in the Office of the Secretary. Each operating administration's development project will be implemented no later than October 1, 1981.

The Office of the Secretary, through its Office of Consumer Liaison, will be responsible for: (1) overseeing the implementation of the Policy statement and the final guidelines; (2) coordinating the operating administrations' development projects; (3) providing technical assistance and educational materials to affected segments of the public; and (4) coordinating Departmental training programs and outreach efforts for citizen participation.

(1) *Overseeing implementation of the Policy Statement and the final guidelines:* The DOT Work Group on Citizen Participation has successfully completed its charge to develop a comprehensive DOT policy, as well as recommending implementation actions to support the policy. With the group's mission thus accomplished, the Department believes that good management practice requires that this ad hoc committee disband. It will, therefore, be the responsibility of the Office of Consumer Liaison (OCL) in the Office of the Secretary, to oversee implementation of the Policy Statement and the ensuing DOT Guidelines. In discharging this responsibility, OCL will utilize the resources of the ad hoc work group, as needed, to facilitate contacts with various offices having responsibilities for local transportation planning. In dealing with overall Departmental issues bearing on citizen participation, OCL will utilize the permanent mechanism of the DOT Consumer Policy Coordinating Council, established in July 1980 under the DOT Consumer Program, in response to Executive Order 12160.

(2) *Coordinating the operating administrations' development projects:* In order to provide for efficient coordination among the operating administrations' projects, the Office of Consumer Liaison (OCL) will oversee the designs of the development projects and will monitor the progress of these projects. It will be OCL's responsibility to establish criteria assuring that the project designs are valid, that they address pertinent issues on which data are needed, and that they avoid costly duplication.

(3) *Providing technical assistance to affected segments of the public:* The Office of Consumer Liaison will oversee implementation of the Department's responsibility for providing technical assistance to various persons, groups, and agencies affected by the Policy Statement and the ensuing Departmental Guidelines. This responsibility will include such actions as preparing information for State, regional, and local transportation agencies, describing noteworthy examples of citizen participation in local transportation

planning; and also preparing educational materials for citizens, with explanations of DOT's requirements for public involvement opportunities.

(4) *Coordinating Departmental training and outreach programs for citizen participation:* Several DOT operating administrations have already produced training projects to assist their headquarters and field staffs, as well as State and local transportation planners, in better utilization of citizen involvement techniques and outreach efforts. The Office of Consumer Liaison will be responsible for working with the operating administrations to coordinate and enhance these existing programs, with a view to making them available to more people in the Department and the transportation community.

(Department of Transportation Act, 49 U.S.C. 1651 *et seq.*)

In consideration of the foregoing, the following Policy Statement and Proposed Guidelines are issued.

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

Neil Goldschmidt,

Secretary of Transportation.

(4) Policy Statement on Citizen Participation in Local Transportation Planning [1]

U.S. Department of Transportation policy actively supports and strongly encourages citizen participation in the development of Federal, State, regional, and local transportation plans and programs.

Citizens' rights to know about public issues and to participate in the decisionmaking process are inherent in our system of government. To ensure that transportation systems and projects are in the best overall public interest, and that all concerns are adequately addressed, citizens' voices should be heard when a community makes its transportation plans.

This DOT policy, therefore, recognizes and reaffirms the right and the need for citizens to take an active part in transportation decisions affecting their lives and their communities.

DOT views citizen participation in local planning as:

- an essential element in the development of transportation programs and decisions;
- a resource that improves decisions by broadening the base of information which is considred by public officials;
- a tool for influencing agency decisions so that they respond to public needs and protect the rights of all to be heard.

Citizen participation is useful and effective when citizens are brought into the planning process during the earliest stages and when planners and officials continue to inform citizens and to ask for ther views during all stages of the planning and development process.

It is through the combined and continuing efforts of officials, citizens, and planners that a community produces rational, workable, and satisfying transportation plans, thus assuring the fullest benefits from the use of public funds.

Goal of This Policy

The goal of this policy is to help communities plan transportation systems that are safe, efficient, cost-effective, energy-efficient, environmentally satisfactory, and responsive to the needs of the broadest range of citizens. DOT firmly believes that the people who use a transportation system, or are affected by it, should have a voice in deciding the "where," the "what," and the "when" of the modes that move in their community.

Roles in the Planning Process

In communities where transportation planning is most effective and satisfactory, active citizen participation is part of the planning process. Active citizen participation exists where officials, citizens, and agency staffs work together, with each group playing its specific role in the planning process.

The Role of Officials Includes:

Assuring that citizens will receive adequate opportunity to participate;

Assuring that information presented to citizens is clear, complete, and timely;

Listening attentively to citizens' views;

Giving full consideration and response to citizens' concerns, comments, and recommendations.

The Role of Citizens Includes:

Devoting time and effort to participate;

Learning about the planning process and the needs of all sectors in the community;

Contributing from their special knowledge of the community;

Identifying problems;

Reviewing plans and proposing alternatives.

The Role of Agency Staffs Includes:

Expending time and effort necessary to work with citizens;

Keeping citizens informed;

Providing adequate technical support;

Involving citizens at all stages throughout the planning process;

Making a conscientious effort to get needed information from citizens.

To achieve active citizen participation in local planning, these roles should be incorporated fully into the planning process by every Federal, State, regional, and local agency that uses DOT funds in providing transportation facilities or services. [Key elements of an active citizen participation effort are identified and explained in the Proposed Guidelines which are being issued with this Policy Statement.]

Implementation of This Policy

In implementing this policy, DOT and its operating administrations will—

Promote an atmosphere within government which encourages citizen participation in local planning by providing training, technical assistance, and technology sharing for officials and staff members of DOT and State, regional, and local transportation agencies;

Assist citizens and their organizations by sponsoring outreach, information/education, technical assistance and, where appropriate, financial assistance to help citizens participate in local planning and project development;

Support this Policy Statement by monitoring the progress of required citizen participation in State and local transportation planning and project development;

Assure full compliance with citizen participation requirements.

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[1] DOT operating administrations which do not have mandated Federal-aid programs for local transportation planning have the following interests in this Policy Statement:

For purposes of implementation by the National Highway Traffic Safety Administration and the Research and Special Programs Administration, the phrase "local transportation planning" shall be construed to mean "projects and programs which use Department of Transportation funds and which are planned with the involvement of local governments."

The Coast Guard has no programs that can be described specifically as local transportation planning projects, but does have rulemaking programs concerned with marine navigation and safety, and marine environmental protection, that can affect local communities or local marine transportation. Techniques and procedures to improve citizen participation in these programs will be provided for under the Coast Guard Final Consumer Affairs Plan. The Coast Guard also has ongoing procedures in the areas of recreational boating, aids to navigation, and marine environment where citizen concerns will continue to be addressed consistent with the spirit and intent of this Policy Statement.

In the case of the St. Lawrence Seaway Development Corporation, this Policy Statement shall apply to any proposed major Federal action significantly affecting the environment.

(5) Proposed Guidelines on Citizen Participation in Local Transportation Planning [1]

Introduction

When examining the best way to implement its policy on citizen participation, DOT balanced two important priorities:

(1) to ensure that citizens in every community have the opportunity to be involved actively in local transportation planning efforts in their area; and

(2) to allow the implementors of this policy—Federal, State, local, and regional transportation planning agencies—sufficient flexibility to tailor citizen participation programs to their communities and to the specific transportation plans being developed.

What evolved are guidelines which identify and describe key elements which should be part of an active citizen participation effort. In the beginning of each major section, DOT describes certain minimum citizen participation principles and later provides suggestions on how these principles might be applied to specific citizen participation techniques.

These guidelines are written to allow transportation planning agencies considerable flexibility, yet at the same time let these agencies know what is expected of them. DOT's operating administrations will issue more specific guidance relating to their own programs. DOT's operating administrations will also be responsible for ensuring that DOT's Policy Statement is followed and the guidelines are implemented to the fullest extent in their program areas.

These guidelines apply to all transportation planning and development programs which involve the use of DOT funds (see Appendixes A and B). The term "lead planning agency" means the Federal, State, local, or regional body which has primary responsibility for transportation planning.

Characteristics of Citizen Participation

Citizen participation is an open process which seeks out and encourages early and continuous public involvement throughout the development of transportation plans and projects. It is not a single event or even a series of events; but part of a coordinated effort to develop a transportation plan which responds to community needs and has a wide degree of public acceptance. Citizen participation is an integral part of the overall transportation planning process, and is most effective during the early planning stages before concepts/directions have been set and while the largest number of alternatives are under consideration. Citizen participation provides the mechanism whereby planning staff and citizen participants can freely exchange information, ideas, and values.

Citizen participation does not eliminate conflict, but it allows conflict to surface early enough in the process that alternatives can be explored in a spirit of cooperation rather than confrontation. A transportation plan which is developed "with" the public is apt to have greater public support than one that is designed "for" the public.

I. Commitment

Agency commitment to the principles of citizen participation is at the heart of any successful citizen involvement program. Such commitment recognizes that a planning agency may not have all the answers, that the public has the right to participate in the planning process, and that the planning agency has the duty to inform and involve the public and to respond to public concerns on transportation planning issues.

Admittedly, commitment is not something which can be regulated because commitment to a large extent involves personal attitudes of planners and decisionmakers. However, commitment does have certain visible measuring sticks such as the openness of the process, the adequacy of information prepared for the public on the planning effort, the degree to which citizen participation is integrated into the overall transportation planning process, the level of staffing and funding devoted to citizen participation, and the extent to which an agency responds to public suggestions.

Developing a Plan for Participation

Just as architects and engineers draw up blueprints and plans for the construction of a subway or roadway, so too should lead planning agencies, working with its community, develop a plan for how and when citizens will be involved in each transportation planning and project development activity. Without such plans, agency citizen participation efforts can become too haphazard and can run the risk of allowing too little time for public understanding of the issues. Citizen and community leaders can be helpful and should participate in developing a plan for citizen involvement and in identifying community transportation goals. A public participation plan should

Clearly define agency transportation goals and objectives;

Be integrated fully into the overall planning process;

Identify legal requirements and constraints which influence the scope of citizen participation;

Identify key issues and decision points and how they relate to citizen participation activities;

Describe citizen participation mechanisms to be used and the timing of such efforts; including efforts to notify the public and informational materials which will be prepared for the public;

Establish procedures for considering public comments and responding to those comments;

Commit adequate resources, including staff, money for printing, meeting rooms, transcripts and minutes, announcements, graphics and technical assistance, where needed;

Provide for periodic evaluation of effectiveness of the citizen participation program in order to identify weaknesses and modify participation efforts when necessary.

Identifying Public Participants

It is important to identify those groups and individuals who may be interested in and/or affected by transportation planning programs or projects. A list of people to be informed about a planning activity should be developed at the beginning of the planning process and expanded regularly during the process as new groups and individuals are identified and new alternatives considered. This list should also include people who have been involved in past transportation planning activities. Depending on the scope of the particular planning effort, the affected community may range from a neighborhood to a large region. Care should be taken to

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In the case of the St. Lawrence Seaway Development Corporation, these Proposed Guidelines shall apply to any proposed major Federal action significantly affecting the environment.

identify a broad range of participants representing different sectors of the community. Certainly, special efforts should be made to notify personally those who might be affected directly by specific transportation alternatives, such as people living in potential transportation corridors.

Depending on the nature of the transportation planning activity, planning agencies might want to consult with the following groups and organizations in identifying public participants:

Other government and public service agencies, including agencies serving the handicapped, elderly, low income, disadvantaged and minority communities;

Civic and neighborhood association;

Consumer and public interest groups;

Environmental groups;

Religious and ethnic groups;

Business groups;

Civil rights organizations;

Labor organizations;

Groups representing handicapped citizens;

Merchants and small business organizations.

Informing the Public

The public can contribute most effectively in the local transportation planning process when they are provided with accurate, understandable, timely, and relevant information on transportation planning issues. Information efforts should be an on-going part of the citizen participation process from the exploration of transportation altenatives through the implementation stage of a project. The lead agency should make sure that the information reaches the public early enough in the process to permit their active participation. The planning agency should make the implications of the various alternatives clear to the public so that they may make informed decisions on whether or not to participate.

Because many information activities take time to prepare and to arrange, lead planning agencies should build the necessary time requirements into the public participation plan. All public information documents or announcements should identify a person to contact for further information.

In addition to providing the public with information on specific planning activities, lead planning agencies might also consider providing the public with an overview of all transportation planning activities on a regular basis, perhaps once a year through an annual report.

Notifying the Public. The public should be notified well in advance of specific planning and citizen participation activities so that they may have enough time to respond to agency questions and proposals. Background information on planning issues should be made available and advertised well in advance of decision points and public participation activities. It is important to make announcements concerning planned activities relevant to the public and to avoid the use of technical jargon wherever possible. Agencies should use a variety of mechanisms for getting the word out to the public; for example:

Direct mailings;

Public service announcements.

Display ads in newspapers;

Announcements on public transit vehicles and at transit stops;

Community bulletin boards;

Radio and TV talk shows;

Agency and community newspapers;

Flyers;

Inserts in local papers.

Keeping the Public Informed. One way to maintain the interest and involvement of the general public is to provide regular updates on planning activities and problems. This is especially important for long-term planning efforts in which the public may lose interest or confidence in the agency if they are not kept apprised on-going activities. Planning agencies can do this with the various mechanism mentioned above.

Types of Information. Different public sectors have different information needs. For instance, residents who might be affected by a transportation proposal will want to know what the project will do to their neighborhood, or how it will affect their own transportation. A mere description of the proposal will not necessarily provide them with enough information to form opinions and judgments. Merchants will also have special needs. Those involved in environmental, social, and transportation issues may need more technical data and assistance to help them in exploring and assessing various transportation alternatives.

Agencies might consider a variety of mechanisms to meet these different information needs, such as simple fact sheets for a general audience and more detailed brochures and technical reports for individuals and businesses who might be affected by a proposed transportation alternative.

Background papers on how the planning process works, how the public can participate, a description of specific issues, key decision points and sources to contact for further information can be very helpful to citizen participants. Such papers might describe the social, economic, and environmental implications on each alternative. Any information which an agency produces should be written to solicit public input, not to sell a particular proposal.

Packaging Information. Agencies should be careful to prepare information with the general public in mind. Information should contain as little technical jargon as possible. When technical terms have to be used, they should be defined as clearly as possible. The use of maps and other graphics can aid considerably in public understanding of the alternatives.

Making Effective Use of the Media. Establishing working relationships with people both in print and broadcast media can be invaluable resource for transmitting information to the public. In many ways, the press shares some of the same information needs as the general public. For example, planning agencies should be prepared to explain to editors and broadcasters in clear, concise language what impact certain proposals might have on the community.

Planning agencies can deal more easily with the press by learning their deadlines and procedures and working with them. A press briefing should not be planned for 3:00 when the paper's deadline is 3:30. Also be mindful of the deadlines for weekly and community papers.

Lead planning agencies can provide information to the press in a variety of ways—letters, informal telephone contact, press releases, press briefings. Planning agencies should keep press releases brief (no more than two double-spaced typed pages), but have additional background information available. Planning agencies should be open in their dealings with the press and be careful to avoid misunderstandings. Agencies should also be careful not to overcontact the media with insignificant items, or else the big issues may not receive the attention they deserve. Cover all aspects of the issues when they are controversial or could cause problems. Agencies might also work with editors in developing a calendar of public meetings and hearings.

Radio and TV talk shows can help to air the issues especially if an agency official can respond to questions on the air or to subsequent inquiries in the office. Public television is also opening new opportunities for getting information to the public. Planning agency officials might get involved in structured panels, single presentations, or even some type of polling situation via public TV. Public TV might also be interested in televising public meetings. Whenever possible, let the public know

in advance when agency officials will discuss issues on radio or TV.

Paid Advertisements. Because the public often does not take note of legal notices in the classified section of the newspaper, agencies might consider paying for a display ad on important planning activities. Radio and TV stations sometimes provide public service announcements on planned meetings. Here, again, agencies should keep in mind copy deadlines.

Access. The planning process should be open. This means that citizens should have the opportunity to review appropriate technical documents, including technical memorandums/assumptions on the various alternatives while a project is still under consideration and before decisions have been made. To the extent possible, major documents such as draft environmental impact statements, technical memorandums, narrative reports, position papers, and alternative analysis documents should be open for public viewing at various locations in the community such as public libraries, city halls, neighborhood centers, project site field offices, planning agency offices, etc. Local agencies should make the public feel at ease in reviewing such documents and should provide staff assistance to answer technical questions. Citizens should be made aware of the availability of such materials.

Fees for Copying. Wherever possible, lead planning agencies should make copies of relevant documents available to the public free of charge. If charges must be made, they should be set as low as possible.

Conferences. When the lead planning agency sponsors conferences/activities which impact the general citizenry of the area, it should invite the public and try to make provisions for waiving any conference fee.

Working With the Public

Public information is a means of generating public understanding of the issues and notifying them of participation opportunities. Participation occurs when the agency starts working with the community to explore the issues, exchange views, and select alternatives.

While involvement efforts may include public hearings and advisory groups, they should not be limited to such formal mechanisms. In fact, public hearings, though often required by law, when used alone may not be the most effective means of influencing planning decisions. The agency should use mechanisms tailored to the existing community and which will involve the widest range of the interested public. These efforts may and should take several forms such as using existing community resources (neighborhood councils, meetings of local groups), town meetings, public meetings and workshops, surveys, telephone hotlines, speakers' bureaus, citizen advocates, and ombudsmen. Lead planning agencies should examine existing citizen participation literature to help them decide the best participation mechanisms for their communities.

Any public participation mechanism should be used at times and places convenient to the public. Whenever possible, public meetings should be held generally during non-work hours, such as evenings and weekends, and at locations which are accessible to public transportation before and after the meeting times. Meeting places should be accessible to elderly and handicapped persons; special arrangements should also be made for those with hearing and sight impairments. Agencies should provide appropriate security arrangements and they might consider providing transportation and nursery services to make it easier for citizens to participate.

Effective involvement activities occur early enough in the process to ensure that the public's options are not limited and to permit agency response to the public before decisions are made. The public should be notified well in advance so they have time to study the issues.

Agencies should inform participants about special meeting procedures and tell the public how it intends to respond to public suggestions.

These activities should be conducted in a fashion which promotes the exchange of ideas and should specifically avoid a defensive posture on the part of the agency. Technical staff should be available to answer questions about specific proposals and to explore alternatives suggested by citizens.

When participation activities are announced, notices should identify matters to be discussed, the format of the discussion, what printed information is available, and how to obtain it. When an agency has reached tentative conclusions, they should be stated in the notice. The agency should identify any significant areas in which they are most desirous of public comment.

Advisory Groups

Planning agencies now use a variety of task forces, committees and boards to assist them in making planning decisions. When used effectively, such groups can be an important element of the citizen participation process. While the scope and purposes of these groups may vary, certain basic procedures should be followed. Care should be taken to achieve a balanced membership in terms of socio-economic, racial, sexual and geographic distribution. For permanent or long term committees, appointments to the advisory groups should be made on a staggered basis to provide for continuity. The goals, role, and limitations of such groups should be clearly defined to avoid confusion and frustration. If the life expectancy of the group is short, this should be clearly stated. Planning agencies should provide adequate staff support to enable advisory group members to analyze fully pending issues. Information should be presented to advisory groups early and throughout the process so that the agencies can have the benefit of group views in making decisions. Agencies should not expect advisory groups to appprove automatically or "rubber stamp" agency recommendations; nor should advisory groups expect to make final decisions. However, agencies should seriously consider group recommendations and respond to advisory group suggestions and let members know why certain suggestions were or were not used. Meetings of advisory groups should be held at convenient times and places for group members, and these meetings should be advertised and open to the public.

In selecting advisory group members, lead planning agencies should consult with community leaders and advertise openings on the advisory group. General advisory groups should have a balanced representation including elected officials, business interests, public interest groups, technical advisors, and citizen representatives.

Citizen advisory groups should be composed of representative cross-section of citizens, with a mix of people according to age, race, sex, and geographic distribution. Low-income and handicapped people should be represented on such groups. In addition to advising the planning agency, citizen advisory groups might also be used for community outreach efforts. Planning agencies and transit boards might also consider using advisory groups members to serve as ex-officio members of policy committees and boards. Such formal groups could benefit from having the views of transit users and other representatives citizens.

Considering and Responding to Public Comments

People are apt to have different views on how to meet transportation needs and how to solve specific transportation

problems. While a planning agency cannot always mesh conflicting views, it should demonstrate, in its decisions and in its actions, that it has fully understood and considered public concerns. Agencies should establish procedures for collecting, analyzing, considering, and responding to public comment.

Planning agencies receive public comments from various sources—including telephone conversations, letters, public meetings and workshops, informal contacts with citizens, surveys, and public hearings. Data from all these sources should be collated and analyzed so that public suggestions may be considered by transportation planning staff and decisionmakers. Such analysis should identify segments of the community which participated (e.g., affected residents, citizen groups, business, other government agencies), summarize meaningful public comments (both majority and minority points of view), and explain how they relate to the decisions to be made. Such a summary can serve as a valuable tool for decisionmakers in gauging possible public reaction and/or acceptance to pending decisions. Such summaries should be prepared during each major planning phase, and perhaps more often when the process extends over a long period of time. Public comments and the analysis of the comments should be filed in a central location and be available for public inspection on request.

Agencies should also respond to those who participated in planning efforts and indicate how public suggestions were used or why their suggestions could not be accommodated. This can be done by personal letter when there are a small number of participants. However, when there are a large number of participants, agencies may find it easiest to send a summary of comments and responses to all those who participated. The key is letting participants see the results of their involvement. Citizens still may not agree with all planning decisions, but they may understand the decisions better if they know why certain options were or were not chosen. Citizens will also be more apt to participate in future planning activities if they know that their recommendations are given serious consideration. Such summaries may also be helpful to DOT in reviewing transportation planning efforts.

(6) Appendixes: DOT Requirements for Citizens Participating in Local Transportation Planning

Introduction

Part I of Appendix A lists those DOT Federal-aid programs which have statutory and/or regulatory requirements for citizen participation. These programs are listed by DOT operating element and each program is designated by the title and number assigned to it in the "Catalog of Federal Domestic Assistance" (CFDA), a volume which includes all domestic programs involving Federal grants and financial assistance, published by the Office of Management and Budget. Part II of Appendix A gives brief explanations of how Federal-aid programs are administered in various DOT operating administrations.

Appendix B lists those requirements which are not specific to particular Federal-aid programs. This Appendix, however, does not include opportunities for public involvement such as notice and comment and public hearing requirements under the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, petitions for the promulgation of a rule, private citizens' suits to compel agency compliance with a statutory requirement, and public representation on Federal advisory committees.

Appendix A.—*Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning*

Part I.—*Office of the Secretary (OST)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
None	None	None	None	None	None.

Part I.—*Federal Aviation Administration (FAA)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
1 Airport Development Aid Program,* No. 20.102, Pub. L. 91-258, as amended, 49 U.S.C. 1701 *et seq.*	Public hearings or an opportunity for public hearings to consider economic, social, and environmental effects of an airport location, an airport runway, or a runway extension 49 U.S.C 1716(b)(1)	When requested project sponsor shall submit a copy of hearing transcript to the Secretary 49 U.S.C 1716(d)(2)	a. Before submitting a request for aid, the sponsor must afford an opportunity for a public hearing. 14 CFR 152.117 (45 FR 34789, 5/22/80) See also Airport Environmental Handbook (FAA Order 5050.4, Chapters 2.18, 5.49 (45 FR 56527, 56646 8/25/80)	If a hearing is held, sponsor must provide to the Administrator a summary of issues raised, alternatives considered, conclusions reached and stated reasons. Upon request, a verbatim transcript must be furnished to the Administrator. 49 CFR 152.117(e).	a. No specific provisions.
			b. FAA Order 1050.1C "Policies and Procedures for Considering Environmental Impacts." Appendix 6, incorporates requirements of 49 U.S.C 1716(d)(1) (45 FR 2269, 1/10/80). Compliance with FAA Order 5050.4 above, assures compliance with FAA Order 1050.1C (See Appendix B under section for Federal Aviation Administration for a description of FAA Order 1050.1C).	If a hearing required by 49 U.S.C. 1716(d)(1) is not held the sponsor must certify that notice of opportunity for a hearing was provided but no request for a hearing was received (49 U.S.C 416(f))	b. No specific provisions.
2. Airport Planning Grant Program,* No. 20.103, Pub. L. 91-258, as amended, 49 U.S.C 1713	Project grants to planning agencies to develop airport master plans and systems plans. Citizen participation not mandatory but strongly encouraged.	Citizen participation aspects of the plan are evaluated in the same context as other elements that were funded under the grant: engineering, traffic forecasting, financial planning, etc.			Funding is available as integral part of the planning process if proposed by the sponsor.

*Authorization expired 9/30/80.

Appendix A.—*Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning*

Part I.—*Federal Highway Administration (FHWA)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
Federal-Aid Highway Planning Research and Development Pub. L. 85-767, as amended (Federal-Aid Highway Program), No. 20.205, 23 U.S.C. 101 *et seq.*	a. State highway department submitting plans for certain Federal-aid highway projects shall afford the opportunity for public hearings.	Copy of hearing transcript to be submitted to FHWA. 23 U.S.C. 128(b).	a. Planning process must include provisions to ensure public involvement. 23 CFR 450.120(a)(3); Appendix B, Advisory Information on Planning for Elderly and Handicapped Persons, emphasizes that elderly and handicapped persons are to be included in the planning process.	Each State highway agency has developed an "Action Plan" which outlines procedures and responsibilities for the involvement of other agencies and the public. FHWA reviews and monitors States' implementation of Action Plans at appropriate intervals. In addition, FHWA personnel attend as observers and sometimes participate in the meetings or public hearings.	Funds are authorized by 23 U.S.C. 104 and 303(c) as amended. Administrative limitation on project-related public participation expenses prohibits reimbursement with Federal-aid funds for personal expenses of individuals and groups. 49 CFR 790
	b. State highway department submitting plans for an Interstate system project shall afford the opportunity for hearings for affected rural area residents to object. 23 U.S.C. 128(a).	.....	b. Regulations on Process Guidelines require public participation in the development of State environmental action plans and as part of those plans the establishment of public involvement procedures covering the entire highway development process. 23 CFR 795.10.	Several types of courses and workshops which have been conducted by FHWA throughout the country in order to improve highway agencies' public involvement activities.	
			c. Public notification and, in appropriate instances, opportunity for public participation in the assessment of environmental impacts of highway projects. 23 CFR 771.	Evaluation of citizen participation in the transportation process is made through the annual planning process certification reviews. Citizen participation is currently receiving major emphasis in these reviews.	
			d. Public hearings or an opportunity for public hearings required during the consideration of highway location and design proposals. 49 CFR 790. Corridor public hearings also required. (Applies to highway agencies which have not developed approved Action Plans, pursuant to 49 CFR 795.10).	.....	

Appendix A.—*Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning*

Part I.—*Federal Railroad Administration (FRA)*

1. Local Rail Service Assistance (National Rail Service Continuation Grants), No. 20.308, Pub. L. 89-760, as amended, 49 U.S.C. 1654.	a. State is eligible to receive rail service assistance if it has established an adequate plan for rail services as part of an overall planning process for all transportation services. 49 U.S.C. 1654(j)(1).	No direct monitoring/evaluation; each recipient to keep records which disclose amounts spent. 49 U.S.C. 1654(m)(1).	a. State planning process shall provide for an opportunity for participation by persons interested in rail activity in the State and adjacent States, where appropriate. At a minimum, public hearings with adequate notice are required. 49 CFR 266.15(a).	State Rail Plans submitted to FRA for review and approval. 49 CFR 266(o).	Rail planning funds may be used for citizen participation
	b. To be eligible to receive assistance, State must maintain adequate programs of investigation, research, promotion and development with provisions for public participation. 49 U.S.C. 1654(j)(3)(c).	.....	b. Each State rail plan shall describe its planning process which includes participation of the general public. 49 CFR 266.15(c)(10).	.....	
			c. States eligible for rail service continuation assistance under the Regional Rail Reorganization Act of 1973,* Pub. L. 93-236, 45 U.S.C. 701 et seq., are required to afford interested persons, such as users of rail transportation, labor organizations, environmental groups, and the public generally timely opportunity to express their views in the development of the State Rail Plan. 49 CFR 255.9(a).	.....	

Appendix A.—*Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning*

Part I.—*Federal Railroad Administration (FRA)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
2. Railroad Rehabilitation and Improvement:					
a. Guarantee of Obligations, No. 20.389, Pub. L. 94-210, § 511, 45 U.S.C. 821 *et seq.*			Applicants for assistance under § 511 must provide FRA with a discussion of problems and objections raised by other Federal, State, or local agencies, and citizens with respect to the impact of a proposed project on the environment. 49 CFR 258 Appendix, Part II, F	No specific provision	No specific provision.
b. Redeemable Preference Shares, No. 20.310, Pub. L. 94-210, § 505, 45 U.S.C. 821 *et seq*			Applicants for assistance under § 505 must provide FRA with a discussion of problems and objections raised by other Federal, State, or local agencies, and citizens with respect to the impact of a proposed project on the environment. 49 CFR 260. Subpart A, Appendix, Part II, F	No specific provision	No specific provision.

*Continued under the 4R Act of 1976, Pub. L. 94-210 Title VIII

Part I.—*National Highway Traffic Safety Administration (NHTSA)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
None	None	None	None	None	None.

Part I.—*Research and Special Programs Administration (RSPA)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
None	None	None	None	None	None.

Part I.—*St. Lawrence Seaway Development Corporation (SLSDC)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
None	None	None	None	None	None.

Part I.—*U.S. Coast Guard (USCG)**

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
None	None	None	None	None	None.

*No current grant or loan programs involving citizen participation elements exist. The funding authority for Boating Safety Financial Assistance Programs (CFDA No. 20.001) expired at the end of FY-80.

Appendix A.—*Federal-Aid Requirements for Citizen Participation (CP) in Local Transportation Planning*

Part I.—*Urban Mass Transportation Administration (UMTA)*

Program, CFDA number, authorization	Statutory CP requirements	Monitoring/evaluation of statutory requirements	Regulatory CP requirements	Monitoring/evaluation of regulatory requirements	Funding
1. Capital Improvement Grants, No. 20.500, Pub. L. 88-365, § 3, as amended, 49 U.S.C. 1602.	Certification by applicant of adequate public notice and opportunity for public hearings concerning projects which will substantially affect a community or its mass transportation services. 49 U.S.C. § 1602(d).	a. Hearing transcript to be submitted with application.	To receive Federal assistance, ubanized areas must have a transportation planning process which ensures public involvement, 23 CFR 450.120(a)(3), also incorporated in 49 CFR 613.100.	Annual review and evaluation of planning process. 23 CFR 450.122(a)	No specific provisions, adminstrative limitation requires all funds to be dispensed through duly elected or appointed body
		b. Administration shall determine that consideration has been given at public hearing to environmental effects of proposed project. 49 U.S.C. 1610 (b) and (c).			
2. Capital Improvement Loans, No. 20.501, Pub. L. 88-365, § 3, as amended, 49 U.S.C. 1602.	See 1, above	See 1, above	See 1, above	See 1, above	See 1, above
3. Formula Grant Program, No. 20.507, Pub. L. 88-365, § 5, as amended, 49 U.S.C. 1604.	a. Certification by recipient of adequate public notice and opportunity for public hearing and submission of report.	a. A copy of transcript of hearings to be furnished upon Administrator's request.	a. See 1, above	a. See 1, above	See 1, above
	b. Assurances to be provided to Secretary that any public mass transportation system will not change fares or substantially change any service except after holding a public hearing or providing an opportunity for such a hearing. 49 U.S.C. § 1604(i).	b. UMTA reviews on a case-by-case basis, as needed.	b. Implements statutory requirement that public hearings be held prior to fare change or substantial service change. 49 CFR 635 (45 FR 26301, 4/17/80).	b. UMTA Administrator may impose sanctions for noncompliance 49 CFR 635.11 (45 FR 26301 4/17/80).	

Part II.—How Federal-Aid Programs Are Administered in Operating Administrations of the Department of Transportation

Federal Aviation Administration

The objectives of the Federal Aviation Administration's (FAA) Planning Grant Program (PGP) are to improve airport planning, to promote the effective location and development of airports, and to develop an adequate National Airport System Plan (NASP). PGP grants are available to planning agencies and public agencies which act as sponsors for airport system planning and airport master planning studies, respectively.

PGP funds may be used by these sponsors for citizen participation activities in support of their airport planning. These citizen participation activities include public hearings, public information sessions, coordination meetings, and other communication conducted for the purpose of ensuring that the affected public (planning agencies, community organizations, interested individuals, affected local governments, and airport users) is informed about the planning study and have opportunities to be involved in its development. The responsible local FAA Airports field office or regional office will assist sponsors in incorporating appropriate participation activities, such as those described above, into the design of the study. In the event that an individual or community organization should feel that adequate coordination with the public has not been provided and that direct communications with the sponsor have not satisfactorily corrected the situation, the local FAA Airports field office or regional office monitoring the study should be contacted.

For more information, contact Robert B. Hixson, Community Planner, Division of Community and Environmental Needs, Office of Airport Planning and Programming, APP-600, Federal Aviation Administration, Washington, DC 20591; (202) 426-8434.

Federal Highway Administration

Under the Federal-aid highway program, the States and the Federal Government operate in a partnership. State highway agencies initiate, plan, design, build, and operate highway projects. The Federal Highway Administration (FHWA) in turn provides guidance and financial assistance, and is responsible for approvals at key stages of highway development.

Federal-aid procedures provide for public involvement during the planning and developmend of a project. Federal regulations require each State highway agency to spell out the steps it will follow to involve other agencies and the public in the planning, location, and design of a highway. These procedures are detailed in a State's Action Plan. A copy of a State's Action Plan may be viewed at the State highway agency in the State capitol, or at the FHWA Division Office, generally located in the State capitol (exceptions: Maryland's FHWA division office is in Baltimore; Iowa's FHWA division office is in Ames). Concerns about an alleged failure to provide for public involvement should be directed to the Division Administrator in the appropriate FHWA Division Office.

For further information, contact Stephen J. Kimlicko, Chief, Environmental Process Branch, HEV-12, Room 3232, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590; (202) 426-0303.

Federal Railroad Administration

The Local Rail Service Assistance Program has as its primary goal the strengthening of branchline rail services of importance to State and local economies. As administered by the Federal Railroad Administration's (FRA) Office of Federal Assistance, the program provides grants to State agencies designated by the governors of each State. These grants may be used for State rail planning and rail projects, i.e., branchline operating assistance.

acquisition, rehabilitation, rail facility construction, or substitute service.

As a prerequisite for project funding, each State must develop a State Rail Plan, to be updated annually, which includes the procedures and mechanism used by the State to provide for public participation. At a minimum, this information must indicate: (1) the groups involved in the planning process, both at the level of broad goal setting and at community level where the impacts of branchline abandonment are most personally felt; (2) the involvement of these groups in the setting of goals and criteria for project selection, priority setting, and resource allocation; (3) those points in the planning process where the different groups have been involved; and (4) the mechanisms the State uses to involve and inform the public of its rail planning activities.

The public participation mechanism is reviewed annually by the FRA's Office of Federal Assistance, as part of the annual update of the State Rail Plan. Any questions or complaints concerning the public participation mechanism or its implementation should be addressed to the State agency designated by the governor of the State.

To identify the title and location of the State agency, contact the governor's office or write or call Garold Thomas, Acting Director of State Assistance, Federal Railroad Administration, Washington, DC 20590; (202) 426-1567. Mr. Thomas may also be contacted for other information about the program.

Urban Mass Transportation Administration

The objective of the Federal transit program is to improve public transportation by providing financial assistance to local governments for the purchase and operation of transit equipment and facilities and to assure that projects funded with Urban Mass Transportation Administration (UMTA) grants are developed in a manner consistent with national energy, environmental, social, and economic goals.

UMTA grants are available to public, non-profit agencies which meet eligibility criteria stated in the Urban Mass Transportation Act. Citizen participation required by UMTA regulations is monitored by UMTA regional offices at several stages of planning or project development, utilizing hearing transcripts, environmental impact comments, and public complaints and grievances. The enforcement mechanism for non-compliance with UMTA regulations is the withholding of financial assistance.

UMTA grant recipients are encouraged to employ whatever citizen participation activities are necessary and appropriate. Formal complaints about alleged failures to comply with UMTA regulations should be filed with the appropriate UMTA regional office. A complaint charging inadequate opportunity for citizen participation should be addressed to the civil rights officer in the appropriate UMTA regional office.

For further information, contact Irv Chor, Office of Public Affairs, Urban Mass Transportation Administration, Washington, DC 20590; (202) 426-4043.

Appendix B.—*General Requirements for Citizen Participation (CP) in Local Transportation Planning*

Title	CP requirement	Monitoring/evaluation of CP requirement	Funding
	Office of the Secretary (OST)		
1. "Procedures for Considering Environmental Impacts," DOT Order 5610.1C, 44 FR 56420 (10/1/79).	Encourages citizen participation at the earliest practical time and at each appropriate stage of development of the proposed action. Administrations are encouraged to develop lists of interested parties at the national, State, and local levels. DOT Order 5610.1C, Par. 14a, c.	A summary of citizen involvement shall be documented in the EIS. DOT Order 5610.1C, Par 14	No specific provision.
2. U.S. Environmental Protection Agency—Department of Transportation Expanded Guidelines on Public Participation in the State Implementation Plan, 45 FR 42023 (6/23/80).	Joint Guidelines cover the essential elements and procedures of an effective public participation program in developing the transportation component of State Implementation Plans (SIP's) funded by EPA with grants authorized by Section 175 of the Clean Air Act in urban areas requiring an extension beyond 1982 for attainment of national ambient air quality standards.	EPA evaluates performance of planning agencies; Applicants for Section 175 funds must submit a work program for public information/involvement. Sections F and H.	EPA "encourages the passthrough of Section 175 (EPA) funds to a broad base of affected constituencies top achieve * * * effective participation in the planning process." Section E.7.
3. "Implementation of the Department of Transportation Title VI Program," DOT Order 1000.12.	a. Requires action to ensure that non-elected boards, advisory councils, or committees which are in integral part of planning the program or activity reasonably reflect the racial/ethnic composition of the affected community. DOT Order 1000.12, Chaper 1-4(b)(2)(a). b. Where the program or activity requires public hearings, appropriate action should be taken to ensure that notice of such hearings reaches all segments of the affected community The Title VI program shall also require that direct contact will be made with racial/ethnic community organizations and/or leaders in communities affected by the program or activity. DOT Order 1000 12, Chapter 1-4(b)(2)(a).	Enforced by Civil Rights Offices in DOT operating element; monitored by Departmental Office of Civil Rights.	No specific provision.
	Federal Aviation Administration (FAA)		
"Policies and Procedures for Considering Environmental Impacts," FAA Order 1050.1C (45 FR 2244, 1/10/80).	a. Sets forth criteria in deciding whether a public hearing is appropriate, although not statutorily mandated, for a broad range of FAA programs and projects. FAA Order 1050.1C, Chapter 2, Section 2.213b. b. Encourages citizen participation at the earliest practical time and throughout the development of the proposed project. FAA Order 1050 1C, Chapter 2, Section 2.214.	a. Records of public hearing maintained in the docket of the General Counsel's office FAA Order 1050 1C, Chapter 2, Section 2.213(g).* b. A summary of citizen involvement shall be documented where practicable in the EIS or Finding of No Significant Impact (FONSI) FAA Order 1050 1C, Chapter 2, Section 2.214.	No specific provision.
	Federal Highway Administration (FHWA)		
None	None	None	None.

Appendix B.—*General Requirements for Citizen Participation (CP) in Local Transportation Planning*—Continued

Title	CP requirement	Monitoring/evaluation of CP requirement	Funding
	Federal Railroad Administration (FRA)		
FRA Procedures for Considering Environmental Impacts, 45 FR 40855 (6/6/80).	Sets forth a policy which encourages citizen involvement at every stage of the environmental assessment of a proposed FRA action and requires appropriate FRA program office to develop, in cooperation with the FRA Public Affairs Office, a list of interested parties including environmental groups, individuals and business, public service, education, labor, and community organizations. The FRA program office, in coordination with the FRA Public Affairs Officer, shall publicize the availability of draft EIS's. FRA Procedures, Section 9 (a), (b)(i), (4), 45 FR 40855 (6/6/80).	No specific provision	No specific provision.
	National Highway Traffic Safety Administration (NHTSA)		
NHTSA Procedures for Considering Environmental Impacts, 49 CFR 520.	a. The Office of Public Affairs and Consumer Participation shall maintain a list of interested groups to notify directly of the availability of Draft Environmental Impact Statements (DEIS's). 49 CFR 520.25(b)(iv)(3)(i).	No specific provision	No specific provision.
	b. In deciding whether a public hearing on a proposed or ongoing action covered by a DEIS is appropriate, the responsible official should consider, among other things, the extent to which public involvement has already been achieved through other means, such as earlier public hearings, meetings with citizen representatives, and/or written comments on the proposed action. 49 CFR 520.26(a)(4).		
	c. Final environmental statement shall include a discussion of problems and objections raised by other Federal agencies, State and local entities, and citizens in the review process, and the disposition of the issues involved and the reasons therefore; The draft and final environmental statements should document issues raised through consultations with Federal, State, and local agencies and with citizens, of actions taken in response to comments, public hearings, and other citizens involvement proceedings. 49 CFR 520, Attachment 1, § 3(i).		
	Research and Special Programs Administration (RSPA)		
None	None	None	None.
	St. Lawrence Seaway Development Corporation (SLSDC)		
SLSDC Procedures for Considering Environmental Impacts (Draft). 45 FR 46601 (7/10/80).	Chief Engineer shall solicit citizen comments where an Environmental Statement is to be prepared by any or all of the following means: conducting hearings; making personal contact with interested parties, issuing press releases, placing notices in newspapers, and publishing a notice of intent in the FEDERAL REGISTER, Chief Engineer shall develop lists of interested parties at the national, State, and local levels. Order SLS 10-5610.1C (Draft), Par. 10, 45 FR 46601 (7/10/80).	Citizen involvement and environmental issues raised in the public commenting process will be documented in the environmental statement.	No specific provision.
	U.S. Coast Guard (USCG)*		
1. Ports and Waterways Safety Act, 33 U.S.C. 1221, as amended by Port and Tanker Safety Act of 1978, Pub. L. 95-474, § 2.	a. Statement of Policy. Congressional finding that advance planning is critical in determining proper and adequate protective measures for the Nation's ports and waterways and the marine environment, with continuing consultation with other agencies, affected users, and the general public in the development of such measures. 33 U.S.C. 1221(d).		
	b. In issuing vessel operating requirements, the Coast Guard must consult with representatives of the maritime community, port and harbor associations, environmental groups and others who may be affected by the proposed action. 33 U.S.C. 1224(b).	No specific provision	No specific provision.
2 Tank Vessel Act, 46 U.S.C. 391a, as amended by Port and Tankers Safety Act of 1978, Pub. L. 95-474, § 5.	In exercising regulatory authority under the Act, the Coast Guard shall establish procedures for consulting with agencies, representatives of environmental groups or other interested parties with experience with problems involving vessel safety, port and waterways safety, and protection of the marine environment. 46 U.S.C. 391a(6)(C) (v), (vi).	No specific provision	No specific provision.
3. Bridges	a. Upon a determination that a bridge obstructs navigation, a public hearing must be held. 33 U.S.C. 513; 33 CFR 116.20.	a. District Commander who holds public hearing must submit transcript and report to the Chief, Office of Navigation.	No specific provision.
	b. Public hearing to be held where there are substantial issues relevant to the effect that a proposed bridge will have on the reasonable needs of navigation. 33 CFR 115.60.	b. See 3a, above	No specific provision.

Appendix B.—*General Requirements for Citizen Participation (CP) in Local Transportation Planning*—Continued

Title	CP requirement	Monitoring/evaluation of CP requirement	Funding
	Urban Mass Transportation Administration (UMTA)		
1. Accessibility of mass transportation to handicapped and elderly persons.	Agencies shall use "adequate citizen participation mechanisms or procedures." Public hearings with adequate notice to be held. 49 CFR 27.107.	Recipients required to file report on compliance with requirements of handicapped access regulation; Department investigations and enforcement procedures authorized. 49 CFR 27.121-27.129	No specific provision.
2. Statement of Policy—Major Urban Mass Transportation Investments. 41 FR 41513 (9/22/76).	1. "Alternative analyses" studies shall include development of a "citizen involvement mechanism".	No specific provision	No specific provision
	2. After completion of a draft EIS, a formal public hearing shall be held, covering both the analysis of alternatives and the draft EIS. (See also 49 U.S.C. 1602(d))		

*While the United States Coast Guard has no programs that can be described specifically as local transportation efforts, the programs listed in this Appendix concerning marine navigation and safety, and marine environmental protection, can affect local communities or local marine transportation. Techniques and procedures to improve citizen participation in these programs will be provided for under the Coast Guard Final Consumer Affairs Plan.

For information about each DOT operating administration's general requirements for citizen participation in local transportation planning, contact:

Federal Aviation Administration: Robert B. Hixson, Community Planner, Division of Community and Environmental Needs, Office of Airport Planning and Programming, Federal Aviation Administration, Washington, DC 20591; (202) 426-8434.

Federal Highway Administration: Stephen J. Kimlico, Chief, Environmental Process Branch, Federal Highway Administration, Washington, DC 20590; (202) 426-0303.

Federal Railroad Administration: Eric Hanson, Consumer Affairs Officer, Office of Public Affairs, Federal Railroad Administration, Washington, DC 20590; (202) 426-0881.

National Highway Traffic Safety Administration: Ann Mitchell, Office of Consumer Participation, National Highway Traffic Safety Administration, Washington, DC 20590; (202) 426-0670.

Research and Special Programs Administration: Jacqueline S. Gillan, Director, Office of Consumer and Public Affairs, Research and Special Programs Administration, Washington, DC 20590; (202) 426-9676.

St. Lawrence Seaway Development Corporation: Dennis Deuschl, Director, Office of Communications and Consumer Affairs, St. Lawrence Seaway Development Corporation, Washington, DC 20591; (202) 426-3574.

United States Coast Guard: Cdr. Neal Mahan, Chief, Consumer Affairs and Administrative Staff, U.S. Coast Guard, Washington, DC 20593; (202) 426-1080.

Urban Mass Transportation Administration: Irv Chor, Office of Public Affairs, Urban Mass Transportation Administration, Washington, DC 20590; (202) 426-4043.

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Thursday
October 30, 1980

Part V

Department of Transportation

Federal Aviation Administration

SFAR 27-4; Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes; Compliance With EPA Smoke Emissions Standard for In-Use JT3D Engines

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 11, 21, 45, and 91

[Docket No. 20250; Amendment No. SFAR 27-4]

SFAR 27-4—Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes; Compliance With EPA Smoke Emissions Standard for In-Use JT3D Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment to the FAA airplane emissions rules requires compliance with the aircraft and aircraft engine emissions (smoke) standards for in-use JT3D engines in accordance with the compliance schedule established on October 30, 1979, by the U.S. Environmental Protection Agency (EPA) under 40 CFR Part 87 (44 FR 64266, November 6, 1979). This amendment covers all civil JT3D powered aircraft operated in the United States with a U.S. standard airworthiness certificate (or foreign equivalent). It reflects the EPA's extension of compliance deadlines to be more, though not completely, compatible with the FAA's aircraft operation noise limits rule applicable to certain JT3D-powered aircraft in domestic service (14 CFR Part 91, Subpart E). It requires timely modification by all U.S. and foreign operators of in-use JT3D engines manufactured before January 1, 1978, in accordance with a phased compliance schedule. That schedule prescribes intermediate compliance dates of January 1, 1981, and January 1, 1983; with full compliance beginning January 1, 1985. JT3D engines manufactured on or after January 1, 1978, are already required by EPA to meet those engine emission standards. This FAA rulemaking action is required by Section 232 by the Clean Air Act, as amended in 1970 by Pub. L. 91-604 (42 U.S.C. 1857f-10).

DATES: Effective date December 1, 1980.

Compliance Dates—

January 1, 1981, one-fourth of the operational JT3D engines

January 1, 1983, one-half of the operational JT3D engines

January 1, 1985, all operational JT3D engines.

FOR FURTHER INFORMATION CONTACT:

For information concerning enforcement of SFAR 27 which implements 40 CFR Part 87: Mr. Emanuel M. Ballenzweig, Air Quality Division (AEE-300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, (202) 755-8933.

For information concerning the substance of 40 CFR Part 87: Mr. George Kittredge, Office of Mobile Source Air Pollution Control, AW455, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 426-2514.

SUPPLEMENTARY INFORMATION:

Regulatory History

On April 14, 1980, the FAA published Notice No. 80-6 (45 FR 25350) proposing to amend SFAR 27, "Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes." That notice proposed amendments to ensure compliance with the EPA emissions standards for in-use JT3D engines. Interested persons were invited to participate in this rulemaking by submitting written comments on the proposed rule. The notice recognized the division of regulatory responsibility between the EPA (under section 231 of the Clean Air Act, as amended, 42 U.S.C. 1857f-9) and the Secretary of Transportation (under section 232 of that Act, 42 U.S.C. 1857f-10). Therefore, comments were not requested concerning the substance or the compliance dates of the already final requirements of the EPA's Part 87 that were incorporated in the FAA proposal. Since such comments would involve EPA's regulatory authority, over which the FAA has no control, they should have been submitted directly to the EPA prior to finalization of the most recent amendment to the EPA standards issued on October 30, 1979. Nevertheless, most comments received addressed those issues over which the FAA has no authority. These were referred to the EPA for consideration. All comments received have been given full consideration in the promulgation of this amendment which, after consultation with the EPA, adopts the proposals in Notice No. 80-6 without substantive change.

Under section 232 of the Clean Air Amendments of 1970, Pub. L. 91-604, the FAA must issue regulations to ensure compliance with all aircraft emissions standards promulgated by the EPA under section 231 of the Act. The EPA regulations are currently prescribed under 40 CFR Part 87 originally published in the Federal Register on July 17, 1973 (38 FR 19088). Accordingly, on December 26, 1973, the FAA issued Special Federal Aviation Regulation (SFAR) 27, (38 FR 35437, December 28, 1973). The purpose of SFAR 27 is to fulfill FAA statutory responsibilities to ensure compliance with aircraft and aircraft engine emissions standards and related test procedures under EPA's (40 CFR) Part 87.

SFAR 27, as originally issued, governed compliance of only those standards and procedures in EPA Part 87 that were effective beginning February 1, 1974. On December 23, 1974, the FAA amended SFAR 27 (Amdt. SFAR 27-1: 39 FR 45008, December 30, 1974) to regulate compliance with the fuel venting standards in EPA Part 87 that became effective January 1, 1975. Amendment SFAR 27-2, effective January 1, 1976 (40 FR 55311, November 28, 1975), governs compliance with smoke emissions standards in EPA's Part 87 applicable to new and in-use aircraft turbofan or turbojet engines with a rated power of 29,000 pounds thrust or greater, that are designed for operation on subsonic airplanes. A third amendment (Amdt. SFAR 27-3; 42 FR 64876, December 29, 1977) regulates compliance of JT3D engines manufactured on and after January 1, 1978, with smoke emissions standards in EPA's Part 87.

Discussion of the Amendment

Overview

This amendment to SFAR-27, pursuant to the Clean Air Amendments of 1970, requires compliance with the EPA's Part 87 exhaust emission (smoke) requirements that apply to "in-use" JT3D engines on EPA's prescribed phased compliance schedule (40 CFR 87.31(c)). It provides that the exhaust emissions of each in-use Class T3 engine, specified under § 87.1(a) as "gas turbine engines of the JT3D Model family," may not exceed a smoke number of 25, when measured in accordance with the related test procedures under EPA's Part 87. To meet these smoke requirements for Class T3 engines requires a retrofit or a replacement of the combustor in JT3D engines manufactured before January 1, 1978. Those manufactured on or after that date must already comply.

That provision of EPA's Part 87 affecting in-use JT3D engines was originally scheduled to take effect January 1, 1978. As a result of a petition from the Air Transport Association of America (ATA), the EPA relaxed the compliance schedule to permit 90 percent compliance by September 1, 1980, with full compliance by September 1, 1981 (41 FR 54861, December 15, 1976). Subsequent to an FAA suggestion, the EPA again amended the compliance schedule (44 FR 64266; November 6, 1979). The new schedule coincides with 14 CFR 91.305, the FAA's phased schedule for noise compliance by U.S. operators of JT3D-powered airplanes operated domestically under FAR Parts

121 and 135 (43 FR 12815, March 24, 1978). It should be noted that the phased compliance schedule in EPA's Part 87 applies to all civil JT3D-powered airplanes that operate in the United States under a U.S. standard airworthiness certificate (or foreign equivalent). Thus, it applies equally to U.S. and foreign operators of those airplanes with JT3D engines. The compliance schedule prescribed under 40 CFR 87.31(c) is as follows:

"(c) Exhaust emissions of smoke from each in-use aircraft gas turbine engine of Class T3 shall not exceed a smoke number of 25. Each operator shall achieve compliance in accordance with the following schedule:

(1) One quarter of its operational Class T3 engines by January 1, 1981.

(2) One half of its operational Class T3 engines by January 1, 1983.

(3) All of its operational Class T3 engines by January 1, 1985.

"This compliance schedule notwithstanding, Class T3 engines which do not meet a smoke number of 25 may continue to be operated if, under an FAA approved plan, replacement engines or replacement airplanes have been ordered and are scheduled for delivery prior to January 1, 1985, but not after the dates specified in the plan. For the purpose of this paragraph, replacement engines are engines of a class different from Class T3 and have been shown to meet the smoke emission standards in this part appropriate to their class."

This amendment to SFAR 27 requires compliance in accordance with 40 CFR 87.31(c) and, thus, the FAA has no discretion in establishing or modifying the rule in areas such as (1) the regulated persons, engines, or airplanes; (2) the emissions standards; or (3) the compliance schedule. Many commenters to the notice opposed the unilateral actions being taken by the United States that they considered to be counter to International Civil Aviation Organization (ICAO) and European Civil Aviation Conference (ECAC) positions which oppose emissions standards that require modification to in-service aircraft engines. The EPA's response to those comments is contained in the preamble of the final rulemaking taken by EPA with regard to JT3D smoke emissions standards (44 FR 64266, November 6, 1979). The EPA rejected those arguments at that time because that rulemaking represented a delay in the effective dates of a standard that had been promulgated in 1973 which antedated any positions taken by ICAO Committees or by the ECAC. Other commenters considered the phased compliance schedule to be burdensome and wanted a rule change, a waiver, or an exemption for particular types of operations such as travel clubs, international operations, etc. The EPA has indicated that they do not plan to change the applicability or the schedule for compliance with the JT3D smoke standards. They have rejected requests for a rule change or exemptions based upon such considerations as (1) limited operations that do not represent a large environmental burden, (2) disparity of emissions and noise compliance schedules for an operator, and (3) economic burden and lack of air quality justification. The EPA's stated position on each respective point may be summarized as follows: (1) the operations of each operator of aircraft powered by JT3D engines may contribute little to environmental degradation, but the total environmental burden, that is composed of many such operations, has to be reduced if the nation's air quality goals are to be achieved; (2) the compliance schedule has been delayed twice and no adequate justification has been shown for further changes in the schedule since a schedule based on category of operators or operations would be discriminatory; and (3) the EPA conducted the required economic and air quality analyses when it established the standards and schedule.

Concerning requests for waivers or exemptions, the EPA has indicated that as a policy it does not grant exemptions from the provisions of Federal emissions standards, except under the most extenuating circumstances. The Clean Air Act makes no mention of exemptions in Section 231 pertaining to aircraft emissions. The only provision of this nature in 40 CFR Part 87 appears in Subpart J, which was added to the basic standards in December 1973, (38 FR 35000) to provide a mechanism for operators to request temporary delays in the compliance dates for the fuel venting and JT8D smoke retrofit standards after several foreign airlines experienced difficulty in acquiring and arranging for installation of the necessary replacement parts. The JT3D smoke retrofit program is not presently covered by Subpart J, because the compliance date that was established (and since extended) was set to allow liberal time for development and certification of the necessary replacement parts, and it was not envisioned that any operators would need special delays to meet the compliance schedule. However, should that be the case, the EPA has indicated that it will consider extending the provisions of Subpart J, "Temporary Exemption from Aircraft Emissions Standards," to include the JT3D smoke retrofit program.

For the information of any interested parties, the provisions of Subpart J which are most relevant to potential applicants for temporary EPA exemptions are as follows:

"§ 87.101 Application for temporary exemption.

(a) The Administrator of the Environmental Protection Agency may grant to any aircraft or aircraft engine temporary exemption from any applicable standard under § 87.11(a) or § 87.31(a), provided that the owner or operator of such aircraft or aircraft engine demonstrates:

(1) All good faith efforts to achieve compliance with such standards,

(2) Inability to comply with such standard due to circumstances beyond his control, and

(3) A plan by which he will achieve such compliance in the shortest time which is feasible.

(b) Applications for temporary exemption from the requirements of § 87.31(a) shall be submitted in duplicate to the Administrator of the Environmental Protection Agency and shall contain the following information:

(1) The name and address of the applicant,

(2) The standard or requirement from which temporary exemption is requested,

(3) The number of aircraft or aircraft engines subject to the requirement for which a temporary exemption is requested,

(4) The efforts made by the applicant to accomplish compliance, including ordering of equipment and scheduling of maintenance work, and the dates of these efforts,

(5) A detailed statement of reasons why the applicant will not be in compliance when the standard or requirement becomes effective,

(6) The name of the equipment supplier and/or the name of the firm retained to perform the maintenance work,

(7) The applicant's proposed timetable for installation of equipment and obtaining necessary approvals for each aircraft or aircraft engine for which temporary exemption is requested, and

(8) The name of the person responsible for accomplishing compliance according to the timetable proposed by the applicant.

(c) Prior to taking action on an application for temporary exemption, the Administrator shall consult with the Secretary of Transportation. A copy of the applicant's request should be

submitted by the applicant to the Secretary of Transportation.

(d) The Administrator shall publish in the Federal Register the name of the owner or operator to whom a temporary exemption is granted and the period of such exemption.

(e) No state or political subdivision thereof may attempt to enforce a standard respecting fuel venting or smoke emissions from an aircraft or engine if such aircraft or engine has been granted an exemption from such standard."

December 15, 1976, was the effective date for the EPA rulemaking that first extended the compliance date for smoke standards applicable to JT3D engines. The extension was predicated on EPA's determination that a means of achieving compliance had been developed, was completing service evaluation, and would be available for installation beginning in the spring of 1978. Since those operators contemplating operation of JT3D-powered airplanes after 1980 have been given adequate time to order retrofit kits (and any required tooling) or new combustors, the EPA has indicated that it will not consider favorably requests for temporary delays in compliance that do not demonstrate that a conscientious effort was made to comply with the requirements. Purchasers of noncomplying aircraft subsequent to December 15, 1976, should not expect special considerations by the EPA simply because they were ignorant of the legal emissions requirements.

As provided in § 9 of SFAR 27, should the EPA act through rule or interpretations to modify the compliance requirements, these actions would be reflected in FAA's enforcement activities, as appropriate.

Discussion of Comments and the Rules

The following is a discussion of pertinent portions of the proposal to SFAR 27 (Notice No. 80-6) and any comments related to the subject matter covered.

Local Regulations

Commenters representing international air carriers expressed concern that some U.S. airports might attempt to apply more stringent regulations than those imposed by the Federal Government. That concern is unfounded. Section 233 of the Clean Air Act effectively prohibits such action as it states that no State or political subdivision may adopt or attempt to enforce any standard concerning emission of air pollutants from any aircraft or aircraft engine unless that standard is identical to the Federal standards.

Operational Engines

Though the term "operational engines" is not defined in 40 CFR Part 87, the previous quote from § 87.31(c) indicates that operational Class T3 engines are a subset of the in-use aircraft gas turbine engines of Class T3. (The term "in-use aircraft gas turbine engine" is defined in Part 87 as an aircraft gas turbine engine which is in service.) For purposes of enforcement, "operational Class T3 engines" include only those engines installed on airplanes that operate in the United States. Therefore, spare engines will not be monitored, though they will have to come into compliance at about the same rate as operational engines in order to keep an operator's airplane fleet in compliance when complying operational engines need to be removed. The EPA has indicated that this enforcement approach is consistent with 40 CFR Part 87.

Replacement Airplanes

The EPA has defined the term "replacement engines" in § 87.31(c) where the term "replacement airplane" was introduced, but did not define the latter term because the EPA assumed that an analogous definition was implied. For purposes of enforcement, a "replacement airplane" is an airplane powered by engines, other than Class T3, that meets applicable smoke emission requirements. The EPA has indicated that this approach is consistent with 40 CFR Part 87, as interpreted by the EPA.

Achieving Compliance

Pratt and Whitney (P&W) Service Bulletin No. 4694 describes the methods and parts for modification of in-use JT3D engines to provide a burner configuration that results in smoke density levels consistent with the EPA maximum limit. One commenter noted "unsatisfactory results" from such a burner configuration, but the commenter did not provide any information to support that assertion. The burner retrofit configuration in the referenced Service Bulletin (also described in the FAA-approved Engineering Change 284890) has been installed in a JT3D-7 engine and shown to produce maximum smoke numbers well below the standard of 25 during separate test runs. In addition, the approved modification has undergone several thousand cycles of engine testing, several airline tests, and more than 150,000 hours of service tests. Another comment stated that "the burner modifications necessary to reduce smoke emissions are believed to have been sufficiently service tested for performance and durability." The FAA agrees. Based on these tests, the burner retrofit configuration described in Service Bulletin 4694 is considered to be in conformance with the EPA standards. The EPA, therefore, regards modification of a JT3D engine in accordance with the above Service Bulletin to be satisfactory evidence of compliance with 40 CFR Part 87, if that engine is properly maintained.

Thus, in a fashion similar to that used previously in SFAR 27 to ensure compliance by in-use JT8D engines, this amendment incorporates by reference the P&W Service Bulletin No. 4694 in § 14 of the SFAR. The Service Bulletin is available for examination in the FAA Rules Docket, AGC-204, Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591, or may be obtained from Pratt and Whitney Aircraft Division of United Technologies Corporation, 400 Main Street, East Hartford, Connecticut 06108. In addition, to ensure that the incorporated materials are reasonably available to interested persons, it will also be available at the locations listed in the new § 10(e). The incorporation by reference has been approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR Part 51. It should be noted that those incorporated documents describe merely one acceptable means of compliance for an in-use JT3D engine to achieve the EPA smoke standards. Any other means, consistent with § 11 of the SFAR, that is demonstrated by the prescribed test procedures of EPA's Part 87 to limit engine emissions below smoke number 25 will be accepted as compliance with the provisions of § 87.31(c) that are incorporated in this amendment to SFAR 27.

P&W Service Bulletin 2417, which was incorporated by reference in SFAR 27, has been cancelled by Pratt and Whitney and has been incorporated in parts catalogs. Since retrofit in accordance with P&W Service Bulletin 2531 is sufficient to meet JT8D smoke requirements without reference to Service Bulletin 2417 or Engineering Change 197707 (which provided the details needed for conducting a service evaluation of the smoke reduction chamber configuration for JT8D engines), the incorporation by reference of P&W Service Bulletin 2417 and P&W Engineering Change 197707 is no longer needed, and has been deleted from SFAR 27.

Airplanes and Engines Covered by Replacement Plans

JT3D engines of JT3D-powered airplanes that are scheduled to be

replaced with complying engines or airplanes before 1985 may continue to be operated after the 1981 and 1983 interim dates in the phased compliance schedule, if those engines or airplanes are covered by an FAA-approved replacement plan (§ 87.31(c)). Thus, an operator may elect to submit to the FAA for approval a plan under which replacement engines (engines of a class different than Class T3 that have been shown to meet EPA smoke emission requirements) or replacement airplanes (airplanes powered by engines of a class different than Class T3 engines that meet applicable EPA smoke emission requirements) have been ordered and are scheduled for delivery prior to January 1, 1985. If the plan is approved, those engines and airplanes included in the plan do not have to comply with the requirements of the phased compliance schedule for Class T3 engines until January 1, 1985, or an earlier date specified in the plan. Those approved replacement plans may constitute a compliance strategy for smoke emissions even if a replacement plan is not needed for the FAA's operating noise limits rule. The noise rule does not require compliance before 1985 for Part 91 and 123 operations and for airplanes engaged in foreign air commerce in the United States under an approved method of apportionment. Thus, some operators may wish to request approval of a replacement plan for smoke emission compliance purposes only. Replacement plans for noise that are submitted by operators under 14 CFR 91.306 which have FAA approval may, upon request, serve as FAA-approved plans for the EPA smoke emissions standards as well.

Under this amendment, any replacement plan submitted solely for smoke emissions purposes should be submitted to FAA's Office of Environment and Energy and should, at a minimum, include (1) the operator's name and address, (2) the name, title, address and phone number of the person who submitted the plan, (3) the operator's current and projected inventory of JT3D engines (by serial number) and JT3D-powered airplanes (by aircraft registration number and airplane serial number) covered by this SFAR, (5) the verifiable order and schedule for replacement of those engines or airplanes, and (6) certification that the plan is true and complete (under penalty of 18 U.S.C. 1001). If a replacement plan strategy is selected, the plan should be submitted to the FAA by December 1, 1980, to provide sufficient time for the FAA approval process to be completed prior to the first interim compliance date, January 1, 1981. Later submissions might not be approved before compliance is required, and will not be a basis for relief from compliance with the rule without EPA remedial action.

The approval process for replacement plans includes consideration of whether the plan would provide benefits similar to the emissions reduction that would be achieved through a phased retrofit program without replacement. Thus, a plan submitted by an operator with a large JT3D-powered fleet may be unacceptable if it delays replacement of a substantial portion of its fleet until December 1984, and does not provide a compelling reason for such an inordinate delay. In considering approval of specific replacement plans for emissions submitted by those operators required to prepare compliance plans for noise (under 14 CFR 91.308) the approval process of replacement plans for emissions will include a comparison between plans for consistency and differences. While some minor differences might be expected since the objectives are not the same, each operator's fleet projections and compliance strategy should be traceable among any different plans the operator submits. Any unplanned changes in an operator's equipment inventory or plans for replacement of aircraft or engines covered by this SFAR will necessitate an update in the replacement plan.

Several commenters said that even though most operators will be replacing their JT3D-powered aircraft, their filing of replacement plans would place an unnecessary administrative burden on the FAA. These commenters would prefer an exemption or waiver. This option was discussed earlier and it was indicated that FAA has no authority to grant exemptions or waivers from the EPA standards (see § 9(a) of SFAR 27). Since EPA has given operators the option of submitting replacement plans, FAA will provide the necessary review of these plans.

Replacement Credit

"Replacement credit" permits the operator of an airplane (or engine) covered by an FAA-approved replacement plan to continue to operate that airplane (or engine) until 1985 or an earlier date specified in the plan. For compliance purposes, each airplane or engine scheduled for replacement in an FAA-approved plan will be counted as if it were in compliance and any airplane or engine that has been replaced by each interim compliance date will be counted in the fleet count for that date.

Retirement Credit

On December 15, 1976, the EPA announced (43 FR 54861) that compliance with its smoke emissions standards for Class T3 engines was technically achievable. One of the options available to operators at that time was retirement of aircraft on which Class T3 engines were installed (an option still available). The retirement option was not addressed in the preamble to the proposal. Since "retirement credit" is applicable under the FAA's operating noise rule and achieves the air quality goals of EPA, the concept of retirement credit has been accepted by the EPA as a compliance strategy consistent with Part 87. Permitting the use of this concept increases the consistency between compliance with the Part 91 noise requirements and the SFAR emissions requirements. Retirement credit permits the operators of airplanes covered by 40 CFR 87.31(c) to count the associated Class T3 operational engines as complying engines if those airplanes are retired from any future operation in the United States without replacement after December 15, 1976. This is similar to the procedures that operators are allowed to follow in fulfilling the requirements of 14 CFR 91.305, though the earliest date for emissions and noise retirement credit are different (December 15, 1976 vice January 1, 1977). Retirement credits only apply to engines installed on airplanes that are retired; spare engines are not eligible for such credit. The credit is not available until shown to be a true and complete retirement from U.S. service without replacement. If an airplane or engine for which retirement credit has been given is replaced or operated in the United States even by another operator, the credit is, of course, forfeited.

Operators electing to take retirement credit should certify (under penalty of 18 U.S.C. 1001) the following information in writing to the FAA's Director of Environment and Energy before December 1, 1980 for 1981 compliance, and December 1, 1982 for 1983 compliance purposes: (1) the operator's name and address, (2) the name, title, address and phone number of the person submitting the information, (3) the date of the submission, (4) a statement that the operator is eligible for "retirement credit" in meeting compliance on the interim dates, (5) the operator's inventory of JT3D-powered airplanes and engines covered by this SFAR (by aircraft registration number, airplane serial number, and engine serial number) with an indication of those airplanes that have been retired after December 15, 1976, including the date

when each listed airplane was retired from service in the United States without replacement.

Compliance Schedule (Interim Compliance Dates)

The EPA has indicated that the proportions prescribed by 40 CFR 87.31(c) for interim compliance dates apply to the operational engines and not the individual JT3D-powered airplanes. Specifically, unless an operator has FAA approval for a replacement plan or has elected to use retirement credit before the dates specified in the previous discussion, the proportions apply to the total number of operational engines owned or controlled by each operator on, and after, each interim compliance date. If replacement or retirement credit is selected by an operator, these factors are considered in calculating the proportions on the interim compliance date.

In general, each proportion is the quotient of the number of "complying operational engines" divided by the "total number of operational engines" in the operator's fleet. The number of "complying operational engines" is (the sum of) the number of any operational Class T3 engines that meet the EPA smoke emissions standard, plus the number of any Class T3 engines installed on aircraft that were retired completely from U.S. service without replacement between December 15, 1976 and the interim date, plus the number of any operational engines of Class T3 covered by an FAA-approved replacement plan. The "total number of operational engines" in the fleet is (the sum of) the number of all operational engines owned or controlled on the interim compliance date, plus the number of any Class T3 engines installed on aircraft retired completely from U.S. service without replacement between December 15, 1976 and the interim date, plus the number of any engines of Class T3 covered by an FAA-approved replacement plan that have been replaced by the interim date.

Comments were received from operators which have no interim noise compliance dates and object to interim compliance dates for smoke emissions. One aspect of their objection was the likelihood that aircraft would be retired or replaced by 1985 to meet the FAA noise rule, making engine modifications for earlier emissions compliance dates an uneconomic alternative. The EPA has considered that argument and, as indicated earlier, considers it discriminatory to establish a different set of compliance dates for different classes of operators. Another aspect of that concern is summarized in the comment from the International Air Transport Association which said:

"There are significant real difficulties which are equally applicable to the intermediate partial compliance requirements of 40 CFR 87. We understand that, in computing the numbers of engines required to be modified, reference would probably be made by the FAA to the Operations Specfications of the airline in question. In deciding which aircraft to list in its Operations Specifications the airline could list the registration numbers of just the number of aircraft of the type(s) it operates in U.S. service theoretically needed to support these services. This would minimize the number of engines required to be modified but could restrict the ability of the airline to obtain maximum utilization of the whole fleet of the type(s) concerned. Alternatively, the airline could reduce this constraint by listing the registration numbers of more than this theoretical minimum number of aircraft (up to the whole of its fleet of the type(s) concerned), but clearly this would increase the number of engines required to be modified. Moreover, it would be unreasonable to expect an airline to modify more engines than required for service to the U.S. when no other country requires a similar modification."

The above comment correctly assumes that aircraft listed on an operations specification will be considered to represent those aircraft that a foreign operator has determined to be those operating in the United States (without regard to the frequency of operations). Whether the operator chooses to minimize the number of airplanes operated into the United States or to increase operational flexibility by designating more airplanes for U.S. operations is a matter best reserved to the operator. Balancing these factors should be a prerogative of the operator and should not be dictated by the rule. Those who have listed more than the minimum number of aircraft (which is a typical approach) may be eligible for retirement credit for those aircraft removed without replacement from any future U.S. service.

As indicated in SFAR 27 § 9(a), and as discussed earlier, the FAA cannot grant variances from the prescribed schedule established by the EPA. All comments on that schedule have been referred to the EPA for consideration. Operators are reminded that they should take the necessary actions to meet the phased compliance schedule. Several comments mentioned lack of availability of retrofit kits, lack of tooling, and lack of personnel to perform the modifications. EPA has indicated that such conditions might be the basis for a request to the EPA for a temporary delay in compliance, if the operator can demonstrate that good faith attempts have been made since December 15, 1976, to order retrofit kits and tooling and to obtain maintenance personnel (or a maintenance organization) to perform the retrofitting of engines and that such attempts have been unsuccessful. (See 40 CFR 87.101).

Pratt and Whitney Aircraft indicated on July 3, 1980, that it originally planned to produce sets of retrofit parts sufficient for 1000 engines. However, they decided to limit their production run to 100 sets due to a lack of orders. As of that date they had orders for 93 sets (mostly from one operator) with seven sets still available. The lead time for additional sets of parts is sixteen months. They have had no orders for tooling and did not believe that any operator or maintenance shop has developed the tooling capability. The lead time for tooling from P&W is about one year, although maintenance shops can fabricate their own tooling sooner. From those indications, no serious attempt has been made by any operator to achieve compliance through the retrofit option.

Some comments indicated that it will be extremely difficult, if not impossible, for the FAA to determine the degree of compliance, particularly by foreign operators. The FAA does not agree. Its monitoring program will include field examinations and review of documentation such as operations specifications, airplane flight manuals, noise compliance plans, etc. The noise compliance plan is the only document that is not applicable to foreign operators. The FAA program should be sufficient for the purposes of ensuring that operators meet the compliance schedule. If, based on experience, additional means are found to be necessary, the FAA will move promptly to develop and implement additional mechanisms to ensure compliance.

Certification and Engine Approval Actions

Sections 15, 17, 19, and 21 of SFAR 27 have been revised to reflect the EPA requirements applicable to in-use JT3D engines. Those revisions are unchanged from the proposed amendment. No commenter addressed the issues presented.

Since the EPA amendment to § 87.31(c) concerning in-use JT3D engines affects the continued operation of airplanes powered by JT3D engines, it raised questions concerning the need and the appropriateness of including references to in-use JT3D engines in the certificate actions covered by §§ 15, 17, and 21 and the approval actions in § 19. After reviewing these current provisions in light of the EPA amendment, it would be misleading to issue certificates or

make approvals after the final compliance date for engines that cannot legally be operated in the United States. This amendment is consistent with the treatment given Class T2 and T4 engines and T3 engines manufactured on and after January 1, 1978. However, operation of non-complying, in-use JT3D engines manufactured before January 1, 1978, is not completely prohibited until January 1, 1985. The EPA's 1981 and 1983 interim compliance dates for in-use JT3D engines do not apply to certificate and approval actions for JT3D engines manufactured before January 1, 1978. Thus, if the FAA set any cutoff date for certifications and approvals prior to January 1, 1985 (the final compliance date in EPA's Part 87 that applies to all JT3D engines) would be more stringent than the EPA rule. This amendment uses that date as the cutoff date for further certificate and approval action, regardless of the date of application.

As each Class T3 engine is modified to meet the smoke emissions standards, the model designator on the engine identification plate must be modified in accordance with P&W Service Bulletin 4694 in order to comply with § 19(b) of SFAR 27.

Operation

Section 25 has been amended to reflect EPA's Part 87 phased compliance schedule for in-use JT3D-powered airplanes operated in the United States. Comments recommending that FAA delete the interim compliance dates cannot be acted upon. As discussed earlier, such a change is outside the scope of FAA's authority.

Codification

The proposal indicated that consideration is being given to codifying permanently the FAA airplane emissions regulations (SFAR 27) under Title 14 of the Code of Federal Regulations (CFR). There are several options being considered, including (1) redistributing the provisions of SFAR 27 among the various parts of the code as appropriate, e.g., Part 21, Part 33, Part 45, Part 91, etc., and (2) continuing to provide a single code unit for engine emissions by establishing a new Part in Title 14, e.g., Part 34, with references to other affected parts. Three commenters supported the desirability of permanent codification and none opposed such action. One commenter suggested that Part 33 "Airworthiness Standards: aircraft engines" be amended to include the provisions of SFAR 27. The other commenters suggested permanent codification in a single separate unit. (One suggested numbering it Part 34.) The FAA is continuing its review of the issues before taking action to modify the form (not the substance) of the regulation.

Adoption of the Amendment

Accordingly, 14 CFR Chapter I, Special Federal Aviation Regulation (SFAR) 27 is amended, effective December 1, 1980, as follows:

1. By adding a new § 10 to read as follows:

§ 10 Incorporation by reference.

(a) *General.* This SFAR prescribes certain standards and procedures which are not set forth in full text in the rule. Those standards and procedures are hereby incorporated and are approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR Part 51.

(b) *Changes to incorporated matter.* Incorporated matter which is subject to subsequent change is incorporated by reference according to the specific reference and to the identification statement. Adoption of any subsequent change in incorporated matter that impacts compliance with standards and procedures is made under of 14 CFR Part 11 and 1 CFR Part 51.

(c) *Identification statement.* The complete title or description which identifies each published matter incorporated by reference in this SFAR is as follows:

(1) Pratt and Whitney Service Bulletin 2531, Revision No. 10, dated December 28, 1972: containing instructions on incorporation of a combustion chamber assembly configuration for JT8D engines which reduces visible smoke emissions.

(2) Pratt and Whitney Service Bulletin 4694, Revision No. 2, dated May 22, 1979: containing instructions, parts list, and manpower requirements for providing a burner configuration for JT3D engines that reduces smoke density levels to meet EPA standards, and containing new model designations for complying engines.

(d) *Availability for distribution.* Operators affected by portions of this SFAR concerning in-use Class T3 and Class T4 engines normally receive the referenced documents from the manufacturer, Pratt and Whitney Aircraft, when issued. Copies of Service Bulletins may be obtained (without cost) upon request to Pratt and Whitney Aircraft, Division United Technologies Corporation, 400 Main Street, East Hartford, Connecticut 06108.

(e) *Availability for inspection.* A copy of each publication incorporated by reference in this SFAR is available for public inspection at the following locations:

(1) FAA Office of the Chief Counsel, Rules Docket, Room 916, Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, D.C.

(2) Department of Transportation, Branch Library, Room 930, Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, D.C.

(3) The respective offices of the Federal Aviation Administration as follows:

(i) New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts.

(ii) Eastern Regional Office, Federal Building John F. Kennedy (JFK) International Airport, Jamaica, New York.

(iii) Southern Regional Office, 3400 Whipple Street, East Point, Georgia.

(iv) Great Lakes Regional Office, 2300 East Devon, Des Plaines, Illinois.

(v) Central Regional Office, 601 East Twelfth Street, Kansas City, Missouri.

(vi) Southwest Regional Office, 4400 Blue Mound Road, Fort Worth, Texas.

(vii) Rocky Mountain Regional Office, 10255 East 25th Avenue, Aurora, Colorado.

(viii) Northwest Regional Office, FAA Building, 9010 East Marginal Way South, King County International Airport (Boeing Field), Seattle, Washington.

(ix) Western Regional Office, 15000 Aviation Boulevard, Hawthorne, California.

(x) Alaskan Regional Office, 632 Sixth Avenue, Anchorage, Alaska.

(xi) Pacific-Asia Regional Office, 1833 Kolakoua Avenue, Honolulu, Hawaii.

(xii) Europe, Africa and Middle East Office, 15 Rue de la Loi, 1030 Brussels, Belgium.

(xiii) FAA Representative, U.S. Embassy, Corner Avenidas Inca Garcillaso de la Vega & Espana, Lima, Peru.

(xiv) FAA Representative, Office of U.S. Consulate General, Avenida Presidente Wilson, 147 Rio De Janeiro, Brazil.

(4) The Office of the Federal Register, Room 8401, 1100 "L" Street, NW., Washington, D.C.

2. By amending § 14 as follows:

a. By amending paragraph (b) to read as follows:

§ 14 Compliance.

* * * * *

(b) Compliance with the exhaust emissions requirements of this SFAR that apply to Class T4 engines beginning on February 1, 1974, is shown if the engine is a JT8D-11, JT8D-15, JT8D-17, or subsequent civil JT8D engine; or if the engine is a JT8D-1, JT8D-7 or JT8D-9

engine that was modified in accordance with Pratt and Whitney Service Bulletin 2531 which is incorporated by reference under § 10 of this SFAR.

* * * * *

b. By redesignating paragraphs (c) and (d) as paragraphs (d) and (e), respectively, and amending the redesignated paragraph (d) by deleting the words "and January 1, 1978," and substituting for them the words "January 1, 1978; January 1, 1981; January 1, 1983; and January 1, 1985,".

c. By adding a new paragraph (c) to read as follows:

* * * * *

(c) Compliance with the exhaust emissions requirements of this SFAR that apply to Class T3 engines beginning on January 1, 1978; January 1, 1981; January 1, 1983; and January 1, 1985, is shown if the engine is a JT3D-12 engine or if the engine has been redesignated as a JT3D-1A, JT3D-1A-MC6, JT3D-1A-MC7; JT3D-3C or a JT3D-7A engine after being modified in accordance with Pratt and Whitney Service Bulletin 4694, which is incorporated by reference under § 10 of this SFAR.

* * * * *

3. By amending § 15 as follows:

a. By amending paragraph (a)(5) to read as follows:

§ 15 Type certificates.

(a) * * *

(5) For airplanes powered by engines of Class T3—

(i) Each manufactured on or after January 1, 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1978; and

(ii) Each engine manufactured before January 1, 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1985.

* * * * *

b. By amending paragraph (b) by deleting the words "date specified in subparagraph (a)(4)" and substituting for them the words "dates specified in subparagraphs (a)(2), (a)(4) and (a)(5)."

4. By amending § 17 as follows:

a. By amending paragraph (a)(5) to read as follows:

§ 17 Supplemental and amended type certificates.

(a) * * *

(5) For airplanes powered by engines of Class T3—

(i) Each engine manufactured on or after January 1, 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1978; and

(ii) Each engine manufactured before January 1, 1978, complies with the exhaust emission requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1985.

* * * * *

b. By amending paragraph (b) by deleting the words "subparagraphs (a)(2) and (a)(4) of this section" and substituting for them the words "subparagraphs (a)(2), (a)(4), and (a)(5) of this section."

5. By amending § 19(a)(3) to read as follows:

§ 19 Engine approvals.

(a) * * *

(3) For an engine of Class T3, unless—

(i) Each engine manufactured on or after January 1, 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1978; and

(ii) Each engine manufactured before 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1985.

* * * * *

6. By amending § 21(e) to read as follows:

§ 21 Standard airworthiness certificates.

* * * * *

(e) For airplanes powered by engines of Class T3—

(1) Each engine manufactured on or after January 1, 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1978; and

(2) Each engine manufactured before January 1, 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1985.

7. By amending § 25 as follows:

a. By amending the introductory clause by deleting the words "paragraphs (a) through (d)" and substituting for them the words "paragraphs (a) through (e)."

b. By amending paragraph (e) to read as follows:

§ 25 Operations.

* * * * *

(e) For airplanes powered by engines of Class T3—

(i) Each engine manufactured on or after January 1, 1978, complies with the exhaust emissions requirements and related test procedures of 40 CFR Part 87 that apply beginning January 1, 1978; and

(ii) In addition, regardless of date of manufacture, each engine complies with the exhaust emissions requirements according to the following schedule:

(A) One quarter of the operational Class T3 engines by January 1, 1981.

(B) One half of the operational Class T3 engines by January 1, 1983.

(C) All operational Class T3 engines by January 1, 1985.

This compliance schedule notwithstanding, Class T3 engines which do not meet a smoke number of 25 may continue to be operated if, under an FAA approved plan, replacement engines or replacement airplanes have been ordered and are scheduled for delivery before January 1, 1985, but not after the date specified in the plan. For purposes of this paragraph, replacement engines are engines of a class other than Class T3 engines that have been shown to meet the smoke emission requirements and related test procedures of 40 CFR Part 87 appropriate to their class.

(Sec. 232, Clean Air Act, as amended December 31, 1970, Pub. L. 91-604 (42 U.S.C. § 1875f-10) as delegated (36 FR 3733); 40 CFR Part 87; Secs. 307(c), 313(a), 601, and 603, Federal Aviation Act of 1958 (49 U.S.C. 1348(c), 1345(a), 1421, and 1423); Sec. 6c, Department of Transportation Act (49 U.S.C. § 1655(c))

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the first person identified above under the caption "For Further Information Contact."

Issued in Washington, D.C., on October 23, 1980.

Langhorne Bond,

Administrator.

Note.—The incorporations by reference contained in this amendment were approved by the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR Part 51 on August 18, 1980.

[FR Doc. 80-33610 Filed 10-29-80; 8:45 am]

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Federal Register

Thursday
October 30, 1980

Part VI

Department of Transportation

Federal Highway Administration and Urban Mass Transportation Administration

Environmental Impact and Related Procedures; Final Rule and Revised Policy on Major Urban Mass Transportation Investments and Policy Toward Rail Transit

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Part 771

49 CFR Part 622

Environmental Impact and Related Procedures

AGENCIES: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FHWA and UMTA are issuing a joint final regulation for the preparation of environmental impact statements and other related documents and procedures. This regulation incorporates the requirements of DOT Order 5610.1C, "Procedures for Considering Environmental Impacts," 44 FR 56420 (October 1, 1979), and sets forth procedures for complying with other environmental laws, principally section 4(f) of the Department of Transportation Act, 49 U.S.C. 1653(f) and 23 U.S.C. 138.

EFFECTIVE DATES: This regulation becomes effective on December 29, 1980. The documents and actions to which this regulation applies are described more fully in § 771.109 of the regulation.

ADDRESSES: Copies of comments received, together with the regulatory evaluation and work plan required by DOT Policies and Procedures implementing Executive Order 12044, are available for public inspection in the public docket room of the Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, S.W., Washington, D.C. 20590, between the hours of 7:45 a.m. and 4:15 p.m., EST, Monday through Friday. These materials are filed under FHWA Docket No. 79-26. Additional comments on this final rule may be submitted to this address.

FOR FURTHER INFORMATION CONTACT: (1) For FHWA: Mr. Robert Gatz, Office of Environmental Policy (HEV-10), telephone (202) 426-0106, or Mr. Edward Kussy, Office of the Chief Counsel (HCC-40), telephone, (202) 426-0791, Federal Highway Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, between the hours of 7:45 a.m. and 4:15 p.m., EST, Monday through Friday.

(2) For UMTA: Mr. Edward Fleischman, Office of Transit Assistance (UTA-30), telephone (202) 472-2435, or Mr. John Collins, Office of the Chief Counsel (UCC-10), telephone (202) 426-1906, Urban Mass Transportation Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, between the hours of 8:00 a.m. and 6:00 p.m., EST, Monday through Thursday.

SUPPLEMENTARY INFORMATION: The FHWA and UMTA have determined that this final rule is a significant regulation according to the criteria established by the Department of Transportation pursuant to Executive Order 12044. A regulatory evaluation is available for public inspection in the public docket room of the FHWA. Copies may be obtained by contacting Mr. Robert Gatz or Mr. Edward Fleischman. The addresses of the FHWA docket room and these individuals are set forth above. The regulation being issued today applies to both FHWA and UMTA actions. Thus, it will be published as Part 771 of Title 23 of the Code of Federal Regulations (CFR) with a cross reference in Part 622 of Title 49 of the CFR.

Introduction

The Council on Environmental Quality (CEQ) issued a final regulation for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 et seq., on November 29, 1978 (43 FR 55978). The CEQ regulation applies to all agencies of the Federal Government and is codified at 40 CFR Parts 1500-1508.

In response to the CEQ regulation, DOT issued DOT Order 5610.1C, Procedures for Considering Environmental Impacts, on October 1, 1979 (44 FR 56420). The DOT Order establishes general procedures and requirements for the consideration of environmental impacts by agencies within DOT. Both the CEQ regulation and the DOT Order require agencies such as the FHWA and UMTA to develop supplementary implementing procedures. This is especially the case where agency specific procedures are required to fully integrate the agency's programs with the CEQ regulation and the DOT Order. For this reason, both FHWA and UMTA determined that procedures applying directly to the two administrations were required. Thus, this regulation amends the existing FHWA regulation, 23 CFR Part 771, and adds a new Part 622 to Title 49 of the CFR for programs administered by UMTA.

This regulation establishes the specific NEPA requirements that must be followed by FHWA and UMTA, and by applicants for grants, permits and other actions from those two agencies. It also contains the policies and procedures which will guide the FHWA and UMTA activities under section 4(f) of the DOT Act, 49 U.S.C. 1653(f) and 23 U.S.C. 138, which relates to the preservation of certain park and recreation areas wildlife and waterfowl refuges, and historic sites.

The CEQ regulation is an integral part of FHWA's and UMTA's environmental requirements. In accordance with § 1507.3 of the CEQ regulation, the regulation published here does not paraphrase the CEQ provisions. However, in order to reduce the burden on grant applicants, this regulation incorporates the procedural provisions of DOT Order 5610.1C. Grant applicants should not find it necessary to refer to the DOT Order in the course of normal project development. FHWA and UMTA have required compliance with the CEQ regulation and DOT Order since their effective dates.

This regulation was published in proposed form for public comment on October 15, 1979 (44 FR 59436). Comments were also requested directly from potential grant applicants. The closing date for comments was extended once (44 FR 66213; November 19, 1979), and the docket officially closed on December 3, 1979.

A total of 196 comments were received from Federal, State and local units of government, public interest groups, and private citizens in the period prior to or immediately after the closing date. These comments were given full consideration. A small number of comments were received very late in the development of this regulation, well after the close of the comment period, and were entered in the docket for public information.

Comments were reviewed jointly by FHWA and UMTA. Both agencies established task forces to review comments received and make recommendations. The views of the field offices of both agencies were actively solicited in the course of this process. The final regulation has been developed and coordinated jointly by FHWA and UMTA with considerable input from DOT and CEQ.

The remainder of this preamble is divided into three sections as follows:

General Comments—a discussion of the general comments received on the proposed regulation and of the overall objectives in preparing the final rule.

Section-by-Section Analysis—a summary of each section of the final regulation, including a discussion of major comments received on and changes made to each section.

Related Actions—a brief review of other actions being taken by FHWA and UMTA in the environmental area.

General Comments

Federal agencies responding to the notice of proposed rulemaking included CEQ, the Environmental Protection Agency, and the Department of the Interior. Responses were received from 29 State transportation agencies and a wide range of local governments, transit authorities, private citizens and interest groups such as the National Wildlife Federation, Natural Resources Defense Council, Highway Users Federation, National Association of Counties and National Conference of State Historic Preservation Officers.

The major change in this regulation from the proposed rule is the complete integration of the UMTA and FHWA requirements. This is responsive to a number of comments which suggested consolidation of UMTA's and FHWA's procedures. In the proposed rule, the two agencies had issued a joint introductory part and similar detailed procedures. A close review of those detailed procedures indicated considerable simplification could be achieved by a complete merging of the procedures.

There are a number of significant advantages to this approach. UMTA's grant applicants and FHWA's grant applicants may be the same agencies. If they are not, they are agencies which must work very closely together at the State and local levels. Also, DOT requirements apply equally to both agencies. Thus, there is considerable procedural similarity between the two programs, which makes the issuance of joint procedures compelling. Furthermore, the environmental analysis required for compliance with NEPA frequently requires close interaction between UMTA and FHWA. This is especially the case in urban areas where environmental analyses can be particularly complex. Thus, combined procedures facilitate this process at the Federal level.

Another important advantage to a combined regulation is the emphasis that this places on the necessity to closely integrate highway and transit project development. Minor procedural differences in the highway and transit laws should not be allowed to predominate over a full and complete evaluation of all possible transportation solutions to a given problem.

There are, of course, fundamental differences in the major programs administered by UMTA and FHWA. These include (1) the statutory basis of the agencies grant programs (most significant FHWA programs are formula based and funded from a trust fund while UMTA administers a large discretionary grant program funded from general revenues), (2) the type of applicants (FHWA deals mainly with State highway agencies that are given special status under NEPA while UMTA usually does not deal with statewide agencies), (3) the degree of agency decentralization (FHWA has offices in each State while UMTA's field organization consists of 10 regional offices), and (4) the number of parallel regulations (FHWA has a number of related environmental regulations, e.g., process guidelines for environmental action plans (23 CFR Part 795), while UMTA has no other such regulations).

These differences led to the initial decision to publish parallel, but separate procedures. However, our subsequent analysis made clear that insofar as compliance with NEPA and other environmental procedures was concerned, these differences largely result in internal administrative differences and make little or no difference as to what NEPA documentation is actually required. Both UMTA and FHWA will be issuing non-regulatory guidance that will further assist applicants in complying with this regulation. This will be more fully explained below in the discussion of "Related Actions". In those relatively infrequent instances where statutory differences require different procedures in this regulation, they are specifically addressed in the section involved.

Comments received on the length of the regulation and the interpretation of the NEPA process reflected a wide range of views. We have attempted to strike a reasonable balance in both areas. As previously discussed, the regulation does not repeat the provisions of the CEQ regulation, but does include the procedural provisions of the DOT Order. The policies and procedures in the regulation are designed to streamline and shorten the environmental review process wherever possible, in keeping with the President's and DOT's policies on the reduction of red tape. In this regard, unnecessary requirements have been eliminated, lengthy or excessively detailed instructions have been curtailed, and flexibility and discretion have been provided to grant applicants wherever possible. The CEQ regulation and DOT Order set the overall policies and procedures, while this regulation tailors those policies and procedures to fit the unique aspects of the programs administered by FHWA and UMTA. Provisions in the draft regulation that related solely to internal procedures have been eliminated to streamline the regulation.

Several comments expressed concern regarding the degree of pubic involvement. Both FHWA and UMTA heavily emphasize public involvement throughout their programs. This involvement is an essential part of the planning and project development processes. The joint planning regulation of the two agencies requires public participation (23 CFR 450.20(a)(3) and 49 CFR 613.120(a)(3)). The importance of public involvement and early coordination in project development is also emphasized in this regulation in §§ 771.105(c) and 771.111. The FHWA further emphasizes public involvement through its action plan process (23 CFR Part 795) and its public hearing requirements (23 CFR Part 790). Both of these processes form an integral part of the procedures set forth in this regulation.

Numerous comments addressed the ability of local government units to act as joint lead agencies in conjunction with State and Federal agencies in preparing environmental documents and carrying out other lead agency functions under the NEPA regulations. State agencies of statewide jurisdiction, such as State highway departments, are specifically allowed to prepare environmental impact statements (EIS's) under a 1975 amendment to section 102(2) of NEPA, (42 U.S.C. 4332(2)(D)). This section also requires guidance and participation by the responsible Federal official.

The legislative history makes clear that this amendment resulted from conflicting judicial decisions on the issue of State preparation of environmental documents. The question of whether other government units, not having statewide jurisdiction, could prepare these documents was recognized by Congress. The Conference Report on H.R. 3130 (Senate Report No. 94-331) raised the question of whether the amendment could be interpreted by the courts as a statement of congressional intent to either deny or affirm the validity of delegating EIS preparation responsibilities to agencies of less than statewide jurisdiction. This concern was addressed by including the last sentence of section 102(2)(D), which states that the amendment does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction. Thus, the amendment does not in any way declare illegal the preparation of EIS's by other governmental units.

The CEQ regulation addresses this question in §§ 1501.5 and 1506.2. Section

1501.5(b) states that Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an EIS. Section 1506.2 allows a local agency to be a joint lead agency. Section 6 of DOT Order 5610.1C allows a local agency to serve as a joint lead agency if the proposed action is subject to State requirements comparable to NEPA. The mechanism by which a State imposes all applicable Federal and State requirements, including NEPA requirements, on those localities should be sufficient, in the absence of NEPA-type legislation, to allow a locality to become a joint lead agency in preparing environmental documents. In any case, DOT Order 5610.1C was not intended to be any stricter than the CEQ regulation on this point. The CEQ regulation encourages States and local agencies with requirements comparable to NEPA to become joint lead agencies in order to avoid duplication. However, nothing in the CEQ regulation discourages a locality from becoming a joint lead agency with the State and Federal governments in the absence of such comparable State or local requirements. Of course, while a local agency may be a joint lead agency with the State and Federal governments, the responsible Federal official must insure that environmental documents accurately reflect all environmental concerns and Federal requirements.

A number of comments were received which either criticized or suggested changes in procedures which are required by the CEQ regulation (e.g., notice of intent, record of decision, content of environmental documents). It was not possible to revise the regulation in response to those concerns since the CEQ regulation is binding on all Federal agencies.

Numerous editorial revisions have been made in order to improve the clarity and style of the final regulation.

Section-by-Section Analysis

§ 771.101 Purpose.

Section 771.101 describes the general purpose of the final regulation. It has been revised to reflect the fact that the FHWA/UMTA procedures are being issued in a single part of the Code of Federal Regulations.

§ 771.103 Authority and related statutes and orders.

At the request of several commenters, several additional related statutes and orders were added. The list in this section is intended to emphasize that compliance with the procedures of this regulation is the means to comply with these other Federal requirements.

§ 771.105 Policy.

Section 771.105 contains the basic policies of the FHWA and UMTA with respect to compliance with NEPA and related environmental statutes, regulations and orders. In keeping with the policy set forth in § 1500.2(c) of the CEQ regulation, this section of the regulation encourages Federal, State and local agencies to coordinate compliance with all applicable environmental requirements as part of the NEPA process. Several commenters asked that the factors which would be considered in deciding whether or not to mitigate an adverse impact be included. Paragraphs (b) and (d) have been redrafted to describe these factors and specifically include energy conservation benefits of the proposed expenditure. In response to a comment received, paragraph (e) indicates that the cost of preparing environmental documents specifically required by the Administration is eligible for Federal assistance in accordance with the contractual agreements between the applicant and the Administration.

§ 771.107 Definitions.

Section 771.107 contains definitions for basic terms that are used throughout the regulation which are not defined in the basic statutory authority for the two programs or defined by the CEQ regulation. All of the CEQ definitions can be found in 40 CFR Part 1508. For highway projects administered directly by FHWA, such as some Forest Highway projects, the term "Administration" means the Director, Office of Federal Highway Projects, Regions 8 or 10, or Regional Engineer, Region 15. Some of the provisions contained in the definitions section of the draft regulations have been moved to other sections to streamline the regulation. No substantive changes have been made to those provisions.

§ 771.109 Applicability and responsibilities.

Seciton 771.109 has been drafted by FHWA and UMTA to clarify when this regulation applies and what responsibility the applicant has in the environmental process. Activities that were proposed in the draft regulations as non-major Federal actions are described in the final regulation as categorical exclusions and listed in § 771.115(b). The Administration cautions applicants about undertaking activities with their own funds which might tend to limit the consideration of environmental alternatives in subsequent proposals for Federal assistance. The Administration will not permit the consideration of alternatives to be biased by such undertakings. For projects administered by UMTA, if an applicant wishes confirmation from UMTA that it can proceed with a project using its own funds without prejudicing a future application, UMTA will process this "no prejudice" request using the procedures of this regulation. This section also makes it clear that the provisions of this regulation do not apply to, affect, or alter any decisions, approvals, authorizations, or other actions made or taken prior to the regulation's effective date. Paragraphs (a)(4) and (a)(5) of this section describe how the regulation applies to environmental documents in various stages of development.

As indicated in the applicability discussion in § 771.109(a) and the definition of "Action", this regulation applies to proposals for a variety of actions over which the Administration exercises the requisite degree of control and responsibility. The vast majority of the Administration's NEPA activities have traditionally been concentrated in the construction area. Accordingly, prior environmental regulations have been designed primarily for application to highway and transit projects. This regulation follows in that tradition by emphasizing the requirements and information relevant to construction grant applicants. However, an effort has been made to draft this regulation so that its provisions can be applied, as appropriate, to all transportation projects in which the Administration is involved. Specific provisions for non-project related actions (e.g., proposals for legislation) have not been included in this regulation. However, the general policies contained in the regulation, together with the procedures in the CEQ regulation and DOT Order, adequately provide for such actions.

A new paragraph (b) has been added to the regulation to ensure compliance with CEQ's requirement that appropriate mitigation measures will be carried out if the proposed project receives funds from the Administration. (40 CFR 1505.3). The Administrations will adapt existing mechanisms to ensure that mitigation committed to in the environmental documents is actually done.

Section 771.109(c) explains an important concept that was originally presented in the definitions section of the UMTA draft regulation. The phrase "the Administration in cooperation with the applicant" is used throughout the final regulation to describe who has

responsibility for a particular activity. The meaning of the phrase will vary from project to project, depending on what agencies are involved. "Administration" means FHWA or UMTA, depending on which is the lead agency. "Applicant" means the entity—public or private—that is applying for Federal assistance. The basic statutory legislation in titles 23 and 49 of the United States Code defines who can be an eligible applicant. The phrase "in cooperation with" means that different applicants can have different levels of responsibility in the environmental process depending on the CEQ regulation. The greatest level of responsibility (authorized by 40 CFR 1506.2(a) of the CEQ regulation) is for public agencies that have statewide jurisdiction. All State DOT's and State highway and statewide transit agencies are statewide agencies and can prepare the EIS and other environmental documents themselves with the Administration participating in accordance with section 102(2)(D) of NEPA. All FHWA applicants fall within this type of responsibility.

The next greatest level of responsibility is for public agencies which are subject to state and local requirements comparable to NEPA. These "Joint Lead Agencies" may prepare the EIS and environmental documents jointly with the Federal agency (see 40 CFR 1501.5(b)). The Administration maintains its responsibility for the content.

Less responsibility is permitted for public agencies that do not fall within the above two types. A public agency which has special expertise in the proposed project may be a "Cooperating Agency" and have the responsibilities described in 40 CFR 1501.6(b). A local applicant for UMTA section 3 and 5 funds is presumed to be a cooperating agency and is involved, under UMTA leadership, in an active consultation process. The applicant may be directed to carry out UMTA's decisions.

Entities that do not fit within the above types (e.g., private institutions) are limited to providing environmental studies and commenting on environmental documents.

§ 771.111 Early coordination and project development.

Paragraphs (a) through (e) have been added to better define the sequence of formal and informal actions that occur during the early stages of project development and to emphasize the need for early coordination. An explicit link has been made between the planning and programming of projects and the decision on probable class of action of the proposed project.

No EIS, environmental assessment (EA) or finding of no significant impact (FONSI) is required at the systems planning stage. However, the Administration in cooperation with the applicant will use the information developed during the systems planning stage to identify the probable class of action of a project that may be proposed for funding at some future time. This early notification is designed to enhance consideration of environmental, social, economic, and energy effects.

It is recognized that an applicant may commit substantial resources (e.g., conduct planning studies) in advance of Federal project approval. Since the Administration must fully evaluate environmental impacts and alternatives in its decision making process and cannot bias its evaluation based on such prior actions, applicants are strongly encouraged to begin coordination with the Administration early in the project development phase.

Paragraph (f) requires that proposed projects be evaluated between logical termini. Although the comparable provision in the old FHWA regulation has been substantially revised and shortened, the new provision does not represent any change in policy with regard to the scope of the project which should be addressed in an EIS or FONSI.

Paragraph (g) has been added in response to a comment received concerning "tiering". This paragraph clarifies that complex transportation proposals may be best analyzed using first a broad program EIS and later a site-specific EIS. One commenter expressed concern over this section in the UMTA draft regulation that the first tier EIS (that is, a broad overview analysis which focuses on alternative transportation modes and corridors) would not consider cultural resources which might influence the location of the project. If tiering is used, the Administrations will consider the potential impact on cultural resources in the first tier EIS. At this stage of analysis, the Administration, in cooperation with the applicant, would consult state and local inventories of historic properties and the National Register, and would use available information on archeological resources if project alternatives could potentially affect these resources. This question is addressed more fully in § 771.135, dealing with section 4(f) of the DOT Act, to the extent that section is applicable.

Paragraph (h) has been included, in response to comments received, to provide contacts for individuals seeking information on environmental procedures. We hope that this will provide another means to facilitate citizen involvement in agency decision making.

§ 771.113 Timing of administration actions.

This section identifies and limits the types of project activities that are permitted prior to approval of the final EIS and the record of decision (ROD). Any Federal resources expended to gather data, to comply with other environmental laws, or for advance land acquisition will not bias the Administration's eventual decision on the project.

A number of comments were received asking that time limits be imposed for all major steps in the NEPA process. In response to these comments, and to be consistent with 40 CFR 1501.8(a) of the CEQ regulation, time limits will be established on a case-by-case basis when requested.

A number of comments expressed the view that highway agencies should be allowed to proceed with final design activities once the final EIS has been forwarded from the FHWA Division Office to the FHWA Regional Office. One of the arguments advanced for this concept was the contention that there were very few changes made in the project design once the final EIS has been accepted by the Division Office.

It is recognized that in some instances individual project costs may increase because of the time required to process the final EIS. This does not usually result in a cost increase to the program as a whole, since the funds that were scheduled to be utilized on a specific project are made available and shifted to another project within that State; thus that second project may be constructed ahead of its original anticipated schedule and is, therefore, constructed at a lower cost. The FHWA has carefully considered this recommendation, but does not believe that it would be desirable to implement such a change. It would not be a wise expenditure of Federal funds to permit a State agency to proceed with the final design of a recommended alternative prior to a decision on that project by either the Regional Administrator or by the Washington Headquarters, as may be appropriate.

The UMTA has special statutory authority to issue a "Letter of Intent" for projects that it proposes to fund in the future. Section 771.113(c) clarifies that when UMTA indicates an intention to obligate future funds for a multi-year capital transit project (such as a new rail system), the breadth of the EIS must

consider, at least, the entire project covered by the Letter of Intent.

§ 771.115 Classes of actions.

Section 771.115, pursuant to the CEQ regulation, establishes three classes of actions. Class 1 contains those actions that are presumed to require draft and final EIS's. Class 2 contains those actions that are presumed not to have a significant impact on the environment and therefore need no additional environmental analysis. These projects qualify as categorical exclusions (CE's) in accordance with the CEQ regulation. Class 3 contains all other actions since the significance of their environmental impacts is unknown. An EA must be prepared for Class 3 actions. If no significant environmental impact is found, a FONSI is prepared. Otherwise a draft and final EIS are required. The later sections describe how the presumptions can be overcome. The list of Class 1 projects contained in the regulation addresses both FHWA and UMTA actions. The transit class 1 projects were described in the proposed UMTA rule in § 622.203(a). A change was made in the fourth class 1 project to expand the class to encompass both highway and transit related major development projects. This classification will also consider the availability of commercial and residential replacement facilities. The highway class 1 projects were proposed in § 771.213(e) and have been revised to encompass those projects which are presumed to require an EIS.

One commenter requested that any action that has more than a minimal impact on land protected under section 4(f) (sec § 771.135) always be considered a Class 1 action. However, in the Administrations' experience, section 4(f) can encompass projects where 4(f) land is involved and yet there is no significant impact on the environment. For this reason, projects involving 4(f) lands will be treated on a case-by-case basis rather than creating an additional Class 1 project. Of course, any project that involves 4(f) property and has a significant effect on the environment will require as EIS.

Section 771.115(b) identifies a national list of activities that are classified as Class 2 or CE's. The CE's are authorized by CEQ in § 1508.4 of its regulation. The FHWA draft regulation contained a list of examples of CE's that would be utilized and approved in a manner similar to FHWA's previous procedures for non-major actions. A number of comments were received requesting the regulation be revised to indentify certain CE's on a national basis rather than presenting "examples" to be approved by the FHWA Division Administrator. This recommendation was similar to the approach proposed by UMTA. It was adopted and should substantially reduce paperwork requirements by eliminating the need for each of the 50 States to justify and submit for FHWA approval each of the items included on the national list.

The final regulation combines CE's proposed separately by FHWA and UMTA in the draft regulations. The new, identical language will enhance coordination between FHWA and UMTA when an action classified as a CE is jointly funded by the two agencies.

A great many comments were received on the types of actions proposed in § 622.203 for Class 2 (CE) projects.

CE #1 addresses planning and technical studies. This CE is limited to those studies which do not fund the construction of facilities or the acquisition of capital equipment to ensure that physical commitments are not made to a particular course of action.

CE #2 is identical to the CE proposed in § 622.203.

CE #3 is based on language that was included in proposed § 771.109(a). Approval of a unified planning work program and planning certification are actions that do not themselves require environmental documentation.

CE #4 encompasses programming approvals. Environmental concerns at this stage of development are addressed using the procedures of § 771.111.

CE #5 concerns concept approvals for interstate substitution projects and is also addressing using the procedures of § 771.111.

One commenter asked that the regulations be revised to permit preliminary engineering to be undertaken during the period of time when environmental documentation is being prepared. We agree that preliminary engineering may be a necessary step to analyze alternatives. For this reason, we have included in CE #6 engineering to define project elements, costs, and impacts and in CE #1 planning and technical studies. This is consistent with 40 CFR 1506.1(d) of the CEQ regulations. We recognize that it is sometimes necessary to spend money to understand the impacts of a project and that it does not make sense to require an environmental impact analysis to decide whether or not to prepare an environmental analysis. However, we do not want these Federal and local expenditures for studies and data to foreclose alternatives. We emphasize that these financial expenditures are not to bias the environmental process.

CE #7 covers classes of highways under 23 U.S.C. 103. It does not involve physical impacts and is identical in substance to the provision described in the Appendix to the FHWA proposed regulation.

CE #8 is identical to the CE that FHWA proposed.

In response to a comment received, the proposed CE for bridge replacement (#9) has been revised to be identical to the CE contained in the final NEPA regulation of the Coast Guard (45 FR 32818, May 19, 1980) so that different agencies of DOT will be consistent.

CE #10 addresses bikeway projects that typically are not major Federal actions significantly affecting the environment.

CE #11 is substantively the same as the CE for safety work programs contained in the Appendix to FHWA's proposed rule.

CE #12 addresses the transfer of Federal lands under the statutory requirements of 32 U.S.C. 317 when the subsequent action is not an FHWA action.

CE #13 is the CE for highway modernization. It has been revised from the proposed language to limit the CE to minor amounts of land acquisition.

CE #14 is for highway safety and traffic operations and was proposed in the FHWA Appendix. It has been revised to limit the CE to those projects which require only minor amounts of land.

CE #15 and #17 are identical to the CE's proposed by FHWA.

CE #16 covers ridesharing and fringe parking facilities that typically are not major Federal actions significantly affecting the environment.

CE #18 is a CE for administrative costs of the transit rural programs.

CE #19 is substantively identical to the CE proposed by UMTA for operating assistance for transit systems.

The FHWA also received a number of comments which suggested that "new rural two-lane highways," which previously had been considered as a non-major action, should be included as a CE. The FHWA believes that the definition of "new rural two-lane highway" is too broad to permit these projects to be classified as CE's. This issue has been discussed with the CEQ, which concurs that it would not be appropriate to consider the "new rural two-lane highway" as a CE.

One commenter asked if the CE that permits purchases of vehicles of the same mode could be revised to permit the purchase of dual-mode buses (i.e., buses that are powered both by electric

and diesel motors). The proposed CE recognized that the purchase of the same mode vehicles (diesel bus for diesel bus or electric railcar for electric railcar) merely maintains the environmental status quo and has been retained as CE #20. Since dual-mode buses represent a new technology, UMTA lacks experience in assessing the environmental effects of such buses. For this reason UMTA would treat the purchase of dual-mode buses as a Class 3 action at least until more experience is gained with this technology.

CE's #21, #22, #23 and #24 are identical in substance to the CE's proposed by UMTA.

Several commenters requested that new rail yards be treated similarly to new bus storage yards, i.e., that they be considered a CE when located in appropriately zoned areas. In UMTA's experience, the construction of rail yards could involve significant impacts in the surrounding community. For this reason, rail yards for new rail systems would be part of the EIS for the Class 1 project and rail yards for existing systems would be evaluated as Class 3 actions. The CE for new bus storage yards (#25) was modified in response to a comment to reflect that bus storage and maintenance facilities that will be located in industrial or transportation areas permitted under existing zoning are eligible for a CE if the street system can handle the anticipated traffic from the facility.

In response to comments received, a number of additional clarifications were added to the CE for land purchases (#26). With respect to applicants for UMTA funding, it is anticipated that land would be purchased in advance under the loan provisions of section 3(b) of the Urban Mass Transportation Act. This provision creates a narrow statutory mechanism to maintain current land use and to preserve alternatives for future consideration. By statute, no construction can begin on such property without triggering repayment of the loan. The statute creates a mechanism to preserve the status quo and any environmental impacts associated with future construction projects would be evaluated as part of the environmental documentation for that future project. The regulation has been revised to reflect the concept that, while advance land acquisition preserves an option, the scope of alternatives for a capital project in the future will not be prejudiced by the advance acquisition of land. If the land is not needed, the statute provides that the land will be sold and the value recaptured. For all other types of projects, this CE is limited to minor amounts of land.

In response to a comment from CEQ, the CE for regulations and directives proposed by UMTA and FHWA has been limited to those regulations that are not major, significant regulations under the terms of Executive Order 12044 (see CE #27). This Executive Order governs the preparation of regulations.

CE #28 and #29 are substantively identical to the CE's proposed by FHWA.

Some commenters proposed additional criteria for various Class 2 actions such as controversy, noise impact, or location in an area that has air pollution problems. Rather than including these factors and excluding other possible factors, we intend to rely on the early notification and citizen involvement procedures of §771.111 and the specific procedures in § 771.117(c) to determine whether a proposed action is properly classified as a Class 2 action.

UMTA's proposal and FHWA's draft Appendix categorically excluded the promulgation of all regulations and directives from the requirements for either an EA or EIS. UMTA and FHWA believe that certain proposed regulations and directives may have such an impact that environmental study should be undertaken. Such proposals would generally be considered "major" under the criteria established in Section 3 of Executive Order 12044 and would require the preparation of a regulatory analysis. It would be appropriate for environmental impacts to be studied at the same time as economic impacts are being analyzed. Therefore, paragraph (c) of the regulation requires that an EA be prepared for proposed major rules, regulations, and directives and permits the EA to be contained in the regulatory analysis.

§ 771.117 Categorical exclusions.

This section describes the procedures that are used to ensure that actions are properly classified as Class 2 actions. Provisions have been included so that applicants may identify and recommend additional categories of projects for classification as CE's. Further, the regulation provides for the preparation of an EA, FONSI or EIS for types of projects on the list where special circumstances exist.

§ 771.119 Environmental assessments.

Section 771.119 contains the requirements that apply to EA's prepared for Class 3 actions. Several comments were received concerning the "scoping" process for EA's outlined by UMTA in its draft regulation. While scoping is not required by CEQ for EA's the preamble to the CEQ regulation encouraged such scoping (see 43 FR 55982). In preparing EA's, both Administrations will use a process by which significant issues, impacts, and alternatives can be identified for inclusion in the EA. The FHWA and the State highway agencies will rely on the State action plans (23 CFR Part 795) and other early coordination activities to define the scope of the EA. The UMTA and its applicants will rely on a scoping process to achieve the specific objectives in § 771.119(b). The UMTA recognizes that an applicant may take the lead responsibility in preparing an EA. As one means to ensure that the applicant undertakes an EA of the proper scope, UMTA has decided to adopt this streamlined scoping process and require that it be employed by the applicant in consultation with UMTA at the earliest appropriate time.

The UMTA's draft regulation contained a provision applying to EA's whereby UMTA could, as a result of the scoping process, require an applicant to hold a public hearing on the environmental impacts of the proposed project. This provision has been dropped. Since a public hearing is already required as part of the application for all capital (as well as operating) assistance grants, it was felt that a duplicative hearing requirement could be eliminated by specifying in § 771.119(e) that the applicant's EA be prepared and made available prior to the grant application public hearing. The requirements for public hearings and other public involvement procedures with respect to EA's for FHWA projects are contained in approved State Action Plans and, where applicable, 23 CFR Part 790. Where there is no requirement for a public hearing, this regulation establishes a 30-day period for receiving any comments on the EA.

The draft regulation indicated an EA was appropriate in those situations where an EIS was not required and the proposed project was not classified as a CE. The final regulation also provides that an EA is appropriate in those situations where it would assist in determing the need for an EIS. This change was made in response to a number of comments received and is considered to be consistent with the purpose of the EA as identified in the CEQ regulation.

§ 771.121 Findings of no significant impact.

Section 771.121 describes the procedures that the Administration will follow when it determines that a Class 3

action will not significantly affect the environment. In this joint regulation, several changes have been made from the FHWA and UMTA draft regulations. A substantive change is the addition of paragraph (c) which deals with the situation where a FONSI has been prepared and approved by another Federal agency for a project that includes partial FHWA or UMTA funding. Although FHWA and UMTA cannot adopt another agency's FONSI, we can incorporate it into our own finding, thus eliminating any duplication of work. The UMTA and FHWA draft provisions establishing a 30-day review period for projects normally requiring an EIS but for which EA's are written have been relocated to § 771.119(h). In addition, this section now specifies the means by which an Administration's FONSI is made available to agencies and the public.

§ 771.123 Draft environmental impact statements.

This section discusses the procedures applying to draft EIS's, the relationship between the project applicant and the Administration, and their respective responsibilites during the development of the draft EIS. It further discusses the circulation of the draft document and establishes a time period for the return of comments on the draft. This section is similar to the section in the FHWA draft regulation; however, the following differences should be noted.

The scoping process used to identify the significant issues to be addressed in the EIS has been given greater prominence. Whereas most FHWA applicants have established procedures by which coordination among interested agencies takes place and the scope of the EIS is determined, UMTA and its applicants do not have such procedures. The regulation, in § 771.123(b), notes several ways to carry out scoping for an EIS, including holding a scoping meeting. Two commenters requrested that a scoping meeting not be required for every draft EIS, as was stipulated in the UMTA draft regulation. UMTA believes, however, that the scoping meeting is an important means to identify and discuss potential environmental issues and can lead to less delay later on. Thus, the final regulation states that normally UMTA will require a scoping meeting. If experience shows that this step has become counterproductive, this section will be revised. The role of the Metropolitan Planning Organization (MPO) has been clarified in the development of draft and final environmental impact statements (EIS's), in this section and § 771.125. The role of the MPO's in the overall planning process is also being proposed for further discussion in a forthcoming notice of proposed rulemaking that will consider revisions to the joint planning regulations (23 CFR Part 450).

There has also been a substantive change in this section and in the final EIS section on the way UMTA develops EIS's for major urban mass transportation investments. UMTA has reassessed its major investment related procedures in response to comments asking for clarification of the relationship among the alternatives analysis (prescribed by UMTA's Policy on Major Urban Mass Transportation Investments), preliminary engineering, and the EIS process. The commenters expressed concern about the time required to undertake this work and reservations about the timing of UMTA's decisions. The commenters called for streamlined procedures, so that alternatives analysis and preliminary engineering could be accomplished more expeditiously, and the preparation of the EIS could be properly timed in relation to the decision process.

Based on this reassessment, UMTA has decided that a procedural change could mitigate these problems. The procedural change will permit UMTA to explore alternatives more rigorously in the draft EIS and give a preliminary engineering grant consistent with 40 CFR 1506.1(d) to refine environmental impacts and costs for inclusion in the final EIS. Revised procedures applying to UMTA major urban mass transportation investments are being published as a separate notice in today's Federal Register. Revised major investment and rail policies will be incorporated in revisions to the FHWA/UMTA joint planning regulation currently being developed.

Section 771.123(e) acknowledges a difference in how a consultant is selected to prepare an EIS depending on whether the applicant is a State Agency with statewide jurisdiction or an agency with less authority in the NEPA process.

The FHWA and UMTA draft regulations differed with respect to the need for public hearings during the EIS commenting period. The FHWA relied on State requirements, while UMTA specified a public hearing for all draft EIS's. The final requirement is contained in § 771.123(h). Those actions proposing to use UMTA section 3 or 5 funds normally require a public hearing as part of the grant application process. Where possible, the public hearing for the draft EIS may be combined with the hearing required for the grant application. It should be noted that if it is not possible to prepare the EIS in advance of the grant application public hearing, UMTA will require a separate public hearing for the purpose of receiving comments on the draft EIS.

§ 771.125 Final environmental impact statements.

Section 771.125 of the regulation deals with the preparation and processing of the final EIS. It emphasizes the need to comply, to the extent possible, with all applicable environmental laws and Executive Orders in accordance with the "one step" environmental document philosophy in both the CEQ regulation (40 CFR 1502.25) and the DOT Order. This section also identifies those categories of projects which must be submitted for prior concurrence based on the DOT Order. This provision was in the FHWA draft regulation but not in the UMTA draft regulation. The list now includes categories of projects with which UMTA is involved (new construction or extension of fixed guideway systems and major transportation-related development projects) and which will require the prior concurrence of the Office of the Secretary of Transportation before the final EIS can be circulated. Provision is also made for waiving the prior concurrence requirement in certain instances.

The wording of this section is similar to the FHWA draft regulation but includes the following important additions: Paragraph (a) includes a provision which reflects revisions to the UMTA policy on major urban mass transportation investments. The paragraph notes that a final EIS for a major urban mass transportation investment may be developed in conjunction with preliminary engineering so that the final EIS can present more detailed information on costs, impacts, and mitigation measures. This paragraph also includes a statement that final EIS's for projects in urbanized areas must show the views of the MPO on the preferred alternative.

Paragraph (f) recognizes that a difference exists in the effect of an UMTA approval of a final EIS as compared to an FHWA approval of a final EIS. The FHWA's approval of a final EIS typically means location approval for the preferred alternative. In UMTA's large discretionary capital assistance program, EIS approval is a separate and distinct action from approval of the project. There are factors unrelated to the EIS, having to do principally with the availability of funds, which determine which major transit projects will be approved. Thus, completion of the EIS does not mean

automatic approval of the UMTA capital grant.

In response to a comment received, a further revision to this section provides that a preliminary record of decision will accompany the proposed final EIS during the internal DOT review process.

§ *771.127 Record of decision.*

Section 771.127 contains the procedures that govern the Administrations' preparation of a ROD for a proposed action. The ROD will be developed based on consultation with the applicant, but the basic funding decision is the responsibility of the Administration. In response to a comment, this section in the final regulation now provides that a preliminary ROD is prepared. This preliminary ROD will accompany the proposed final EIS during the internal review process. Wording has been added in this section to allow certain administrative actions to be taken in connection with a proposed action during the time between the completion of the final EIS circulation period and the signing of the ROD. Such actions would usually concern steps taken to fulfill grant application requirements and would be consistent with the limitations on actions stipulated in the CEQ regulation.

One commenter suggested that we establish a page limit for ROD's to decrease the burden on applicants. The CEQ regulation specifies that the ROD be a concise document and it is the Administrations' intention to keep these documents as brief as possible. The ROD will summarize and rely on the more detailed information in the final EIS on the factors involved in selecting the preferred alternative and any mitigation measures that have been adopted. However, we recognize that the ROD will vary in length depending on the complexity of the proposed action or the degree of controversy surrounding it and therefore we decline to establish a page limit for this document.

Another commenter wanted copies of the ROD automatically sent to anyone who commented on the draft or final EIS. This document is already available to the public for inspection. The Administrations decline to establish an additional administrative burden that is not required under the CEQ or DOT procedures. Another commenter asked that some environmental findings be removed from the final EIS and placed instead in the ROD. We have not adopted this change because we believe that the final EIS should continue to be the primary means for documenting compliance with environmental laws when there are significant impacts.

A new paragraph (b) has been added to clarify the procedures which will be followed if changes to the ROD are necessary.

§ *771.129 Reevaluation.*

This section is a combination of the sections in the draft FHWA and UMTA regulations dealing with supplemental statements and assessments. The FHWA language on supplemental EIS's has been retained. One commenter asked for clarification concerning the preparation and review of supplemental EIS's. The adopted language clarifies that either draft or final EIS's may be supplemented. A new or supplemental draft EIS is almost always required if a new alternative is considered after the original final EIS has been filed. However, a supplemental or new EIS will not be necessary if the Administration decides to fund an alternative that was adequately described in the final EIS but was not identified as the proposed action. Scoping is not required at the reevaluation stage since this information was obtained earlier.

The section in the UMTA draft regulation on tiered EIS's has been dropped since tiered EIS's do not involve a reevaluation or reconsideration of earlier decisions but rather a phased, progressively more detailed approach to assessing an action's environmental impacts.

In response to a comment, paragraphs (c)(1) through (4) were included which track the language in the DOT Order on the lengths of time that draft and final EIS's are considered valid. After these time periods, EIS's must be reassessed to determine if they are still current and accurate.

The paragraph in the UMTA draft regulation on supplemental EA's has been revised. Rather than require an EA, with its investigation of alternatives, in all cases, we have specified that environmental studies may be appropriate to assess the change. If significant impacts are found, a supplemental draft or final EIS is required. If the impact from the change is not significant or if it is similar to the impact of an action that was considered, this will be indicated in the project file. To avoid confusion the reference to the term FONSI has been deleted from this paragraph.

§ *771.131 Emergency action procedures.*

This section remains the same as the FHWA draft version.

§ *771.133 Compliance with other requirements.*

This section underscores the policy expressed in § 771.105 that all environmental protection requirements should be undertaken and completed as part of the NEPA process and evidence of necessary coordination and compliance should be contained in the environmental document required by NEPA.

§ *771.135 Section 4(f) of the Department of Transportation Act.*

Section 771.135 contains the procedures relative to section 4(f) of the DOT Act (49 U.S.C. 1653(f)) and the companion provision in 23 U.S.C. 138.

In the preamble to the draft regulation, comments were specifically invited on a proposal to limit the application of section 4(f), insofar as that section applies to historic sites, to sites listed on the National Register of Historic Places or determined to be eligible for listing by the Secretary of the Interior pursuant to the National Historic Preservation Act, 16 U.S.C. 470, et seq.

This proposal was made for two reasons. First, in contrast to other 4(f) properties, historic sites need not be publicly owned. Thus, it is often difficult to identify the "official" with jurisdiction over the site. In order to maximize the protective reach of section 4(f), we require 4(f) treatment in the absence of a determination of non-significance. In the case of historic sites, this assumption of significance has often resulted in 4(f) treatment of sites which were so insignificant that no governmental body had established any jurisdictional interest over the site. Second, the criteria for determining eligibility for listing in the National Register provide a convenient basis for determining whether a site is one of national, State, or local historic significance. Anyone can request a determination of eligibility from the Department of the Interior, and FHWA and UMTA have an affirmative duty to seek such determinations on potentially eligible sites as part of the project development process.

Comments were received both in favor of and against this proposal, including several favorable comments from State historic preservation agencies. After due consideration, we have determined to adopt the provision in the proposed regulation with the additional provision that the Administration may determine that section 4(f) applies even to properties not eligible for inclusion in the National Register. The final regulation extends full protection to historic sites in

accordance with section 4(f) while addressing what has become a significant administrative problem.

Several comments suggested that for historic sites section 4(f) compliance could be achieved by relying entirely on the consultation provision of section 106 of the National Historic Preservation Act. We believe that the use of the National Register criteria to identify properties of national, State, or local historic significance will provide enhanced coordination between section 106 and section 4(f) and reduce red tape. Because of differences in the substantive protective provisions of section 106 and section 4(f), it is not possible to completely combine the procedures for compliance with the two sections. Nevertheless, analysis of alternatives, consideration of appropriate mitigation, and coordination with other agencies should be accomplished concurrently to the extent that this is feasible.

A related problem has arisen with respect to archeological sites which are treated as historic sites under both section 4(f) and the National Historic Preservation Act. Frequently, the consultation required by section 106 results in a determination that data recovery is the appropriate form of mitigation for the archeological site. Such determinations are typically made when the recovery of the material contained in or on the site renders more valuable information than leaving such material at the specific location. Applying section 4(f) to archeological sites where data recovery is appropriate would impose the section 4(f) test to sites for which all interested agencies have agreed that removal of the archeological material is in the best public interest. This regulation incorporates current DOT policy by applying section 106 and section 4(f) to archeological sites sequentially. If data recovery under section 106 is appropriate, then section 4(f) would not apply, since recovery results in the removal of materials which make the site significant for purposes of section 4(f). It should be noted that section 4(f) continues to apply to archeological sites on or eligible for the National Register where the site has significance for reasons other than the materials contained. The regulation also clarifies the existing policy that section 4(f) applies to the late discovery of such sites where data recovery is not appropriate under section 106. The consultation under section 4(f) process may be expedited in such cases.

Many comments raised a concern that section 4(f) was frequently applied to lands determined not to be significant because the land to be used was part of a larger body of land which included areas of significance. Most commonly, such areas are designated "multiple use" areas, i.e., areas which have a number of functions, only some of which may be protected by section 4(f). Multiple use lands are dealt with in § 771.135(e). This section applies only to large parcels of land which are administered for a variety of purposes. The various purposes must be conducted in geographically distinct parcels. Under paragraph (e), a determination is required by the official having jurisdiction over the land as to the nature of the use. Section 4(f) applies only to those parcels which are used for one of the purposes enumerated in section 4(f). Typical examples of multiple use lands are national forests, State forests, game preserves, etc. The precise name of the facility is unimportant. The determining factor is that the area is used for a variety of discrete functions which are administered as a single entity. In the case of lands administered as multiple use lands under general statutory authority, it would be expected that an existing plan, clearly designating multiple uses, would be available. Lands would not qualify where many uses are mixed throughout the area, rather than in geographically separate parcels. Further, section 4(f) continues to apply to insignificant uses of otherwise significant areas.

Section 771.135(g) provides that section 4(f) need not apply to areas designated late in the project development process if the property was acquired for transportation purposes prior to the designation or change in the determination of significance. This provision does not apply to areas which are significant but were not recognized as such because an inadequate effort was made to identify their significance in a timely fashion.

Section 771.125(j) permits the section 4(f) approval to be in the final EIS or in the ROD. If the final EIS contains the section 4(f) approval, the ROD must summarize the basis of the Administration's approval action. Appropriate cross referencing to environmental documents is encouraged in the interest of brevity. These alternative approaches are provided to accommodate UMTA procedures which may result in a project being finally approved some time after the completion of the final EIS. Where the ROD is approved a relatively short time after the completion of the final EIS, as with most FHWA projects, the section 4(f) approval should be made part of the ROD. This section also outlines procedures for those actions which do not require a ROD.

Another new provision, § 771.135(m), deals with tiered section 4(f) statements. Frequently, at early stages of project development, such as is often the case with first-tier EIS's, the degree of design detail required to fully develop "all possible planning to minimize harm" is not available. In some cases, even alternative choices relating to the use of section 4(f) lands cannot be made. This provision applies section 4(f) to an extent consistent with the information available, but does not distort the tiered environmental impact analysis encouraged by the CEQ regulation.

§ *771.137 International actions.*

This section discusses the application of this regulation to international actions and was added to identify the NEPA requirements for the Administrations' foreign project activities. At this time, only FHWA activities are involved. This section was incorporated directly from DOT Order 5610.1C.

Related Actions

The provisions of this regulation are also being issued as Volume 7, Chapter 7, Section 2, of the Federal-Aid Highway Program Manual (FHPM 7-7-2). The Manual contains the policies, procedures, requirements and guidelines which apply to the Federal-aid highway program. It is provided directly to all State highway agencies and is available for inspection and copying under 49 CFR Part 7, Appendix D.

Based on experience under the previous procedures, and in view of the direct applicability of the provisions of the CEQ regulation to their activities, the FHWA and UMTA have determined that certain requirements can be dropped from the regulation and issued as explanatory guidance. Specifically, the detailed requirements concerning the format and content of environmental documents prepared for proposed actions have been deleted from the regulation and will be issued as explanatory guidance. Certain administrative housekeeping procedures, such as detailed distribution instructions for copies of environmental documents, will also be issued separately.

These explanatory materials will be issued separately by UMTA and FHWA. The FHWA will issue its explanatory guidance in the form of an appendix to FHPM 7-7-2 and will publish this in the general notice section of the Federal Register. Comments received on the

draft appendices, as well as on the material moved from the draft regulation to the explanatory guidance documents, will be discussed in the preamble to the notice. The UMTA will be revising Circular 5620.1, "Guidelines for Preparing Environmental Assessments", and will be issuing other explanatory guidance on the environmental process. The UMTA guidance provides detail on assessing impacts from transit projects and covers applicable environmental laws, regulations, and related requirements, such as energy conservation, which are normally complied with during preparation of the environmental document.

As indicate earlier in the preamble, it is the intent of this regulation to combine the requirements of UMTA and FHWA with Departmental NEPA requirements contained in DOT Order 5610.1C. The Department plans to issue guidance on the content of environmental impact statements in the form of a revision to attachment 2 of DOT Order 5610.1C in the near future. That attachment will indicate the documentation needed for other environmental and related requirements, such as those dealing with energy conservation, wetlands, floodplains, and section 4(f).

The UMTA draft regulation contained a provision on the development of EISs for proposed major urban mass transportation investments. In response to comments asking for clarification of the decision-making process for major mass transportation investments and the relationship to the EIS process, UMTA has revised its procedures on major mass transportation investments and is publishing them as a separate notice in today's Federal Register.

The revised procedures allow for more detailed studies of promising alternatives to be undertaken during alternatives analysis. Further, instead of preparing the final EIS at the completion of alternatives analysis, the procedures permit the final EIS to be prepared during preliminary enginering. These changes should result in more reliable cost estimates and a more accurate definition of environmental impacts and required mitigation measures in the final EIS.

Over the past several years, the FHWA has presented courses on the preparation of environmental documents to some 40 State transportation agencies and FHWA field offices, often with representatives from other Federal and State agencies in attendance. As a result of the issuance of the CEQ regulations, DOT Order 5610.1C, and this regulation, the course materials will be updated and a new series of courses presented. At this time, it is anticipated that the first of these courses will be presented beginning in mid-1981. State transportation agencies desiring further details may contact Mr. Robert Gatz at the address provided above.

A similar series of courses on the preparation and review of environmental assessments is planned by UMTA for its regional offices. Interested grant applicants will be permitted to participate as well. These courses are planned to start at the end of this year. Contact Mr. Edward Fleischman at the address provided for further information.

(Catalog of Federal Domestic Assistance Program Numbers: 20.205, Highway Research, Planning and Construction; 20.500, Urban Mass Transportation Capital Grants; 20.501 Urban Mass Transportation Capital Improvement Loans; 20.502, Urban Mass Transportation Grants for University Research and Training; 20.503, Urban Mass Transportation Managerial Training Grants; 20.504, Urban Mass Transportation Technology; 20.505, Urban Mass Transportation Technical Studies Grants; 20.506, Urban Mass Transportation Demonstration Grants; 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants; 20.509, Public Transportation for Rural and Small Urban Areas; 20.510, Urban Mass Transportation Planning Methods, Research and Development, 23.008, Appalachian Development Highway Systems; 23.008 Appalachian Local Access Roads. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to these programs)

In consideration of the foregoing, Chapter VI of Title 49 and Chapter I of Title 23, Code of Federal Regulations, are amended by revising Part 622 by adding Subpart A and revising Part 771, respectively, as set forth below.

Issued on October 24, 1980

John S. Hassell, Jr.,
Federal Highway Administrator

Theodore C. Lutz,
Urban Mass Transportation Administrator

Title 49—Transportation

CHAPTER VI—URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 622—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Subpart A—Environmental Procedures

Sec.
622.101 Cross-reference to procedures.

Authority: 42 U.S.C. 4321 *et seq*; 49 U.S.C. 1601 *et seq*; 49 CFR 1.51.

Subpart A—Environmental Procedures

§ 622.101 Cross-reference to procedures.

The procedures for complying with the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and related statutes, regulations, and orders are set forth in Part 771 of Title 23 of the Code of Federal Regulations.

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

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Authority: 42 U.S.C. 4321 *et seq.*; 23 U.S.C. 138; 49 U.S.C. 1653(f); 23 U.S.C. 315; 49 CFR 1.48(b).

§ 771.101 Purpose.

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) for implementing the National Environmental Policy Act of 1969 (NEPA) and the regulations of the Council on Environmental Quality (CEQ). This regulation sets forth all FHWA, UMTA, and Department of Transportation (DOT) requirements under NEPA for the processing of transportation projects, including the applicable operating procedures and implementing instructions contained in DOT Order 5610.1C, dated Sept. 18, 1979.

§ 771.103 Authority and related statutes and orders.

(a) *Authority.* (1) 42 U.S.C. 4321 *et seq.*, National Environmental Policy Act of 1969, as amended;

(2) 23 U.S.C. 138 and 49 U.S.C. 1653(f), Section 4(f) of the Department of Transportation Act of 1966;

(3) 23 U.S.C. 109, Standards;

(4) 23 U.S.C. 315, Rules, Regulations and Recommendations;

(5) 40 CFR 1500, *et seq.*, CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act;

(6) 49 CFR 1.51, DOT Delegations of Authority to UMTA;

(7) 49 CFR 1.48(b), DOT Delegations of Authority to FHWA;

(8) DOT Order 5610.1C, Procedures for Considering Environmental Impacts; dated September 18, 1979.

(b) *Related statutes and orders.*[1] The following is a list of major statutes and orders relating to the preparation of environmental documents:

(1) 16 U.S.C. 461, *et seq.*, Archeological and Historic Preservation Act; and 23 U.S.C. 305;

(2) 16 U.S.C. 470f, Section 106 of the National Historic Preservation Act of 1966;

(3) 16 U.S.C. 662, Section 2 of the Fish and Wildlife Coordination Act;

(4) 16 U.S.C. 1452, 1456, Sections 303 and 307 of the Coastal Zone Management Act of 1972;

(5) 16 U.S.C. 1536, Section 7 of the Endangered Species Act of 1973;

(6) 33 U.S.C. 1251, *et seq.*, Clean Water Act of 1977;

(7) 42 U.S.C. 300(f) *et seq.*, Safe Drinking Water Act;

(8) 42 U.S.C. 4371 *et seq.*, Environmental Quality Improvement Act of 1970;

(9) 42 U.S.C. 4601, *et seq.*, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;

(10) 42 U.S.C. 4901 *et seq.*, Noise Control Act of 1972;

(11) 42 U.S.C. 7401 *et seq.*, Clean Air Act;

(12) 42 U.S.C. 200d–d4, Title VI of the Civil Rights Act of 1964;

(13) Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991, dated May 24, 1977;

(14) Executive Order 11593, Protection and Enhancement of the Cultural Environment dated May 13, 1971, implemented by DOT Order 5650.1, dated Nov. 20, 1972;

(15) Executive Order 11988, Floodplain Management, dated May 24, 1977, implemented by DOT Order 5650.2, dated April 23, 1979;

(16) Executive Order 11990, Protection of Wetlands, dated May 24, 1977, implemented by DOT Order 5660.1A, dated August 24, 1978;

(17) Section 3(d), 5(h) and 5(i) of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1601, *et seq.*);

(18) Section 14 of the Urban Mass Transportation Act of 1964 (49 U.S.C. 1610);

(19) UMTA Circular 5620.1, Guidelines for Preparing Environmental Assessments.

§ 771.105 Policy.

It is the policy of the Administration that:

(a) To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated into a single process, and compliance with all applicable environmental requirements be reflected in the appropriate environmental document required by this regulation;

(b) Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation and of national, State, and local environmental goals including protection and enhancement of the environment, energy conservation and urban revitalization;

(c) Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions;

(d) Measures necessary to mitigate adverse impacts be incorporated into the proposed action. Measures necessary to mitigate adverse impacts are eligible for Federal funding when it is determined that:

(1) The impacts for which the mitigation is proposed actually result from the Administration action;

(2) The proposed mitigation represents a reasonable public expenditure when considered in light of the severity of impacts of the action and the social, economic, energy, and environmental benefits of the proposed mitigation measures; and

(3) The proposed measures would assist in complying with a statute, Executive Order, or Administration regulation or policy.

(e) Costs incurred by the applicant which are directly related to the preparation of environmental documents requested by the Administration will be eligible for Federal assistance in accordance with Administration procedures.

(f) No person, because of handicap, age, race, color, sex, or national origin, be excluded from participating in, or denied benefits of, or be subject to discrimination under any Administration program or procedural activity required by or developed pursuant to this regulation.

§ 771.107 Definitions.

The definitions contained in the CEQ regulation and in titles 23 and 49 of the United States Code are applicable to this regulation. In addition, the following definitions apply to this regulation:

(a) Environmental studies—the investigations of potential environmental impacts made to determine the appropriate environmental process to be followed and subsequent investigations that assist in the preparation of the appropriate environmental document.

(b) Action—the approval of construction of highway and transit projects with funds administered by FHWA under title 23 of the United States Code and by UMTA under title 49 of the United States Code and related statutes. It also includes approval of activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.

(c) Administration—the FHWA or UMTA, whichever is the designated lead agency for the proposed action.

§ 771.109 Applicability and responsibilities.

(a)(1) The provisions of this regulation and the CEQ regulation apply to proposals for Administration action over which the Administration exercises sufficient control and responsibility to alter the development or action being proposed. Actions taken by the applicant which do not require Federal approvals, such as preparation of a regional transportation plan, are not Administration actions.

(2) The provisions of this regulation do not apply to, affect, or alter decisions, approvals, authorizations, or other actions made by the Administration prior to the effective date of this regulation.

(3) Except as provided in paragraph (a)(4) of this section, draft environmental impact statements (DEIS's) final environmental impact statements (FEIS's), environmental assessments (EA's), findings of no significant impact (FONSI) and categorical exclusions (CE's) accepted or prepared by the Administration after the effective date of this regulation will

[1] The FHWA prepared a notice entitled "Summary of Selected Environmental Legislation" which provides details on pertinent environmental requirements. Copies are available as prescribed in 49 CFR Part 7, App. D and G, from UMTA and FHWA headquarters and field offices.

be developed in accordance with this regulation.

(4) FEIS's accepted by the Administration prior to July 30, 1981, whose drafts were filed with the Environmental Protection Agency (EPA) prior to July 30, 1979 (for FHWA, November 30, 1979), may be developed in accordance with the regulations in effect at the time the draft document was filed.

(5) All FEIS's accepted by the Administration after July 30, 1981, whose drafts were filed with EPA prior to July 30, 1979 (for FHWA November 30, 1979), will be developed in accordance with § 771.125 except that the requirements of § 771.127 (Record of decision) are not applicable.

(b) It shall be the responsibility of the applicant, in cooperation with the Administration, to implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation. The FHWA will assure that this is accomplished through reviews and approvals of designs, plans, specifications and estimates (P.S. and E.) and construction inspections. The UMTA will assure implementation of committed mitigation measures through incorporation by reference in the grant agreement.

(c) The Administration in cooperation with the applicant has the responsibility to manage the preparation of the appropriate environmental document. The role of the applicant is determined by the Administration in accordance with the CEQ regulation as described below. If the applicant qualifies for more than one role, the Administration will determine which role the applicant will assume. Regardless of the role the applicant is permitted to assume, the Administration is responsible for the decisions made on the scope and content of the appropriate environmental document.

(1) *Statewide agency.* If the applicant is a public agency that has statewide jurisdiction (for example, a State highway agency or a State department of transportation) or is a local unit of government acting through a State agency and meets the requirements of Section 102(2)(D) of NEPA, the applicant may prepare the EIS and other environmental documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document in accordance with Section 102(2)(D) of NEPA. All applicants in this group qualify as joint lead agencies with the Administration (all FHWA applicants qualify under this paragraph).

(2) *Joint lead agency.* If the applicant is a public agency and is subject to State or local requirements comparable to NEPA, then the Administration and the applicant may prepare the EIS and other environmental documents as joint lead agencies. The applicant will initially develop substantive portions of the environmental document although the Administration will be responsible for its scope and content.

(3) *Cooperating agency.* If the applicant is a local public agency that has special expertise in the proposed action, the applicant may be a cooperating agency. A local applicant for Sections 3 and 5 assistance under the Urban Mass Transportation Act (UMT Act) of 1964, as amended, is presumed to be a cooperating agency. During the environmental process, the Administration will discuss the scope and content of the appropriate environmental document with the applicant before decisions are made on the scope and depth of the environmental analysis. The applicant may be directed to carry out these decisions.

(4) *Other.* In all other cases the role of the applicant is limited to providing environmental studies and commenting on environmental documents. All private institutions or firms are limited to this role.

§ 771.111 Early coordination and project development.

(a) Early coordination involves the input from and exchanges of information with the public and public agencies from the inception of proposals for actions to the preparation of the appropriate environmental document. Applicants intending to apply for funds should notify the Administration at the time that a particular project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action and related environmental laws and requirements which would apply to the proposed action and of the need for specific studies and findings which would normally be developed concurrently with the environmental document.

(b) Any requested identification of the probable class of action will be made at the Transportation Improvement Program (TIP) approval stage, or at an earlier stage, if sufficient information is available to identify the probable impacts of the proposed action. (23 CFR Part 450, Subpart C)

(c) When the FHWA and UMTA are involved in the development of multimodal projects, the agencies will be joint lead agencies or one agency will be designated as the lead agency. When the FHWA or UMTA acts as a joint lead agency with another Federal agency, mutually acceptable procedures for the preparation and processing of environmental documents will be established on a case-by-case basis consistent with the purpose and policy of this regulation.

(d) During the early coordination process, the Administration in cooperation with the applicant may request other appropriate agencies to become cooperating agencies. Agencies with jurisdiction by law must be requested to become cooperating agencies.

(e) Early notification to and solicitation of views from other States and Federal land management entities significantly affected by the proposed action shall be accomplished by the applicant in cooperation with the Administration. The notification and solicitation of views from other States should be mailed to the A-95 clearinghouses for those States unless the Governor has designated an agency other than the clearinghouse for this purpose. The Administration will prepare a written evaluation of any issues identified which indicate a significant disagreement with respect to the impact of the proposed action or any of the alternatives. This evaluation will be furnished to the applicant for incorporation into the EA or DEIS.

(f) In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are evaluated, each EIS or FONSI prepared for a proposed action shall evaluate a project which:

(1) Connects logical termini and is of sufficient length to address environmental matters on a broad scope;

(2) Has independent utility or independent significance, i.e., is useable and a reasonable expenditure even if no additional transportation improvements in the area are accomplished; and

(3) Will not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(g) The tiering of EIS's, as discussed in the CEQ Regulation (40 CFR 1502.20), is encouraged when it will improve or simplify the environmental processing of complex actions. The first tier EIS would focus on broad issues such as mode choice, general location and areawide air quality and land-use implications of the alternate transportation improvements. A second tier, site specific EIS would focus on more

detailed project impacts and detailed mitigation measures.

(h) Interested citizens may obtain information on the UMTA environmental process and the status of EIS's issued by UMTA from: Director, Office of Program Analysis, Urban Mass Transportation Administration, Washington, D.C. 20590. Questions on the status of DEIS's combined with alternatives analyses as required by the policy on major urban mass transportation investments should be directed to: Director, Office of Planning Assistance, Urban Mass Transportation Administration, Washington, D.C. 20590. Information on the FHWA environmental process may be obtained from: Director, Office of Environmental Policy, Federal Highway Administration, Washington, D.C. 20590.

§ 771.113 Timing of administration actions.

(a) The Administration in cooperation with the applicant will complete all work, including any necessary design work, required to make those engineering and environmental decisions necessary to complete a FONSI or an EIS and to comply with other related laws and regulations which, to the maximum extent possible, must be accomplished coincident with the NEPA process. However, other design activities, property acquisition (other than hardship or protective buying pursuant to 23 CFR 712.204(d)), or construction shall not proceed until the following actions have been completed:

(1)(i) The action has been classified as a categorical exclusion, or (ii) a FONSI has been adopted or (iii) a FEIS has been approved and available for the prescribed period of time, and a record of decision, when required, has been prepared and signed; and

(2) For FHWA actions, the FHWA Division Administrator has received and accepted the public hearing transcripts, reports and certifications required by 23 U.S.C. 128.

(b) For FHWA actions, the completion of the requirements set forth in paragraph (a) of this section is considered acceptance of the general location of the proposed action unless otherwise specified by the appropriate FHWA official. For those categorical exclusions which require location approval, this approval will be made by the FHWA after consultation with the applicant.

(c) Letters of Intent issued under the authority of Section 3(a)(4) of the UMT Act are used by UMTA to indicate an intention to obligate future funds for multiyear capital transit projects. The scope of the environmental document must address the entire project covered by the proposed Letter of Intent. Letters of Intent will not be issued by UMTA until the NEPA process is completed.

§ 771.115 Classes of actions.

There are three classes of actions which prescribe the level of documentation required in the NEPA process.

(a) *Class I (EIS's).* Actions that may significantly affect the environment require an EIS. (40 CFR 1508.27). Examples of these actions are:

(1) Any new controlled access freeway.

(2) Any highway project of 4 or more lanes on a new location.

(3) New construction or extension of fixed guideway systems (e.g., rapid rail, light rail, commuter rail, automated guideway transit, and exclusive busway). These projects would be expected to cause major shifts in travel patterns and land use.

(4) Major transportation related development whose construction involves a large amount of demolition, displacement of a large number of individuals or businesses, or substantial disruption to local traffic patterns. This classification will take account of the condition of the buildings and availability of comparable replacement facilities for displaced residences or businesses.

(b) *Class II (Categorical exclusions).* Actions that do not individually or cumulatively have a significant effect on the environment do not require an environmental impact statement or environmental assessment. The following actions are categorical exclusions:

(1) Planning and technical studies which do not fund the construction of facilities or acquisition of capital equipment.

(2) Grants for training and research programs which do not involve construction.

(3) Approval of a unified planning work program and certification of a State or local planning process. 23 CFR Part 450.

(4) Approval of Transportation Improvement Programs under 23 CFR Part 450, Subpart C and statewide programs under 23 CFR Part 630, Subpart A.

(5) Approval of project concepts under 23 CFR Part 476.

(6) Engineering when undertaken to define the elements of a proposal or alternatives sufficiently so that environmental effects can be assessed.

(7) Federal-aid highways system revisions under 23 U.S.C. 103, which establishes classes of highways on the Federal-aid highway system.

(8) Approval of utility installations along or across a transportation facility.

(9) Reconstruction or modification of an existing bridge structure on essentially the same alignment or location (e.g., widening less than a single travel lane, adding shoulders or safety lanes, walkways, bikeways, or pipelines) except bridges on or eligible for inclusion on the National Register or bridges providing access to barrier islands. Recontruction or modification of an existing one lane bridge structure, presently serviced by a two lane road and used for two lane traffic, to a two lane bridge on essentially the same alignment or location, except bridges on or eligible for inclusion on the National Register or bridges providing access to barrier islands.

(10) Construction of bicycle and pedestrian lanes, paths, and facilities.

(11) Activity included in the State's "highway safety plan" under 23 U.S.C. 402.

(12) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.

(13) Modernization of an existing highway by resurfacing, restoration, rehabilitation, widening less than a single lane width, adding shoulders, adding auxiliary lanes for localized purposes (e.g., weaving, turning, climbing), and correcting substandard curves and intersections. This classification is not applicable when the proposed project requires acquisition of more than minor amounts of right-of-way or substantial changes in access control.

(14) Highway safety or traffic operations improvement projects including the correction or improvement of high hazard locations; elimination of roadside obstacles; highway signing; pavement markings; traffic control devices; railroad warning devices; and lighting. This classification is not applicable when the proposed action requires acquisition of more than minor amounts of right-of-way or substantial changes in access control.

(15) Alterations to existing building to provide for noise reduction and the installation of noise barriers.

(16) Ridesharing activities and transportation corridor fringe parking facilities.

(17) Landscaping.

(18) Program administration and technical assistance activities by the applicant to administer Section 18 funds. (Rural public transportation program)

(19) Project administration and operating assistance to transit

authorities to continue existing service or increase service to meet demand.

(20) Purchase of vehicles of the same type (same mode) either as replacements or to increase the size of the fleet where such increase can be accommodated by existing facilities or by new facilities which themselves are within a categorical exclusion.

(21) Track and rail bed maintenance and improvements when carried out within the existing right-of-way.

(22) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where no additional land is required and there is no substantial increase in the number of users.

(23) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant physical impacts off the site.

(24) Installation of signs, small passenger and bus shelters, and traffic signs where no substantial land acquisition or traffic disruption will occur.

(25) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(26) Acquisition of land in which the property will not be modified, the land use will not be changed, and displacements will not occur. For projects other than UMTA advance land loans, this categorical exclusion is limited to the acquisition of minor amounts of land. This is undertaken for the purpose of maintaining the current land use and preserving alternatives to be considered in the environmental process. Advance land acquisition shall not limit the evaluation of alternatives, including shifts in alignment for a construction project, which may be required in the NEPA process.

(27) Promulgation of rules, regulations, and directives for which a regulatory analysis is not required by Section 3 of Executive Order 12044.

(28) Research activities as defined in 23 U.S.C. 307.

(29) Emergency repairs under 23 U.S.C. 125 which do not substantially change the design and are commenced during or immediately after the occurrence of a natural disaster or catastrophic failure.

(c) *Class III (EA's).* Actions in which the significance of the impact on the environment is not clearly established. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required, unless it can be initially determined that an EIS should be prepared. In the case of rules, regulations, or directives for which a regulatory analysis is required by Section 3 of Executive Order 12044, the EA may be contained in the regulatory analysis and need not be a separate document.

§ 771.117 Categorical exclusions.

(a) Categorical exclusions are categories of actions which do not involve significant environmental impacts or substantial planning, time or resources. These actions will not induce significant foreseeable alterations in land use, planned growth, development patterns, or natural or cultural resources. The categorical exclusions are listed in § 771.115(b).

(b) Any recommendation by an applicant that a proposed action is a categorical exclusion as identified in § 771.115(a) must be approved by the Administration. The Administration may require sufficient information to determine if the proposal meets the criteria for a categorical exclusion. Proposals meeting the criteria for categorical exclusions do not require additional environmental documentation.

(c) The Administration may determine that any action proposed as a categorical exclusion may, because of extraordinary circumstances, require appropriate environmental studies to establish the need for an EIS. Extraordinary circumstances includes situations that are likely to involve:

(1) Significant impacts on the environment;

(2) Substantial controversy on environmental grounds;

(3) Significant impacts on properties protected by Section 4(f) of the DOT Act and Section 106 of the National Historic Preservation Act; or

(4) Inconsistencies with any Federal, State, or local law or administrative determination relating to the environment.

(d) An applicant may propose that additional categories of actions be added to the list of categorical exclusions in § 771.115(b). Such proposals shall be submitted to the Administration headquarters office for approval and will be processed in accordance with 40 CFR 1507.3.

§ 771.119 Environmental assessments.

(a) The EA shall be prepared by the applicant in consultation with the Administration for each action that is not a categorical exclusion and does not clearly require the preparation of an EIS or where, in the opinion of the Administration, the EA would assist in determining the need for an EIS.

(b) For actions that require an EA, the applicant in consultation with the Administration will, at the earliest appropriate time, begin consultation with interested agencies and others to achieve the following objectives: Define the scope of the project; identify alternatives to the proposed action; determine which aspects of the proposed action have potential for environmental impact; identify measures and alternatives which might mitigate adverse environmental impacts; and identify other environmental review and consultation requirements which should be prepared concurrently with the EA. The applicant will accomplish this through an early coordination process approved by the Administration (e.g., State Action Plan) or through a scoping process. A summary of the contacts made and comments received will be included in the EA.

(c) The EA is subject to Administration approval before it is made available to the public as an Administration document. If the EA is made available prior to Administration approval, it must be labeled as the applicant's document.

(d) The EA need not be circulated for comment but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices in accordance with paragraphs (e) and (f) of this section. Notice of the availability of the EA shall be sent by the applicant to the State and areawide clearinghouses.

(e) When a public hearing is required, the EA will be prepared in advance of the notice of the public hearing. The notice of the public hearing in local newspapers will announce the availability of the applicant's EA and where it may be obtained or reviewed. The FHWA public hearing requirements are contained in approved State Action Plans. UMTA has a public hearing requirement in all applications for capital and operating assistance.

(f) When a public hearing is not required, the applicant shall place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action advising the public of the availability of the EA and where information concerning the action may be obtained. The notice shall invite comments from all interested parties including those who believe that the action involves a significant impact on the human

environment or that the analysis of social, economic, and environmental impacts presented in the EA is inadequate to assess their significance. Comments shall be sumbitted in writing to the applicant or the Administration within 30 days of the publication of the notice unless the Administration determines a shorter period is warranted.

(g) If no significant impacts are identified, the applicant will furnish the Administration a copy of the EA, revised as appropriate, the public hearing transcript when a public hearing was held, and a summary of any comments received and responses thereto and recommend a FONSI.

(h) If, at any point in the EA process, the Administration determines that the proposed action may have a significant impact on the environment, the preparation of an EIS will be required. Actions in § 771.115(a) will normally require preparation of an EIS. If an action in these categories is processed with an EA, copies of the EA will be made available for pubic review (including State and areawide clearinghouses) for 30 days before the Administration makes its final decision. (See 40 CFR 1501.4(e)(2)) This public availability will be announced by a notice similar to a public hearing notice at least 30 days before any decision on the EA is made. The EA will be provided to the Administration Washington Headquarters at the same time it is made available to the public.

§ 771.121 Findings of no significant impact.

(a) The Administration, after review of the EA and any public hearing comments or other comments received regarding the EA, and if in agreement with the applicant's recommendations, will make a separate written finding of no significant impact (FONSI) incorporating the EA and any other appropriate environmental documents.

(b) After a FONSI had been made by the Administration, a notice of the availability of the FONSI shall be sent by the applicant to State and areawide clearinghouses and the document will be available from the applicant or the Administration upon request by the public.

(c) If another Federal agency has issued a FONSI on an action which includes an element proposed for Administration funding, the Adminstration will evaluate the FONSI, and if it is determined that the proposed Administration-funded action and its environmental impacts are adequately indentified and assessed, the Administration will issue its own FONSI incorporating the other agency's FONSI.

§ 771.123 Draft environmental impact statements.

(a) A DEIS will be prepared when the Administration determines initially that the action may cause significant impacts on the environment, when the environmental studies and early coordination for the action indicate significant impacts, or when the review of the EA in light of comments received indicates the impacts expected to result from the action may be significant. when the decision has been made by the Administration that an EIS will be prepared, the Administration will issue a notice of intent for publication in the Federal Register. Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the local level.

(b) After publication of the notice of intent, the Administration in cooperation with the applicant will begin a scoping process. The scoping process will be used to indentify the range of alternatives and impacts and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. For FHWA, scoping is normally achieved through procedures developed in accordance with State Action Plans (32 CFR Part 795) and through other early coordination activities. For UMTA, a scoping meeting will normally be required. If a scoping meeting is to be held, it will be announced in the Administration's notice of intent and by appropriate means at the local level.

(c) The DEIS shall be prepared by the Administration in cooperation with the applicant. The DEIS shall discuss all reasonable alternatives to the proposed action and summarize the studies, reviews, consultations, and coordination required by environmental laws and Executive Orders to the extent appropriate at this stage in the environmental process. The DEIS for actions in an urbanized area shall reflect the involvement of the metroplitan planning organization (MPO) and alternatives to be considered in the DEIS shall be developed in consultation with the MPO.

(d) For major urban transportation investments the DEIS documents the results of an analysis of transportation alternatives.

(e) An applicant which is a "joint lead" or "cooperating" agency may select a consultant to assist in the preparation of an EIS subject to the concurrence of the Administration to assure compliance with 40 CFR 1506.5(c). (See § 771.109(c) for definitions of these terms.) A "statewide" agency may select a consultant in accordance with applicable procedures. The Administration will select any such consultant for "other" applicants.

(f) The Administration, when satisfied that the DEIS complies with NEPA requirements, will approve the DEIS for circulation by signing and dating the title page.

(g) A lead, joint lead, or a cooperating agency shall be responsible for printing the EIS. The initial printing of the DEIS shall be in sufficient quantity to meet requirements for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the DEIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement can be reviewed.

(h) The DEIS shall be circulated for comment by the applicant on behalf of the Administration. The UMTA requires a public hearing during the circulation period of all DEIS's. The FHWA public hearing requirements are contained in approved State Action Plans or, if applicable, 23 CFR Part 790. If a public hearing is required, the DEIS shall be available for a minimum of 30 days in advance of the public hearing. The availability of the DEIS shall be included in any public hearing notice and mentioned at any public hearing presentation with a request for public comments. If a public hearing is not required, a notice shall be placed in a newspaper similar to a public hearing notice advising where the DEIS is available for review, how copies may be obtained, and where the comments should be sent.

(i) The DEIS shall be circulated to:

(1) Public officials, private interest groups, and members of the public having the potential to be directly affected or expressing an interest in the proposed action or the DEIS. Comments should be obtained directly from appropriate State and local agencies, except where review is secured by agreement through the A-95 clearinghouse.

(2) Government agenices expected to have jurisdiction or responsibility over, or interest or expertise in the proposed action.

(j) The Federal Register public availability notice shall establish a period of not less than 45 days for the return of comments on the DEIS. The notice and the DEIS transmittal letter

shall identify where comments are to be sent.

(k) The applicant shall furnish copies of the DEIS to those States and Federal land management entities which may be significantly affected by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such State or entity advise the Administration in writing of any disagreement with the evaluation of impacts in the statement. Copies of the DEIS are to be furnished to the A-95 clearinghouses of other impacted States unless the Governor has designated an agency other than the clearinghouse for this purpose. The Administration will furnish the comments received to the applicant along with a written assessment of any disagreements for incorporation into the FEIS.

§ 771.125 Final environmental impact statements.

(a)(1) After circulation of a DEIS and consideration of comments received, a FEIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the Administration. The FEIS shall identify the preferred alternative, discuss substantive comments received on the DEIS and all reasonable alternatives considered, summarize citizen involvement, and include when appropriate a description of the procedures to be followed to assure that all environmental mitigation measures are implemented. The FEIS for actions in urbanized areas shall include the views of the MPO regarding the preferred alternative. The FEIS should also document compliance, to the extent possible, with all applicable environmental laws and Executive Orders or provide reasonable assurance that their requirements can be met.

(2) For UMTA-funded major urban mass transportation investments (new construction or extension of a fixed guideway), the applicant shall prepare a report identifying a locally preferred alternative. Approval may be given to begin preliminary engineering on the principal alternatives currently under consideration. During the course of such preliminary engineering, the applicant will refine project costs, effectiveness, and impact information with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures. These studies will be used to prepare the FEIS.

(b) Every reasonable effort shall be made to resolve interagency disagreements on proposed actions before processing the FEIS. If significant issues remain unresolved, the FEIS shall identify those issues and the consultations and other efforts made to resolve them.

(c) A preliminary record of decision (ROD) shall accompany the proposed FEIS during the internal review process. (See § 771.127)

(d) The FEIS shall be reviewed for legal sufficiency by the Administration's Chief Counsel or designee.

(e) The Administration will indicate approval of the FEIS for an action by signing and dating the title page. However, FEIS's prepared for actions in one or more of the following categories shall be subject to prior concurrence by the Administration Washington Headquarters and the Office of the Secretary of Transportation.

(1) Any highway project on a new location in an urbanized area of over 100,000 population or bypassing such area.

(2) Any new controlled access freeway.

(3) New construction or extension of a fixed guideway transit system.

(4) Any major transportation related development whose construction requires the preparation of an EIS (see § 771.115(a)(4)) if the proposed Administration grant assistance exceeds $5 million or if the proposed total cost of publicly and privately funded construction is expected to exceed $50 million.

(5) Any action to which a Federal, State or local government has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the objecting agency).

(6) Any action for which the Administration or the Office of the Secretary of Transportation requests that the FEIS be reviewed at the Washington Headquarters office.

(f) The signature of the UMTA approving official on the title page constitutes UMTA authorization to circulate the FEIS; compliance with Section 14 of the UMT Act and fulfillment of the grant application requirements of Section 3(d)(1) and (2) and Section 5(h) and 5(i) of the UMT Act. The approval of the FEIS does not commit UMTA to approval of any grant request for future funding of the preferred alternative.

(g)(1) After review of a DEIS on an action in one or more of the categories in paragraph (e) of this section, the Administration with the concurrence of the Office of the Secretary of Transportation may determine that the FEIS may be processed without prior concurrence of the Administration Headquarters Office. This determination will include consideration of:

(i) Adequacy of early coordination with other Federal, State, and local government agencies; and

(ii) Adequacy of the DEIS in identifying environmental impacts of, and reasonable alternatives to, the proposed action.

(2) Any determination under this paragraph is subject to review and withdrawal at any time prior to approval of the FEIS.

(h) The initial printing of the FEIS shall be in sufficient quantity to meet the request for copies which can be reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the FEIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement can be reviewed.

(i) At the time the FEIS is distributed and filed with EPA, the applicant is responsible for making the FEIS available through State and areawide clearinghouses pursuant to OMB Circular A-95, publication of a notice of availability in local newspapers, and for furnishing the document to any person(s), organizations, or agencies that made substantive comments on the DEIS or requested a copy. At this time the FEIS shall be available for public review at the applicant's offices and at appropriate Administration offices. A copy should also be made available for public review at public institutions such as local government offices, public libraries, and schools, as appropriate.

(j) The Administration shall not make any project approvals for any action requiring an EIS until the approval of a ROD, in accordance with § 771.127.

§ 771.127 Record of decision.

(a) The Administration shall complete and sign a ROD (40 CFR 1505.2) no sooner than 30 days after publication of the FEIS notice in the Federal Register or 90 days after publication of a notice for the DEIS, whichever is later. The ROD should document any required Section 4(f) approval in accordance with § 771.135(k). A preliminary ROD is to be prepared by the Administration in consultation with the applicant. The proposed action shall not be advanced except for administrative actions taken to secure further project funding and other actions consistent with 40 CFR 1506.1 until any required ROD has been signed. A ROD is not required for those EIS's where the DEIS was filed with

EPA prior to July 30, 1979 (For FHWA November 30, 1979).

(b) If the Administration subsequently wishes to take an action which was not identified as the proposed action in the final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the record of decision, a revised preliminary record of decision shall be processed internally by the same offices that acted on the original EIS.

§ 771.129 Reevaluation.

(a) The applicant shall consult with the Administration to assure that the proposed action or environmental conditions have not significantly changed prior to proceeding with major project approvals or authorizations.

(b) The DEIS or FEIS may be supplemented at any time. Supplements will be necessary when there have been significant changes in the proposed action, the affected environment, the anticipated impacts, or the proposed mitigation measures. However, a supplemental EIS will not be necessary if the Administration decides to fund an alternative adequately covered in the Final EIS but not identified as the proposed action. The decision to prepare a supplement to the FEIS shall not require withdrawal of the previous approvals for those aspects of the proposed action not directly affected by the changed condition or new information. A supplement is to be developed in the same manner (except that scoping is not required) as a new EIS (draft and final, with a ROD).

(c)(1) The DEIS is considered valid for a period of 3 years. If an acceptable FEIS is not submitted to the Administration within 3 years from the date of the DEIS circulation, a written evaluation of the DEIS shall be prepared by the Administration in cooperation with the applicant prior to submission of the FEIS. This evaluation must demonstrate that there have not been significant changes in the proposed action, the affected environment, the anticipated impacts or the proposed mitigation measures. If there have been changes in these factors which would be significant in the consideration of the proposed action, a supplement to the DEIS or a new DEIS shall be prepared.

(2) If major steps to advance the action (e.g., authority to acquire a substantial portion of the right-of-way, or approval of the plans, specifications and estimates) have not occurred within 3 years from the date the FEIS or FEIS supplement was approved, the Administration in cooperation with the applicant shall prepare a written evaluation of the FEIS before further approvals may be granted. If there have been significant changes in the proposed action, the affected environment, the anticipated impacts, or proposed mitigation measures, a new or supplemental EIS shall be prepared and circulated.

(3) If major steps to advance the action have not occurred within 5 years from the date the FEIS or FEIS supplement was approved, or within the time frame identified in the FEIS, the written evaluation required in paragraph (c)(2) of this section will be prepared and forwarded for review and action to the same offices that took approval action on the original FEIS.

(4) The requirements for a written evaluation as described in paragraphs (c)(2) and (c)(3) of this section apply only to requests for Administration approvals after July 30, 1982.

(d) If any changes are made to the proposed action and it is uncertain if a supplemental EIS is required, the applicant will develop appropriate environmental studies or, if necessary, an EA to assess the impacts of such changes. If it is determined that the changes result in significant environmental impacts which could not be identified from reviewing the initial EIS, a supplemental EIS will be prepared. If no supplemental EIS is required after the studies or EA required by this subsection have been made, the Administration shall so indicate in the project file.

§ 771.131 Emergency action procedures.

Requests for deviations from the procedures in this regulation because of emergency situations shall be referred to the Administration's Washington Headquarters for evaluation and decision after consultation with CEQ, through DOT, in accordance with 40 CFR 1506.11 for evaluation and decision.

§ 771.133 Compliance with other requirements.

(a) The FEIS or FONSI should document compliance with requirements of all applicable environmental laws, Executive Orders, and other related requirements. If full compliance is not possible by the time the FEIS or FONSI is prepared, the FEIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document by the Administration constitutes approval or any required findings and determinations that are contained therein.

(b)(1) Sections 3(d) and 5(i) of the UMT Act require applicants for Sections 3 and 5 grants to make several certifications regarding the local decisionmaking process. The report requirement of Section 5(i) will be satisfied by a FONSI, FEIS, or an identification of the project as meeting the criteria for categorical exclusions.

(2) Section 5(h)(2) of the UMT Act requires the Secretary of Transportation to consider the environmental effects of any proposed Section 5 project and make decisions based on the public interest. The provisions of this regulation satisfy the statutory provisions of Section 5(h)(2).

§ 771.135 Section 4(f) of the Department of Transportation Act.

(a)(1) No Administration action will use land from a significant publicly owned park, recreation area, or wildlife and waterfowl refuge or any significant historic site unless a determination is made that:

(i) There is no feasible and prudent alternative to the use of land from the property; and

(ii) The proposed action includes all possible planning to minimize harm to the property resulting from such use.

(2) Supporting information must demonstrate that there are unique problems or unusual factors involved in the use of alternatives and that the cost, environmental impacts, or community disruption resulting from such alternatives reaches extraordinary magnitudes.

(b) The Administration will determine the application of section 4(f). Any use of lands from a section 4(f) property shall be evaluated early in the development of the action when alternatives to the proposed action are under study.

(c) Consideration under section 4(f) is not required when the Federal, State, or local official having jurisdiction over a park, recreation area, or refuge determines that it is not significant. The Administration will review the official's determination, to assure its reasonableness. In the absence of a satisfactory determination, the section 4(f) land will be considered to be significant.

(d) In determining the application of section 4(f) to historic sites, the Administration in cooperation with the applicant will consult with the State Historic Preservation Officer and local officials and will identify properties on or eligible for the National Register of Historic Places. For purposes of section 4(f), a historic site is significant only if it is on or eligible for the National Register, unless the Administration determines that the application of section 4(f) is otherwise appropriate.

(e) Where Federal lands or other large public land holdings (e.g. State forests) are administered under statutes permitting management for multiple uses, and in fact are managed for multiple uses, section 4(f) applies only to portions of such lands which are in fact being used for or are designated in the plans of the administering agency as being for park, recreation, wildlife or waterfowl refuge, or historic purposes. The determination of significance shall be made by the official having jurisdiction over the lands. The Administration will review the agency's land use determination to assure its reasonableness.

(f)(1) Section 4(f) applies to all archeological sites on or eligible for inclusion on the National Register, including those discovered during construction, unless the Administration, after consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation, determines that the archeological resource is important chiefly for the information it contains and has minimal value for preservation in place. Such archeological resources which do not warrant preservation in place may be recovered in accordance with a resource recovery plan developed in compliance with 36 CFR Part 800.

(2) For sites discovered during construction, where preservation of the resource in place is warranted, the section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take account of the level of investment already made and the review process, including the consultation with other agencies, will be shortened as appropriate.

(g) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made and determinations of significance changed late in the development of a proposed action. With the exception of the treatment of archeological resources in paragraph (f) of this section, an action may proceed without consideration under section 4(f) if the property interest in the section 4(f) type lands was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by section 4(f) prior to project approval.

(h) The evaluations of alternatives to avoid the use of section 4(f) land and of possible measures to minimize harm to such lands shall be presented in the DEIS or EA or, for those projects classified as categorical exclusions, in a separate document. The document containing the section 4(f) evaluation shall be provided for coordination and comment to the official having jurisdiction over the section 4(f) property and to the Department of the Interior and, as appropriate, to the Department of Agriculture and the Department of Housing and Urban Development. A time limit of 45 days shall be established by the Administration for receipt of comments.

(i) The discussion in the FEIS, FONSI, or separate section 4(f) evaluation shall specifically address:

(1) The reasons why alternatives to avoid a section 4(f) property are not feasible and purdent; and

(2) All measures which will be taken to minimize harm to the section 4(f) property.

(j) The final section 4(f) evaluation will be reviewed for legal sufficiency by the Administration Chief Counsel or designee.

(k) The Administration will document and make the section 4(f) approval either in its approval of the FEIS or in the ROD for actions processed with EIS's. In those cases where the section 4(f) approval is documented in the FEIS, the Administration will summarize the basis for its section 4(f) approval in the ROD. Actions requiring the use of section 4(f) property and proposed to be processed with a FONSI or classified as a categorical exclusion shall not proceed until notified by the Administration of section 4(f) approval. For those actions processed with a FONSI or classified as a categorical exclusion, any required section 4(f) approval will be documented separately.

(l) Circulation of a separate section 4(f) evaluation will be required when:

(1) A modification of the alignment or design requires the use of section 4(f) property after the categorical exclusion, FONSI, or FEIS has been processed;

(2) A modification of the alignment or design which significantly increases the use of section 4(f) land is found to be necessary after the original section 4(f) approval; or

(3) Another agency is the lead agency for the NEPA process, unless another DOT element is preparing the section 4(f) statement.

(m) An analysis required by section 4(f) may involve different levels of detail where the section 4(f) involvement is addressed in a tiered EIS.

(1) When the first tier broad-scale EIS is prepared, the detailed information necessary to complete the section 4(f) evaluation may not be available at that stage in the development of the action. In such cases, an evaluation may be made on the potential impacts that a proposed action will have on section 4(f) land and whether those impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible and prudent locations or alternatives for the action to avoid the use of section 4(f) land. This preliminary determination shall consider all possible planning to minimize harm to the extent that the level of detail available at the first tier EIS stage allows. It is recognized that such planning at this stage will normally be limited to ensuring that opportunities to minimize harm at subsequent stages in the development process have not been precluded by decisions made at the first tier EIS stage. This preliminary determination is then incorporated into the first tier EIS.

(2) A section 4(f) approval made when additional design details are available shall include a determination that:

(i) The preliminary section 4(f) determination made pursuant to paragraph (m)(1) of this section is still valid,

(ii) There are no feasible and prudent design alternatives to the use of such section 4(f) land,

(iii) The proposed action includes all possible planning to minimize harm.

§ 771.137 International actions.

(a) The requirements of this regulation apply to:

(1) Administration actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans and Antarctica).

(2) Administration actions significantly affecting the environment of a foreign nation not participating in the action or not otherwise involved in the action.

(3) Administration actions which significantly affect the environment of a foreign nation and which provide a product or action producing a toxic emission or effluent that is prohibited or strictly regulated in the United States by Federal law.

(4) Administration actions outside the U.S., its territories, and possessions which significantly affect natural resources of global importance designated for protection by the President or by international agreement.

(b) If communication with a foreign government concerning environmental studies or documentation is anticipated, the Administration shall coordinate such communication with the Department of State through the Office of the Secretary of Transportation.

[FR Doc. 80-33714 Filed 10-29-80; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Policy on Major Urban Mass Transportation Investments and Policy Toward Rail Transit

AGENCY: Urban Mass Transportation Administration (UMTA).

ACTION: Notice of Revised UMTA Policy.

SUMMARY: This notice is being published to announce two revisions to the UMTA Policy on Major Urban Mass Transportation Investments and Policy Toward Rail Transit. Changes that have been made to the FHWA/UMTA environmental impact procedures published elsewhere in the Federal Register have necessitated these policy statement revisions. These revised procedures establish that UMTA may fund conceptual design studies leading to a greater level of detail on the alternatives presented in the alternatives analysis/draft environmental impact statement (EIS). The revised procedures further establish that UMTA may fund preliminary engineering following the circulation of the alternatives analysis/draft EIS. Preliminary engineering on the locally preferred alternative as well as other promising alternatives evaluated in the draft EIS will provide more accurate information on costs and environmental impacts for the final EIS.

Previously, alternatives were developed in less detail in the alternatives analysis/draft EIS and preliminary engineering was undertaken following the circulation of the final EIS. These changes will integrate a progressively more detailed study of alternatives into the EIS process to ensure that the preferred alternative in the final EIS is more carefully defined in terms of environmental impacts and costs. This notice will clarify UMTA procedures governing the EIS process for major urban mass transportation investments.

FOR FURTHER INFORMATION CONTACT: Mr. John Barber, Office of Transit Assistance (UTA-32), telephone (202) 472-7100, or Mr. Joel Ettinger, Office of Planning assistance (UPM-12), telephone (202) 426-2360, Urban Mass Transportation Administration, 400 Seventh Street, SW., Washington, D.C. 20590, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The Urban Mass Transportation Administration (UMTA) published its Policy on Major Urban Mass Transportation Investments on September 22, 1976 (41 FR 41512) and Policy Toward Rail Transit on March 7, 1978 (43 FR 9428). The procedures set forth in the major investment policy established the requirement for a rigorous, objective evaluation of alternatives where a major investment was being considered. The procedures specified that the alternatives analysis is combined with a draft environmental impact statement (EIS) and that the final EIS is prepared at the same level of detail as the draft EIS.

During the commenting period on UMTA's proposed regulation on environmental impact and related procedures (44 FR 59445; October 15, 1979), UMTA applicants asked for clarification of the relationship of the alternatives analysis and the EIS process. Further, suggestions were made to integrate preliminary engineering into the EIS process because of what was perceived as duplicative and confusing agency review requirements for each.

UMTA's experience in developing EIS's under the procedures in its major investment and rail transit policies has shown the need for a greater level of detail on environmental impacts and more accurate cost estimates of the project proposals emerging from alternatives analysis before the final EIS can be prepared.

For these reasons, UMTA is implementing the following changes in the procedures of the major investment and rail transit policies. UMTA may allow, where appropriate, conceptual design studies during the preparation of the alternatives analysis/draft EIS. These studies would be undertaken at a sufficient level of detail to identify a locally preferred alternative in terms of mode and general alignment. Upon completion of the alternatives analysis/draft EIS, UMTA may approve funds to support preliminary engineering for one or more promising alternatives. By authorizing preliminary engineering after the draft EIS and the applicant's preferred alternative report have been completed, UMTA will be integrating a progressively more detailed study of promising alternatives into the EIS process to ensure that the preferred alternative in the final EIS is more carefully defined in terms of environmental impacts and costs. This procedure should also aid applicants by clarifying the sequence of UMTA decisions with respect to the evaluation of fixed guideway alternatives.

Comments are invited on these procedures. Moreover, since a forthcoming Notice of Proposed Rulemaking (NPRM) will also provide an opportunity for comment on the entire set of policies and procedures governing major urban transportation investments, there will be additional opportunities for public involvement. That NPRM is being published in the Federal Register with several proposed revisions to the FHWA/UMTA joint planning regulations. Among the revisions is a set of proposed joint FHWA and UMTA procedures covering all planning activities leading to the preparation of a draft EIS for major urban transportation investments. A change in nomenclature will be proposed in the NPRM whereby the term "alternatives analysis" will be replaced with "corridor refinement studies".

Procedures for Major Urban Mass Transportation Investments

This section outlines the procedures which UMTA will normally follow in reviewing alternatives analysis studies, in implementing the enironmental impact statement requirements of the National Environmental Policy Act, and in making funding commitments.

1. After obtaining UMTA's concurrence, the applicant may proceed with an alternatives analysis, and UMTA in cooperation with the applicant will prepare a draft EIS. The draft EIS shall be combined in a single document with the results of the alternatives analysis. The alternatives analysis will investigate the most promising alternatives identified in system planning at a sufficient level of detail to identify a locally preferred alternative in terms of mode and general alignment. This investigation may include conceptual design of the alternatives to provide a sufficiently confident level of cost, ridership demand, and environmental impact information to allow a decision on a locally preferred alternative. UMTA will ensure that the alternatives analysis and preparation of the draft EIS have been performed in accordance with UMTA policy and procedures.

2. After the end of the circulation period for the draft EIS, the applicant should designate, in a separate document, the locally preferred alternative and state a rationale for the choice. This document should clearly state that any recommendation is solely that of the applicant and that UMTA's judgement is reserved until the environmental process is completed.

3. Upon review of the locally preferred alternative report and the comments received on the draft EIS, UMTA will decide whether the alternatives analysis requirements have been satisfied and a preliminary engineering grant should be given to develop data for the final EIS. This decision will be based upon an appraisal of the cost-effectiveness of the

locally preferred alternative compared to the other alternatives examined in the analysis. The grant may be for preliminary engineering of the locally preferred alternative as well as other promising alternatives evaluated in the draft EIS. Preliminary engineering will be undertaken as necessary to insure that all alternatives in the final EIS are presented at a comparable level of detail. Preliminary engineering should develop system cost, effectiveness, and impact information with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures.

4. The final EIS is developed during preliminary engineering. No action may be taken which would limit the choice of reasonable alternatives studied in the draft EIS until completion of the circulation of the final EIS.

5. UMTA may admit projects into preliminary engineering whose combined cost exceeds available Federal authorization levels. This will be done in anticipation of any of several possibilities: the withdrawal of projects as a result of changing local priorities; a local decision to use non-Federal resources to finance more than 20 percent of total cost; enactment of additional authorizations; or changing conditions such as the availability of detailed cost estimates which might lead to a later decision that a particular project should not be federally financed.

6. During the execution of preliminary engineering, the applicant will complete all the steps which must precede a Federal indication of intent to fund the project. These steps include providing evidence of firm commitment of the non-Federal capital share; providing evidence of State and/or local consensus regarding the financing of operating deficits; and planning for and gaining financial commitment to necessary supportive actions to promote effective utilization of the proposed fixed guideway system. A letter of intent may be issued for construction in a specific dollar amount only upon completion of the circulation of the final EIS and review of the capital grant application, the transcript of the public hearing, and the detailed cost estimates emerging from preliminary engineering. The decision to issue such a letter will be based upon a comparison of projects then pending.

7. If UMTA determines that the project warrants Federal support, UMTA will also develop with the locality a full funding agreement which will: (1) Fix the total amount of the Federal contributions, subject to a defined method of adjusting for inflation; (2) include a mutually agreeable schedule for anticipating Federal contributions during the life of the project; and (3) require the locality to complete construction of the project as defined, and to absorb any additional cost incurred, except under certain specific "extraordinary" circumstances.

8. Specific annual contributions under the letter of intent and full funding agreement will be subject to the availability of appropriations and the ability of the grant recipient to use the funds effectively. UMTA will limit the sum total of letters of intent to the sum of future Section 3 authorizations, less an amount which is necessary for those portions of the Section 3 program which are not covered by letters of intent.

Dated: October 24, 1980.

Theodore C. Lutz,

Administrator.

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federal register

Thursday
October 30, 1980

Part VII

Department of Transportation

Federal Highway Administration and Urban Mass Transportation Administration

Urban Transportation Planning; Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Urban Mass Transportation Administration

23 CFR Parts 450, 630

49 CFR Part 613

[FHWA Docket Nos. 78-21 and 80-24]

Urban Transportation Planning

AGENCIES: Federal Highway Administration (FHWA) and Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Withdrawal of proposed rulemaking; addition of new notice of proposed rulemaking.

SUMMARY: The purpose of this document is to propose amendments to existing regulations governing urban transportation planning under FHWA and UMTA programs. The proposed changes are intended to (1) integrate the FHWA/UMTA policy for decisions on major urban transportation investments with the ongoing urban planning process; (2) reflect changes in the planning process necessitated by recent environmental requirements and agreements between the Department of Transportation (DOT) and the Environmental Protection Agency (EPA) relative to air quality; (3) emphasize the importance of Transportation System Management (TSM) in conserving energy and improving the efficiency of our transportation resources; and (4) simplify the administration of the planning process, particularly for areas under 200,000 population. A previous FHWA/UMTA notice of proposed rulemaking which was limited to major urban transportation investments (43 FR 57478, December 7, 1978) is withdrawn.

DATE: Written comments are due on or before December 29, 1980.

ADDRESS: Submit written comments to FHWA Docket No. 80-24, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: FHWA: Sam W. P. Rea, Jr., Urban Planning Division, (202) 426-2961, or Gary Maring, Public Transportation Management Division, (202) 426-0210, or Stanley Abramson, Office of the Chief Counsel, (202) 426-0762; or UMTA: Robert Kirkland, Office of Planning Assistance, (202) 426-4991, or Joel Ettinger, Office of Planning Assistance, (202) 426-2360, or Anthony Anderson, Office of Chief Counsel, (202) 426-1906, all located at 400 Seventh Street, SW., Washington, D.C. 20590. FHWA office hours are from 7:45 a.m. to 4:15 p.m. ET; UMTA office hours are from 8:30 a.m. to 5 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking (NPRM) requests comments on proposed revisions to the FHWA/UMTA requirements for urban transportation planning (23 CFR Part 450 and 49 CFR Part 613) and the FHWA requirements for Federal-aid program approval and project authorization (23 CFR Part 630, Subpart A). Although current regulations are being implemented effectively, the proposed revisions are intended to promote consistency between national and local objectives and to implement various transportation-related legislative requirements, such as air quality, energy conservation and the DOT policy on major urban transportation investments. In many cases, these modifications simply make formal what has already taken place on an informal basis.

The proposed changes are discussed under three major headings: Major Urban Transportation Investments, Air Quality, and Transportation System Management. Under a fourth heading, Other Changes, proposals are discussed which would simplify or eliminate requirements particularly in smaller urbanized areas (under 200,000 population), and emphasize citizen participation and urban goods movement.

This proposal is considered to be significant under the criteria established by the Department of Transportation pursuant to Executive Order 12044 because it involves important Departmental policy and major urban investments by FHWA and UMTA. A draft regulatory evaluation is available for inspection in the public docket (No. 80-24, Room 4205). Copies of the evaluation may be obtained by contacting Mr. Sam W. P. Rea, Jr., at the address provided above.

Major Urban Transportation Investments

On September 17, 1975, FHWA and UMTA jointly issued final regulations on the urban transportation planning process (40 FR 42976). These regulations made the planning of both highway and transit projects subject to the same continuing, comprehensive and cooperative process. Further unification was achieved by requiring that all projects be included in a region's Transporation Improvement Program (TIP) as a condition for Federal approval. However, while the joint regulations established a common planning process, the projects emerging from the process remained subject to different FHWA and UMTA policies and procedures.

Recognizing that improved decisionmaking would result from further coordination of the planning and project development process for major urban transportation investments, the FHWA and UMTA published an NPRM titled "Major Urban Transportation Investment Policy and Procedures," (43 FR 57476, December 7, 1978). The proposed rule specified a consistent policy and procedure for the evaluation of major highway and transit projects. The proposal included a requirement that all major projects be developed in a process that considered the costs and effectiveness of an appropriate range of investment alternatives. The previous NPRM is being withdrawn in favor of the new NPRM issued today.

Ninety-three comments were submitted to the public docket (No. 78-21) in response to the NPRM. Fifty-two comments supported the proposed rule as a step toward a more balanced approach to urban transportation. Support came from metropolitan planning groups, transit authorities, cities, other Federal agencies, and environmental groups. Most of the negative comments stressed possible duplication of effort with the ongoing urban planning process, delay of projects and added "red tape." A number of comments posed questions requesting clarification or further definition of specific points or made remarks of a general nature.

In response to these comments, FHWA and UMTA are proposing to include an explicit treatment of planning for major investments within the joint planning regulations. The proposed integration of the key elements of the proposed major investment policy into the joint planning regulations directly addresses concerns on duplication of effort and additional redtape. The proposed regulations specify a single set of requirements for the technical process as well as the funding, documentation, and administration of major investment planning.

The major change to the existing regulations would be the addition of a new § 450.122 that would establish uniform requirements for the analysis of major investments within the transportation planning process. The

costs and effectiveness of major investment alternatives would be considered as the alternatives are advanced through the areawide and corridor planning efforts. Definitions of major urban transportation investments and cost effectiveness would be provided in § 450.104.

In the past, projects proposed for funding by FHWA have been developed through the areawide planning effort, followed by highway location studies and preparation of environmental impact statements (EIS's). The location studies have in some instances been conducted by State highway agencies with only secondary involvement of local officials, usually acting through the Metropolitan Planning Organization (MPO). Projects proposed for UMTA funding have been assessed in the areawide analysis and then studied in more detail in corridor level alternatives analysis, documented in a draft EIS. Alternatives analyses have typically been conducted by the local transit operator, again in some instances without full MPO involvement.

The separate corridor level analyses by the implementing agencies have tended to constrain full consideration of modal tradeoffs (i.e., comparison of various transportation modes). To address this problem, the proposed requirements for the analysis of major investments would be included within the cooperative planning process established in § 450.112. Section 450.112 currently defines responsibility for urban transportation planning as a cooperative effort among the MPO, the State, and local public transit operators. This section would be modified by the proposed rule so as to include within a fully cooperative process all planning activities for major investments leading to the development of the draft EIS. The intent is to ensure cooperation without prescribing specific responsibilities or degrees of involvement for each agency. This flexibility permits local and State officials to decide the specific institutional arrangements and procedures to be used in the consideration of transportation alternatives. These procedures would be tailored to the range of alternatives being considered, their stage of advancement in the process, and other local considerations. It is anticipated that the degree of responsibility and involvement of the various agencies will also vary with the status of development of implementation proposals. For example, the responsibility of MPOs would be heaviest at the system planning level, with appropriate input from implementing agencies. As proposals become more definitive, implementing agency responsibility would increase and become predominant as the project nears implementation.

Requirements for major investment planning set forth in proposed § 450.122 would rely upon planning activities already required by the regulations. While past planning efforts have included considerations of cost and effectiveness, the proposed rule would ensure that a consistent approach will be employed in all analyses of major investments. Section 450.122 would require that the costs and effectivenss of major new transportation facilities be explicitly considered in the areawide assessment of transportation needs. This assessment would be used to narrow the range of options to a number of reasonable and potentially cost-effective alternatives. The range of the remaining alternatives may be quite narrow or very broad. For example, a narrow range of alternatives would be expected if the investments only involved increasing the capacity of existing facilities. Where major widening of an existing freeway is proposed, the capital intensive alternatives might differ only in the number of lanes to be added and the possible restriction of these lanes to high-occupancy vehicles. Similarly, where additional parallel tracks are proposed for an existing rail facility, the major capital alternatives might differ only in the number of miles of facility to which tracks are added. In other cases, however, the range of alternatives might be quite broad and could include such varied projects as a new freeway, a busyway, a light rail line, and a heavy rail line.

Section 450.122 also would require that the narrowed range of alternatives be further evaluated in corridor refinement studies. The studies would ensure that the selection of an alternative is based on more reliable cost and effectiveness information developed for all remaining alternatives in the corridor. For any freeway or busway project included within the range of alternatives, corridor refinement studies would assess their location, degree of grade separation and access control, approximate right-of-way requirements, interchange locations, number of lanes, and general operating characteristics. For any heavy rail, light rail, or automated guideway projects among the alternatives, the corridor studies would examine the transit technology, degree of grade separation, station locations, operating characteristics, and general alignment of the facility. The same level of detail would be employed for all alternatives, regardless of their nature. Corridor refinement studies are analogous to highway location studies. Corridor refinement studies are also analogous to transit alternatives analyses, with greater detail used in the specification and assessment of the alternatives. The greater level of detail would yield more reliable estimates of costs and effectiveness than have been developed in past alternative analyses. This would provide greater confidence in the selection of an alternative with which to proceed into preliminary engineering.

Section 450.122 would make it clear that the draft EIS is the document in which the results of corridor refinement studies are to be presented. This procedure is consistent with current environmental requirements and with the joint environmental regulation published by FHWA and UMTA in this same edition of the Federal Register. Section 450.122 would also identify the FHWA and UMTA funds that may be used for corridor refinement studies. In the past, highway location studies have been funded by FHWA construction funds while transit alternatives analyses have used UMTA Section 8 funds. In order to support the more detailed analysis undertaken in a corridor refinement study, UMTA recognizes that additional funding may be required. Consequently, this section would implement the provision of the Surface Transportation Assistance Act of 1978 that UMTA Section 3 funds may be used to support detailed alternatives analyses. Specific funding arrangements would be established on a case-by-case basis by Federal, State, and local officials.

The proposed rule would amend § 450.114 to require that the Unified Planning Work Program (UPWP) describe corridor planning activities, regardless of funding source and implementation responsibility. In the past, the UPWP has usually described areawide planning activities, as well as UMTA Section 8 funded alternatives analyses. Highway location studies proposed for FHWA funding were included in the Transportation Improvement Program (TIP) but were not described in the UPWP. Conversely, alternatives analyses proposed for UMTA Section 8 funding were described in the UPWP but not included in the TIP. To ensure full coordination of all planning and project development activities, the FHWA and UMTA propose to require UPWP documentation of all activities leading to preparation of a draft EIS for major

urban transportation investments, regardless of funding sources.

No changes are proposed in § 450.124 on certification of the planning process (except as noted under the heading, "Other Changes"). However, it is important to note that the certification review required by this section encompasses all activities included in Subpart A of the regulations (23 CFR Part 450). Therefore, planning for major investments is explicitly subject to the certification review process, and the review is expected to assess the soundness of all activities leading to preparation of a draft EIS for major investments.

A new appendix has been prepared to provide advisory informaiton on FHWA and UMTA procedures in administration of corridor refinement studies. In the past, major investments have been subject to separate UMTA and FHWA administrative procedures. To support the uniform major investment planning revisions proposed in this dicument, FHWA and UMTA have developed a single set of procedures that are identified in proposed Appendix C to 23 CFR Part 450, Subpart A.

In view of the propsoed changes to the joint planning regulations, UMTA has reevaluated its existing policy statements on major urban investments. Every effort has been made to streamline the relevant policy and procedure statements to minimize duplication with the proposed revisions to the joint planning regulations. As a result, the 1976 Major Urban Mass Transportation Investment Policy (41 FR 41512, September 22, 1976) and the 1978 Policy Toward Rail Transit (43 FR 9428, March 7, 1978) would be superseded. Elements of these policies and procedures that are unique UMTA requirements would be placed in 49 CFR Part 613 as an appendix. The procedural elements are fully compatible with the procedures outlined in the joint FHWA/UMTA environmental regulation. These elements include, for example, the incremental development of propsed new rail transit systems. During the period of this rulemaking, the revised policies and procedures in the proposed appendix will be used as guides.

The 1978 NPRM on Major Urban Transportaiton Investments proposed that Federal support be available only for major urban transportation investments that meet local, State, and national goals and objective in a cost-effective manner. This proposed requirement has been retained in this NPRM by proposed inclusion in 23 CFR 630.106(b) and 49 CFR 613.204.

Finally, FHWA and UMTA wish to ensure a smooth transition to these propsed canges in the ongoing planning and project development efforts. Consequently, those corridors for which a draft EIS has been filed with EPA or will be filed within 90 days of the effective date of the final rule, will not be affected by the revisions proposed in this document. Once issued in final form, the revised regulations will apply, however, to corridors where the draft EIS is supplemented under the FHWA/UMTA environmental process, unless the Administrator of FHWA and/or UMTA determines that it is not necessary. In corridors where a draft EIS is under preparation, FHWA and/or UMTA will work with State and local officials to identify any appropriate actions on a case-by-case basis.

Air Quality

Sections 104, 106, 108, 112, 114, 120, and 122 in Subpart A of Part 450 and sections 304, 312, 316, and 320 in Subpart C of Part 450 contain proposed revisins related to the transportation/air quality planning and programming roles and responsibilities of the MPO. The proposed changes reflect modifications required by the Clean Air Act Amendments of 1977 (Pub. L. 95-95) and a series of agreements reached between the DOT and the EPA as they relate to the urban transportation planning process and Federal review and approval responsibilities. The purpose of these proposed revisions is to identify those actions necessary for the enhanced coordination of the air quality and transportation planning processes.

In a separate actions, FHWA and UMTA are undertaking a major revision to 23 CFR Part 770, Subpart B Air Quality Guidelines. This revision will provide the FHWA/UMTA detailed operating procedures necessary to implement the priority and conformity requirements (Section 176 (c) and (d)) of the Clean Air Act. In anticipation of this change, the revised urban transportation planning regulations would incorporate these requirements by reference in the appropriate sections of Part 450 which are listed above.

In addition, the September 19, 1980, Federal Register invited public comment on the meaning of "basic transportation needs" in the context of Clean Air Act requirements. Proposed federal policy would permit local definition of "basic transportation needs" through existing planning and programing processes.

Transportation System Management

The promulgation of the joint planning regulations in 1975 introduced the concept of transportation system management (TSM) to the urban transportation planning process. (See 23 CFR Part 450, Subpart A, Appendix A.) The TSM concept is generally recognized as a major contributor to satisfying such national goals as energy conservation, air quality, and more efficient use of existing facilities. However, a number of questions and issues have arisen about TSM. Thus, a number of changes are proposed to clarify the intent and scope of TSM and to provide better guidance on how localities might address the requirements. In general, the changes proposed do not affect the substance of the regulations, but rather are intended to provide clarification or to reflect the evolution of the process. Program expectations, however, are more explicitly stated. This proposed change particularly recognizes the national concern for energy conservation in response to Executive Order 12185 on energy conservation (44 FR 75093, December 19, 1979).

Since the original joint regulations were published, a number of questions have arisen regarding the definition of TSM and the distinction between the TSM element and the long range element. To help eliminate this confusion regarding the definition and scope of TSM we propose reverting to the more conventional terms for elements of the plan, i.e., short and long range elements. Comments are invited on whether the proposed changes provide sufficient clarification. It should be noted that these proposals would in no way diminish the importance of TSM; in fact, § 450.116(a) would be revised to include TSM as a key component of the transportation plan. In addition, since TSM pervades the whole process TSM would be included as the first element required in § 450.120(a).

Section 450.116 would also be revised to clarify the purpose of TSM as primarily addressing operational and service issues both short and long range. Changes to paragraph (b) emphasize the synergistic effect possible with systematic applications of TSM actions and highlight the applicability of a problem area-oriented approach to TSM. The phrase "or strategies" would be added to paragraph (c) in order to emphasize that the long-range planning process should be just as sensitive to potential major regulatory policy changes or, in fact, long-term operational measures as is the short range element. This change would also make this paragraph consistent with § 450.120(a)(8) which was recently changed in a similar manner in a rulemaking (45 FR 58022, August 29, 1980) connected with Executive Order 12185 on Energy Conservation. A new

element in § 450.120 is proposed to ensure participation of the many public and private sector agencies critical to successful TSM programs.

Another change proposed at this time regarding TSM is the substitution of Appendix A to 23 CFR Part 450, Subpart A. Appendix A was originally included to provide guidance on the then new regulatory requirements for TSM. While Appendix A does appear to have been successful in conveying the intent and scope of TSM in general, the experience since 1975 has demonstrated that certain changes are needed.

The proposed new Appendix A is intended to replace the current version completely. Therefore, it is designed to stand alone as guidance on the intent, goals, scope and requirements of TSM. The proposed appendix is organized into seven sections covering the goals of FHWA and UMTA in requiring TSM the scope of what TSM includes, roles and responsibilities in addressing TSM requirements, necessary technical activities, documentation requirements, programing, and funding.

The section on goals is intended to lay out clearly the rationale for TSM and its emphasis on system operations and services. New issues facing the planning process and the need for an approach recognizing these new issues are provided.

The scope of TSM is then discussed. The range of tactics available is described. This listing is arranged in a fairly general way and would replace the list in the original appendix. That list has been misinterpreted as a checklist of tactics which every area must assess, one-by-one, and accept or discard based on local conditions.

The proposed list is intended merely to illustrate the kinds of actions which fall into the service and operational improvement categories represented in general by TSM. Also discussed are some issues regarding the definition of TSM, particularly the relationship of short-term/long-term and high-cost/low-cost distinctions to the intent of TSM. The concept of different operating environments (or problem areas) is also introduced.

The section of the proposed appendix on roles and responsibilities recognizes that the MPO has lead responsibility for coordinating all TSM activities. However, the need to include a broad range of actors in the planning process would now be made explicit. This is needed to reflect the range of public and private operating agencies and authorities responsible for implementing TSM actions and programs.

Technical activities to be included in the Unified Planning Work Programs would be described much more explicitly than in the past. However, the list provided is again intended to be illustrative, not a mandatory checklist.

The requirements for documentation of area TSM planning would be clarified in the next section of the appendix. No new documentation would be required for TSM, rather TSM is to be documented in the normal products of the planning process. Much discretion would be left to localities to decide how best to report on TSM activities.

Finally, a section on programing would be added to better describe the kinds of results of TSM planning which would be expected. This section should help localities understand the types of projects which will be emphasized in reviewing implementation efforts in TSM.

Other Changes

On August 9, 1979, the Department requested, through the Federal Register, public comment on citizen participation in transportation planning and an overall Departmental policy (44 FR 46971). A response to these comments has been prepared for publication in the Federal Register, along with a Departmental Policy Statement and Proposed DOT Guidelines on Citizen Participation in Local Transportation Planning. The Federal Register notice will also announce Departmental actions to be taken in support of the Policy Statement. These include: (1) Issuance of guidelines on citizen participation in local planning, by each operating administration, after final Departmental guidelines are issued; (2) revision by operating administrations of their existing regulations, as needed to comply with the Departmental Policy Statement on Citizen Participation in Local Transportation Planning; and (3) implementation by each operating administration of a development project to explore innovative approaches for providing technical and financial assistance to stimulate citizen participation in local planning. It is clear from the comments that there is a need to stress the importance of citizen participation by clarifying the existing provision in § 450.120(a)(3). Further, this existing provision must comply with the new Departmental Policy Statement. Consequently, § 450.120(a)(3) would be modified to emphasize the continuing and meaningful participation of the public, especially minorities and women and other interested persons in the 3C planning process. It should be noted, therefore, that the certification review process is expected to assess citizen participation in the planning process in light of this increased emphasis on continuing and meaningful public participation.

Section 450.106 would be revised to conform to the legislative revision contained in Section 305(b) of the Surface Transportation Assistance Act of 1978. Section 305(b) specifies that after November 7, 1979, designation of MPO's shall be by agreement among the units of general purpose local government and the Governor. This is not intended to mandate new or reaffirmed designation action on the part of local governments or the Governor.

As part of a joint FHWA/UMTA effort to reduce redtape and simplify administrative and technical requirements in small metropolitan areas, FHWA and UMTA issued guidance on August 1, 1980, relating to meeting the minimum requirements of the joint planning and programming regulations for urbanized areas of less than 200,000 population.[1]

The simplification of Federal program requirements has been given a high priority by the Administrators of FHTWA and UMTA and by the Office of the Secretary. The objective in developing the guidance was to: (1) Reduce the burden of Federal planning requirements in all urbanized areas under 200,000 population; (2) reduce the administrative burden on FHWA and UMTA staffs, and (3) aid newly designated urbanized areas in developing a planning process which is adequate to address their unique needs while avoiding excessive detail and wasteful expenditures. Other administrative actions, also not requiring regulatory changes, were outlined in the August 1 guidance memorandum. This guidance will be included as an appendix to the joint planning regulations when they are issued in revised form.

In concert with other administrative efforts to reduce redtape, several sections of the existing regulations would either be modified or eliminated. The requirement for an annual review and evaluation of the transportation planning process in all areas regardless of size and complexity of their programs contained in existing §450.122(a) would be modified. Instead, the review and evaluation would be required at the discretion of the Federal Highway and Urban Mass Transportation

[1] Copies of the relevant document are available from the individuals and offices listed under "For Further Information Contact." This document was also published in the Federal Register on October 23, 1980.

Administrators. It is anticipated that this review and evaluation would be undertaken more frequently in the larger urbanized areas, perhaps annually, than in the smaller urbanized areas, where it may only be done on a 2- to 3-year cycle. Also the level of detail of the review and evaluation would be at the discretion of the Administrators.

Also, the requirement for a prospectus would be eliminated. This change is being proposed to reduce paperwork requirements. Section 450.114 would be modified to require the Unified Planning Work Program (UPWP) to contain a summary of the planning program including a description of the important transportation issues facing the area.

Section 450.108, relating to agreements would be modified to allow the parties to the agreements specified in this section to document their responsibilities and procedures in the UPWP in lieu of a formal agreement. This option would be allowed only if the parties mutually decide that a formal agreement is not necessary. If one of the parties requested a formal agreement, the option would not be applicable. Section 450.108 would also be modified to require copies of the formal agreements to be sent to the FHWA Division Administrator (through the State) and to the UMTA Regional Administrator.

The current joint planning regulations do not specifically address urban goods movement issues, although many sections of 23 CFR Part 450 may be interpreted as allowing urban goods movement planning activities. The FHWA and UMTA issued joint guidance in January 1980 stressing the importance of goods movement considerations in the planning process, and a number of MPO-conducted studies involving these issues have been identified.[2]

Recent technical assistance developed by FHWA consists of two publications: "Urban Transportation for Goods and Services: A Reference Guide," and "Urban Goods Movement," a booklist for local officials.[3] Also, TSM and air quality planning efforts have investigated truck movements within urbanized areas. Because it is clear that these issued directly affect the quality of transportation services in urban areas, the joint planning regulations should specifically address urban goods movement issues. This proposed modification consists of an additional technical activity item under § 450.120(a)(8). This item would provide the framework for urban goods movement planning, emphasizing a problem identification, site-specific approach. The modification would also specifically recognize the need for involvement of the private sector in goods movement planning activities.

In addition to the specific modification to § 450.120(a)(8), the revised "TSM Appendix" would present the movement of goods as an integral part of the planning process. Also, the phrase "persons and goods" is proposed to be used in the description of the short-range and long-range elements of the planning process.

Section 450.120(a)(8) would be modified to give added emphasis to analyzing the economic impacts on existing commercial centers during the systems planning phase of the 3C planning process. This change is in concert with the President's National Urban Policy.

As part of the Department's rulemaking on Section 504 of the Rehabilitation Act (44 FR 31454) several changes were made to these regulations. In 49 CFR Part 613, Subpart B, the section (49 CFR 613.204) describing programing requirements of the transportation for elderly and handicapped persons and an advisory appendix were superseded by the new DOT regulations. Also, it was indicated in that rulemaking that Appendix B to 23 CFR Part 450, Subpart A on transportation for elderly and handicapped persons was to be revised. That revision will be published at a later date.

The provisions of 23 CFR Part 450, Subpart C included in this rulemaking document have been revised to reflect recent amendments to that subpart which were issued in connection with amendments to the Interstate substitution and withdrawal regulations (23 CFR Part 476, Subpart D). These amendments were published by FHWA and UMTA on October 20, 1980 (45 FR 69390).

(Catalog of Federal Domestic Assistance program Numbers 20.205, Highway Research, Planning and Construction; 20.500, Urban Mass Transportation Capital Grants; 20.501, Urban Mass Transportation Capital Improvement Loans; and 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants. The provisions of OMB Circular No. A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects apply to these programs)

Issued on: October 23, 1980.

John S. Hassell, Jr.,
Federal Highway Administrator.

Theodore C. Lutz,
Urban Mass Transportation Administrator.

In consideration of the foregoing, the FHWA and UMTA propose to amend Chapter I of Title 23, Code of Federal Regulations, and Chapter VI of Title 49, Code of Federal Regulations, as set forth below.

1. Part 450, Subpart A of 23 CFR is amended to read as follows:

Title 23—Highways

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart A—Urban Transportation Planning

Sec.
450.100 Purpose.
450.102 Applicability.
450.104 Definitions.
450.106 Metropolitan planning organization: Designations.
450.108 Metropolitan planning organization: Agreements.
450.110 Metropolitan planning organization: Geographic scope.
450.112 Metropolitan planning organization: Responsibilities.
450.114 Urban transportation planning process: Planning work programs.
450.116 Urban transportation planning process: Transportation plan.
450.118 Urban transportation planning process: Transportation improvement program.
450.120 Urban transportation planning process: Elements.
450.122 Urban transportation planning process: Major urban transportation investments.
450.124 Urban transportation planning process: Certification.
Appendix A—Advisory information on transportation system management.
Appendix B—Advisory information on planning for elderly and handicapped persons under UMTA and FHWA joint regulations. 23 CFR Part 450, Subparts A and C, 49 CFR Part 613, Subparts A and B.
Appendix C—Procedures for the administration of corridor refinement studies.

Authority: 23 U.S.C. 104(f)(3), 134, and 315; secs. 3, 5, 8 of the Urban Mass Transportation Act of 1964, as amended, (UMT Act) (49 U.S.C. 1602, 1604, and 1607); secs. 110, 172, 174, 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.151.

Subpart A—Urban Transportation Planning

§ 450.100 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 134, and Sections 5(1) and 8 (a) and (c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1604(1) and 1607 (a) and (c)),

[2] Copies of the relevant documents are available from the individuals and offices listed under "For Further Information Contact."

[3] Copies of the relevant document are available from the individuals and offices listed under "For Further Information Contact."

which require that each urbanized area, as a condition to the receipt of Federal capital or operating assistance, have a continuing, cooperative, and comprehensive transportation planning process that results in plans and programs consistent with the comprehensively planned development of the urbanized area.

§ 450.102 Applicability.

The provisions of this subpart are applicable to the transportation planning process in urbanized areas. Certification under this subpart shall be a prerequisite for program approvals in urbanized areas pursuant to 23 U.S.C. 105(d) and 134(a), Section 8(a) of the UMT Act (49 U.S.C. 1607(a)), and Subpart C of this part.

§ 450.104 Definitions.

(a) Except as otherwise provided, terms defined in 23 U.S.C. 101(a) are used in this subpart as so defined.

(b) As used in this subpart:

"Cost-effectiveness analysis" of major urban transportation investments means an analysis of the costs of several alternatives and their effectiveness in meeting local, State, and national goals and objectives. In the analysis: (1) Costs are capital, operating, and maintenance expenditures estimated with sufficient detail to distinguish between alternatives; and (2) effectiveness measures assess the degree of attainment of local, State and national transportation, social, economic, and environmental goals. These include, but are not restricted to, mobility, safety, environment, energy, goals related to central city viability, neighborhood preservation, employment, housing and accessibility for minority, elderly and lower income residents, and land use and development.

"Governor" means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

"Major urban transportation investment" means a project that involves new construction or extension of a freeway segment, busway, or fixed guideway transit facility; adding lanes to a freeway segment or busway; or adding tracks to a fixed guideway transit facility. It does not include: (1) Lesser localized improvements to existing freeway, busway, or fixed guideway transportation facilities; (2) safety improvements or resurfacing, restoration, or rehabilitiation of existing facilities; (3) added lanes to short freeway and busway segments (normally less than 1 mile) to alleviate specific, localized traffic flow problems; (4) added segments to fixed guideway transit facilities to provide specific localized improvements to system operations; (5) projects that are part of a demonstration program; and (6) the emergency replacement of facilities damaged or destroyed as a result of a natural disaster or catastrophic failure.

"Metropolitan planning organization (MPO)" means organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of Sections 3(e)(l), 5(l), and 8(a) and (c) of the UMT Act (49 U.S.C. 1602(e)(l), 1604(l), and 1607(a) and (c)). This organization is the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

"Nonattainment area" means a region as defined in Section 171 of the Clean Air Act.

"State implementation plan (SIP)" means a plan approved or promulgated under Section 110 of the Clean Air Act.

§ 450.106 Metropolitan planning organization: Designations.

(a) Designations of metropolitan planning organizations (MPO's) made after November 7, 1979, shall be made by agreement among the units of a general purpose local government and the Governor. To the extent possible, only one MPO shall be designated for each urbanized area or group of contiguous urbanized areas.

(b) Funds authorized by 23 U.S.C. 104(f) shall be made available by the State to the MPO, as required by 23 U.S.C. 104(f)(3). To the extent possible, the MPO shall be eligible to receive planning funds authorized by Section 8 of the UMT Act of 1964, as amended (49 U.S.C. 1607a).

(c) To the extent possible, the MPO designated shall be established under specific State legislation, State enabling legislation, or by Interstate compact, with authority to carry out metropolitan transportation planning, and should perform the functions required by the Office of Management and Budget (OMB) Circular A-95 "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects" (41 FR 2052, Jan. 13, 1976).

(d) Principal elected officials of general purpose local government within the jurisdiction of the MPO shall have adequate representation on the MPO.

(e) Nothing herein shall be deemed to prohibit the MPO from utilizing, through contractual agreements, the staff resources of other local agencies to carry out selected elements of the planning process.

(f) An MPO designated under the provisions of this section shall remain designated until another MPO is designated under the provisions of this section.

(g) In nonattainment areas where transportation controls are required, where feasible, the organization designated under Section 174(a) of the Clean Air Act as responsible for the transportation related portion of the SIP shall be the MPO.

§ 450.108 Metropolitan planning organization: Agreements.

(a) The responsibilities for cooperatively carrying out transportation planning and programming shall be clearly identified in an agreement or memorandum of understanding between the State and the MPO.

(b) Where the MPO is different from the A-95 agency, there shall be an agreement between the two organizations which prescribes the means by which their activities will be coordinated, as required by Part IV of OMB Circular A-95. This agreement shall specify how transportation planning and programming will be part of the comprehensively planned development of the urbanized area.

(c) There shall be an agreement between the MPO and publicly owned operators of mass transportation services which specifies cooperative procedures for carrying out transportation planning and programming as required by this subpart.

(d) If the MPO is not designated for air quality planning under Section 174 of the Clean Air Act, there shall be an agreement between the MPO and the designated agency describing their respective roles and responsibilities for air quality related transportation planning.

(e) To the extent possible, there shall be one cooperative agreement containing the understandings required by this section among the State, MPO, publicly owned operators of mass transportation services and, where necessary, the A-95 agency and the agency responsible for air quality planning.

(f) Where parties involved agree, the requirement for an agreement specified in paragraphs (a), (c) and (d) of this section may be satisfied by including the responsibilities and procedures for carrying out a cooperative process in the unified planning work program.

(g) Copies of the agreements specified in paragraphs (a) through (d) of this section shall be sent to FHWA, through the State, and to UMTA.

§ 450.110 Metropolitan planning organization: Geographic scope.

The transportation planning process shall, as a minimum, cover the urbanized area and the area likely to be urbanized in the period covered by the long-range element of the transportation plan described in § 450.116.

§ 450.112 Metropolitan planning organization: Responsibilities.

(a) The MPO in cooperation with the State, and in cooperation with publicly owned operators of mass transportation services, shall be responsible for carrying out the urban transportation planning process specified in § 450.120 and § 450.122 and shall develop the planning work programs, transportation plan, and transportation improvement program specified in §§ 450.114 through 450.118. The MPO shall be the forum for cooperative decisionmaking by principal elected officials of general purpose local government.

(b) The MPO shall develop or assist in developing the transportation control measures of the SIP in nonattainment areas which require transportation control measures.

(c) The MPO shall annually endorse the plans and programs required by §§ 450.114 through 450.118.

(d) In nonattainment areas which require transportation control measures the MPO shall not endorse any project, program, or plan which does not conform with the SIP.

§ 450.114 Urban transportation planning process: Planning work programs.

The urban transportation planning process shall include the development of a unified planning work program which:

(a) Summarizes the planning program including a discussion of the important transportation issues facing the area;

(b) Describes all urban transportation and transportation-related planning activities, including the corridor refinement activities discussed in § 450.122, anticipated within the area during the next 1- or 2-year period regardless of funding sources;

(c) Describes the transportation-related air quality planning activities anticipated, regardless of funding sources or agencies conducting such activities; and

(d) Documents work to be performed with planning assistance provided under Section 8 of the UMT Act (49 U.S.C. 1607(a)) and 23 U.S.C. 104(f) and 307(c).

§ 450.116 Urban transportation planning process: Transportation plan.

(a) The urban transportation planning process shall include the development of a transportation plan consisting of a short-range element and a long-range element. Transportation system management (TSM), as described in Appendix A to this subpart, shall be a key component of these elements. The transportation plan shall be reviewed annually to confirm its validity and its consistency with current transportation and land use conditions.

(b) The short-range element of the transportation plan shall:

(1) Provide for the transportation needs of persons and goods in the urbanized area by making more efficient use of existing or new facilities and services;

(2) Identify TSM actions such as traffic engineering, ridesharing, pedestrian and bicycle facilities, alternative work schedules, goods movement, high occupancy vehicle treatments, and public transportation improvements (including regulatory, pricing, management, and operational options), that present a systematic approach in addressing problem areas; and

(3) Be reflected in the transportation improvement program.

(c) The long-range element of the transportation plan shall:

(1) Provide for the transportation needs of persons and goods in the urbanized area through capital investments, strategies and policy changes;

(2) Identify new transportation policies, strategies, or facilities or major changes in existing facilities and may be in sufficient detail to identify location and mode to be implemented; and

(3) Fully explore TSM as a policy and investment strategy for the long-range transportation and development plans for the area.

(d) The transportation plan shall be consistent with the area's comprehensive long-range land use plan and urban development objectives, with local, State, and national goals and objectives, and with the area's overall social, civil rights, economic, environmental, system performance, and energy conservation goals and objectives.

§ 450.118 Urban transportation plan process: Transportation improvement program.

(a) The urban transportation planning process shall include development of a transportation improvement program (TIP) including an annual element as prescribed in Subpart C of this part.

(b) The program shall be a staged multiyear program of transportation improvement projects consistent with the transportation plan developed under § 450.116.

§ 450.120 Urban transportation planning process: Elements.

(a) The urban transportation planning process shall:

(1) Provide for the consideration of TSM strategies or actions in all phases of the planning process;

(2) Provide for the consideration of social, economic, and environmental effects, with appropriate emphasis on consideration of transportation-related air quality problems and in support of the requirements of 23 U.S.C. 109(h), and Sections 5(h)(2) and 14 of the UMT Act (49 U.S.C. 1604(h)(2) and 1610), and Section 174(b) of the Clean Air Act;

(3) Include provisions to ensure early and continuing involvement of the public, as actively supported and strongly encouraged by the Departmental Policy Statement on Citizen Participation in Local Transportation Planning. Individuals and groups should have full access to all relevant information. Citizens should be provided such assistance as appropriate to assure meaningful participation in the process. Minorities, women and other interested persons should have an adequate opportunity for full participation in the process and representation on advisory committees;

(4) Be consistent with Title VI of the Civil Rights Act of 1964 and the Title VI assurance executed by each State under 23 U.S.C. 324 and 29 U.S.C. 794, which ensure that no person shall on the grounds of race, color, sex, national origin, or physical handicap be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program receiving Federal assistance from the Department of Transportation;

(5) Include special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons pursuant to Section 16 of the UMT Act (49 U.S.C. 1612), Section 165(b) of the Federal-Aid Highway Act of 1973, as amended, and 49 CFR Part 27;

(6) Provide for the consideration of energy conservation goals, objectives, and where established, energy conservation targets;

(7) Provide for the involvement of the traffic, ridesharing, parking, and enforcement agencies; airport and port authorities; and appropriate private transportation providers;

(8) Include the following activities as necessary and to the degree appropriate for the size of the metropolitan area and the complexity of its transportation problems:

(i) An analysis of existing conditions of travel, tranportation facilities, vehicle

fuel consumption, and systems management;

(ii) An evaluation of alternative TSM improvements and the development of the short-range element of the transportation plan to:

(A) Make more efficient use of existing transportation resources;

(B) Assist in improving air quality;

(C) Reduce energy consumption for transportation overall; and

(D) Respond to short-term disruptions in the energy supply;

(iii) Projections of urban area economic, demographic, and land use activities consistent with urban development goals, and projections of potential transportation demands based on these levels of activity;

(iv) Estimation of the distribution of costs and impacts of transportation alternatives on various segments of the population;

(v) Analysis of alternative transportation investments or strategies to meet areawide needs for transportation facilities and to aid in the development of the long-range element of the transportation plan, such analysis to include estimates of the air quality impacts, impacts on the economic vitality of existing commerical centers and the energy consumption of each alternative;

(vi) Refinement of the transportation plan through the conduct of corridor, transit technology, and staging studies; and sub-area, feasibility, location, legislative, fiscal, functional classification, institutional, air quality impact and energy impact studies;

(vii) Monitoring and reporting of urban development, transportation, and energy consumption indicators and a regular program of reappraisal of the transportation plan implementing programs;

(viii) Implementation programming which merges the results of plan refinement of the long-range element and the improvements recommended in the short-range element of the transportation plan to produce a TIP as specified in Subpart C of this part; and

(ix) An analysis of goods and services movement problem areas, as determined in cooperation with appropriate private sector involvement, including but not limited to port access and traffic impacts of urban goods and services operations.

(b) The urban transportation planning process shall include preparation of technical reports to assure documentation of the development, refinement, and reappraisal of the transportation plan.

§ 450.122 Urban transportation planning process: Major urban transportation investments.

(a) The analysis of alternatives for transportation investments to meet areawide needs for new transportation facilities described by § 450.120(a)(8)(v) shall consider the cost and effectiveness of proposed major urban investments in attaining local, State, and national goals and objectives.

(b) In corridors where a major urban transportation investment is proposed in the long-range element of the urban transportation plan, the corridor studies described in § 450.120(a)(8)(vi) shall further refine the analysis of alternatives at the corridor scale. These studies shall include an evaluation of the cost-effectiveness, the location (i.e., general alignment), the degree of grade separation, and the operating characteristics of the alternatives under consideration. Studies involving transit alternatives shall also include an evaluation technology.

(c) Corridor refinement studies shall serve as the basis for the draft environmental impact statement.

(d) Corridor refinement studies are eligible to receive funds authorized under Sections 3 and 8 of the UMT Act of 1964, as amended, and planning and construction funds apportioned under 23 U.S.C., as appropriate.

§ 450.124 Urban transportation planning process: Certification.

(a) The Federal Highway and Urban Mass Transportation Administrators jointly will review and evaluate as appropriate the transportation planning process in each urbanized area to determine if the process meets the requirements of this subpart.

(b) In nonattainment areas requiring transportation control measures, the FHWA and UMTA Administrators will review and evaluate the transportation planning process to assure conformance with the SIP in accordance with procedures contained in 23 CFR Part 770.

(c) If, upon the review and evaluation conducted under paragraphs (a) and (b) of this section, the FHWA and UMTA Administrators jointly determine that the transportation planning process in an urbanized area meets or substantially meets the requirements of this subpart, they may take one of the following actions, as appropriate:

(1) Certify the transportation planning process; or

(2) Certify the transportation planning process subject to one of the following conditions:

(i) That certain specified corrective actions be taken; or

(ii) That the process is a basis for approval of only those categories of programs or projects that the Administrators may jointly determine and that certain specified corrective actions be taken.

(d) The State and the MPO shall be notified of the actions taken under paragraph (b) of this section.

(e) A certification under paragraph (b) of this section will remain in effect until a new certification determination is made.

Appendix A—.—Advisory Information on Transportation System Management Under UMTA and FHWA Joint Regulations, 23 CFR Part 450, Subparts A and C, and 49 CFR Part 613, Subparts A and B

1. *Purpose.* To implement the updated urbanized area planning requirements contained in Title 23 of the United States Code and the Urban Mass Transportation Act of 1964, as amended, UMTA and FHWA have jointly issued revised regulations (23 CFR Part 450 and 49 CFR Part 613). These regulations require that the transportation planning process in each urbanized area develop (1) a plan addressing Transportation System Management (TSM) in both the long and short-range elements and (2) a Transportation Improvement Program (TIP).

This appendix provides additional guidance on the intent and scope of the requirement for Transportation System Management. Criteria that the U.S. Department of Transportation will use in reviewing the adequacy of the TSM activities in planning and programing are also included.

2. *Goals.* Transportation plans and programs are, to an increasing extent, being called upon to address a host of issues, such as energy conservation, air quality, environmental problems and urban revitalization. At the same time, increasing costs of transportation facilities and decreasing fiscal resources make major new investments extremely difficult. These factors have made it increasingly important that transportation resources—facilities, equipment and services—be operated in the most efficient manner possible. It is this need that led to the concept of TSM and its inclusion as a required feature of transportation plans for urbanized areas.

When originally introduced, the TSM concept represented a significant change in the direction of transportation planning and programing. TSM requires the planning process to expand its focus to include assessments of improved *service and operations*, as well as *facilities*, as a potential means to maximize mobility. TSM also requires the process to address both *supply* and *demand*. The TSM concept requires viewing the transporation system as a whole with all modes receiving attention. The philosophy calls for addressing the transportation of people and goods, not merely movement of vehicles.

TSM accounts for more explicitly new factors in transportation decision-making such as energy, environment, air quality, and fiscal limitations. The constraints on mobility must be dealt with if it is to be maintained or

expanded. In addition, opportunities to enhance mobility exist in urban revitalization efforts that the process should be capable of stimulating.

TSM should be tied to planning required by the Clean Air Act and planning specified by a variety of other statutes covering energy conservation. Consistency in plans undertaken to meet these goals is best developed at the local level.

3. *Scope.* Transportation System Management is a philosophy about planning, programing, implementation and operations that calls for improving the efficiency and effectiveness of the transportation system by improving the operations and/or services provided. TSM aspects of the Transportation Plan address services and operations of the system and identify management and operational changes needed to improve efficiency and effectiveness.

A range of tactics (actions) is available to meet the goals outlined. Examples are:

- Traffic operations improvements
- Ridesharing
- Incentives to use of high occupancy vehicles (such as buses, carpools and vanpools), including preferential parking, reserved lanes, exclusive ramps, etc.
- Pedestrian and bicycle provisions
- Parking management programs, including enforcement, pricing, supply management, zoning changes, permit systems etc.
- Work schedule changes, including flexitime, staggered hours, compressed work weeks
- Goods movement measures
- Pricing actions
- Paratransit services
- Transit route and schedule changes
- Transit management improvements
- Innovative transit services types

In every case, these tactics address the operations or services provided by the transportation system. In addition, some of these tactics can affect transportation demand, as opposed to only supply.

Transportation System Management is applicable to number of operating environments and with a wide range of agencies and groups participating. For example, the central business district (CBD) is a likely site for high occupancy vehicles parking preferences, bus lanes, pedestrian facilities, auto restrictions, etc., while neighborhoods are appropriate for parking permit programs and traffic operational actions discouraging through travel. Further, a radial corridor is an appropriate place for high occupancy vehicle lanes, express bus services and park and ride lots. Each of these actions need the support and coordination of a broad range of agencies and interest groups.

Transportation System Management measures often have synergistic effects. In other words, several tactics applied together may often be more effective as a group than individual actions taken in an uncoordinated manner. Therefore, there should be a systematic approach to TSM planning rather than a piecemeal approach. For example, a package of measures to improve the efficiency of a corridor as a whole should be developed as opposed to only looking at individual problem areas in the corridor in an isolated manner.

Since Transportation System Management actions involve operations and services on existing facilities rather than development of major new facilities, they are generally *low cost.* Certain actions such as high occupancy vehicle incentives or development of transit mall, may involve substantial sums, however.

TSM involves both short and long-term actions. Service and operation changes generally can be implemented more quickly than construction of new facilities and thus can have a short-range focus. However, TSM strategies may also involve *long-term* facility improvements (e.g., dedication of a new facility to high occupancy vehicle use) and have long-term impacts.

4. *Roles and Responsibilities.* A wide range of agencies is likely to participate in addressing TSM considerations in the planning process. While the MPO is primarily responsible for TSM coordination, other agencies, including State DOTs, city traffic departments, public transit operators and enforcement agencies, as well as the private sector, should also be involved. These agencies generally have better knowledge of the operations of specific system elements under their control and can be called on to implement improvements. Private sector involvement in programs such as ridesharing, work schedule changes, goods movement, auto restricted zones, etc., is vital to their success.

The metropolitan planning organization (MPO) has lead responsibility for the coordination of the TSM activities called for by the joint planning regulations. This does not mean, however, that the MPO must conduct all TSM work itself. Rather, local agencies, such as city traffic departments, the State DOT and area public transit operators, should be involved. The decision on which agency should conduct needed analyses should be made locally and should be based on the scale and level of the particular project or problem under study. For example, it is probably most appropriate that operators conduct route and schedule studies and other similar transit management analyses and that local traffic departments undertake signalization studies. In order to support these efforts, MPOs are encouraged to pass Federal planning assistance funds through to such agencies.

Private sector involvement is also important. Employers should be involved in ridesharing or transit-use promotions or in work rescheduling to spread peaks. Also, private providers of mass transit services should be considered for new services, such as paratransit or special user operations. Studies of goods movement management issues, such as truck routes, port access, downtown delivery, etc., should involve the private sector and port authorities.

Ensuring that all likely participants have an appropriate role can be critical to the success of a specific strategy. For example, a downtown parking management program would require participation of a variety of city agencies such as planning and zoning, traffic, and administration. Police involvement early in the planning process would ensure that enforcement is given adequate attention. Downtown businessmen, whose operations might be affected, should be involved. Support from such a group could be critical. The transit operator could suggest key bottlenecks where parking changes could be beneficial. Finally, the MPO can analyze regional impacts and serve to coordinate the overall effort.

5. *Technical Activities.* To adequately address the goals of the requirement for TSM, a number of key technical activities should be undertaken in each urbanized area as part of the continuing planning process.

Each area's Unified Planning Work Program (UPWP) should reflect, to the extent appropriate, the following critical activities:

- System monitoring and data collection, including traffic and auto occupancy counts and transit ridership monitoring and surveys;
- Regional scale problem identification, allowing for selection of areas for detailed study of person and goods movement problems;
- Transit service planning, including reviews of service area, route, schedules, etc., on a comtinuing basis;
- Transit management analyses, covering maintenance practices, organization, personnel policies, financial planning, training, labor relations, etc.;
- Ridesharing and high occupancy vehicle analyses for HOV lanes, parking management, alternative work schedules, etc.;
- Analysis of signal timing optimization and other traffic engineering measures;
- Coordination of local agency activities to ensure that these will result in a plan that is internally consistent;
- Selective post-project evaluations to determine the effectiveness of implemented projects and areas for modification;
- Energy contingency planning.

UMTA and FHWA will review each area's UPWP closely to ensure that sufficient attention is given to these critical activities.

6. *Documentation.* No new documentation products are required to address TSM. The plans and programing implications of TSM will be documented in the normal products of the urbanized area planning process.

The United Planning Work Program (UPWP) should also include a discussion of goals and objectives; a general description of the process for developing, evaluating, and implementing alternative strategies, including TSM alternatives; and a description of the functional responsibilities of the participants in the process. The UPWP should describe TSM planning to be undertaken during the period it covers, including treatment of the critical technical areas outlined above.

Individual technical reports, such as short-range transit plans or traffic engineering studies, should document the procedures that were used to develop, refine or reappraise TSM aspects of the plan; the evaluation of alternative strategies; and the strategies recommended for implementation.

The transportation plan report(s) should describe TSM aspects, including a brief description of system problem areas and recommend TSM improvements. This documentation should provide local officials with a clear understanding of what is being recommended, e.g., type of improvements, locations, financial aspects, etc.

The Transportation Improvement

Program/Annual Element (TIP/AE) should identify implementation costs and schedules, funding sources, and agency responsibilities for TSM projects to be implemented.

The manner in which TSM is documented should not be confused with the need for project justification. Technical information that may be needed for justifying certain types of transit projects should be provided in technical reports on those projects and is not required in the document(s) describing TSM aspects of the transportation plan.

The joint planning regulations require that the plan be reviewed and endorsed periodically. Certification reviews will ensure that TSM is adequately addressed in the plan and that it is updated and endorsed properly.

7. *Programing.* Effective planning for Transportation System Management should result in the programing and implementation of TSM type projects. One measure of the adequacy of the TSM planning effort conducted in an urbanized area is the level of TSM activity found in the area's Transportation improvement program (other measures include past progress in TSM implementation, and most importantly, the overall efficiency of existing system service and operations). While FHWA and UMTA will not prescribe the number of types of projects that must appear in an area's TIP, an adequate level of effort in TSM planning will usually result in programs and projects in the following areas, regardless of the source of funds:

- Ridesharing
- Traffic control signalization
- High occupancy vehicle incentives
- Pedestrian and bicycle facilities

In addition, an adequate level of effort in TSM planning focused on the efficiency of existing services will generally result in the existence, on an ongoing basis, of programs covering transit service monitoring and assessment, transit service adjustments, transit maintenance programing, financial management programs and management and organizational improvement programs. Progress in these activities will receive close attention from UMTA and FHWA.

8. *Funding.* A variety of funding sources are available to support planning and implementation for TSM. UMTA places priority on use of Section 8 technical studies funds for TSM planning as does FHWA on use of PL and HP&R funds. Implementation funds are available from UMTA through the Section 3 discretionary capital grant program and the Section 5 urban mass transportation formula grant program. Federal-aid highway funds may also be used to implement a wide range of TSM-type projects in accordance with normal Federal-aid eligibility requirements. Traffic control signalization projects may be funded at the 100 percent Federal share level.

Appendix B.—Advisory Information on Planning for Elderly and Handicapped Persons Under UMTA and FHWA Joint Regulations, 23 CFR 450, Subparts A and C, and 49 CFR 613, Subparts A and B

1. *Background.* Section 16(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612), declares the national policy that elderly and handicapped persons have the same right as other persons to utilize mass transportation facilities and services; directs that special efforts be made in the planning and design of mass transportation facilities and services so that the availability of mass transportation which elderly and handicapped persons can effectively utilize will be assured; and directs that all federal programs offering assistance in the field of mass transportation contain provisions implementing this policy. Section 165(b) of the Federal-Aid Highway Act of 1973, as amended, contains a similar provision applicable to title 23 mass transportation assistance.

Pursuant to the planning requirements established for urbanized areas in title 23 and the Urban Mass Transportation Act of 1964, as amended, UMTA and FHWA have jointly issued regulations (23 CFR Part 450 and 49 CFR Part 613) that require the urban transportation planning process to include special efforts to plan public mass transportation facilities and services that can effectively be utilized by elderly and handicapped persons. The purpose of this supplementary statement is to provide additional guidance on the special efforts requirement.

2. *General.* Elderly persons and the ambulatory handicapped constitute a significant fraction of present transit ridership. General improvement to transit service can thus be expected to improve conditions for these groups. UMTA's equipment design requirements are meant to ensure that transit equipment is made comfortable and attractive for these users.

Particular care should be directed toward serving the travel needs generated by concentrations of the elderly. The service provided to areas with a high proportion of elderly residents is required to be shown in applications to UMTA for capital or operating assistance.

The focus of this guidance is on service to persons who, because of age or disability, are unable to utilize present transit service and facilities effectively, particularly those who use wheelchairs or other mobility aids which are not accommodated by current bus design. In many communities, persons who use wheelchairs or who otherwise have considerable difficulty negotiating steps find public transportation impossible to use for physical reasons, and private transportation-for-hire (e.g., special taxicab service, medicab, etc.) prohibitively expensive. Specific planning for this group is central to meeting the special efforts requirement.

3. *Consumer representation.* Section 450.120 of the joint planning regulations requires that the planning process include provisions to ensure involvement of the public. Elderly and handicapped persons, including wheelchair users and semiambulatory persons, are a part of the public and should be appropriately involved in the planning process to meet the special efforts requirement. The MPO must describe in what ways such persons, including wheelchair users and semiambulatory persons, were involved in the planning and programming process. Further, it is presumed to be unlikely that effective project development to meet the needs of these users can occur without the assistance and cooperation of such persons, including wheelchair users and semiambulatory persons, and of public and private health and welfare agencies and handicapped consumer groups.

4. *Special efforts, urban transportation planning process.* The urban transportation planning process must include special efforts to plan public mass transportation facilities and service that can effectively be utilized by elderly and handicapped persons. As used in this guidance, the term "special efforts" refers both to service for elderly and handicapped persons in general and specifically to service for wheelchair users and semiambulatory persons. With regard to transportation for wheelchair users and others who cannot negotiate steps, "special efforts" in planning means genuine, good-faith progress in planning service for wheelchair users and semiambulatory handicapped persons that is reasonable by comparison with the service provided to the general public and that meets a significant fraction of the actual transportation needs of such persons within a reasonable time period. Particular attention should be given to those handicapped persons who are employed or for whom the lack of adequate transportation constitutes the major barrier to employment or job training.

In order to fulfill the special efforts requirement in planning it will be necessary to identify the location and transportation needs of wheelchair users and semiambulatory handicapped persons within the urbanized area. To the extent possible this information should be derived from existing and secondary sources. Primary considerations should be given to self-identification techniques, i.e., asking the handicapped to identify themselves and report their transportation needs to the planning body, as opposed to elaborate search techniques.

In carrying out planning for wheelchair users and semiambulatory persons, a range of alternative service improvements should be evaluated as to coverage, cost, and benefit. Maximum feasible opportunity should be given to private carriers, whether or not they are presently providing mass transportation

services, to provide some or all of the services selected.

Considerable short-term benefit can be derived from the coordination and rationalization of existing resources and services to meet the needs of the elderly and handicapped, including wheelchair users and semiambulatory handicapped persons. Governmental health and welfare agencies and private nonprofit organizations spend substantial sums each year to provide or purchase transportation for their clients, and these resources as well as any reduced fare local taxi service should be considered for inclusion in a local coordinated plan.

Finally, the planning process should produce a discussion of the process under which the alternatives were evaluated and the rationale for selection of the service improvement or improvements.

Appendix C.—Procedures for the Administration of Corridor Refinement Studies

The following procedures will normally apply in FHWA and UMTA administration of corridor refinement studies:

1. When an applicant requests approval for a corridor refinement study, the request will be supported by:

(a) An identification of the corridor(s) in which major transportation investments may be warranted;

(b) A description of a number of reasonable alternative major investments for the corridor(s); and

(c) Evidence that demonstrates that further study of major transportation investments is warranted.

2. As part of the scoping process and as early as possible, FHWA and/or UMTA will reach agreement with the applicant on the following aspects of the study:

(a) A range of reasonable alternatives to be studied including, at a minimum, a no action and TSM alternative;

(b) Procedures to be used to estimate the cost and effectiveness of each alternative;

(c) The evaluation methodology;

(d) The process for citizen involvement; and

(e) The administrative arrangements among the MPO, the State, and the public transit operator(s) for conduct of the study.

3. Federal administrative responsibility for the corridor refinement studies depends primarily upon the range of alternatives to be considered. The administration of the study may involve both FHWA and UMTA as joint lead agencies. A joint lead agency agreement will normally result where:

(a) The range of alternatives include a mix of highways and mass transportation investments;

(b) It is uncertain whether FHWA and UMTA will be requested to fund the investment; or

(c) The FHWA and UMTA Administrators decide to establish joint lead agency agreements.

4. During the joint corridor refinement study, FHWA and UMTA will review and monitor the progress of the study and provide guidance as necessary. FHWA and UMTA will participate in the development of the draft EIS to ensure its compliance with Federal requirements. FHWA and UMTA will process the draft EIS in conformance with FHWA/UMTA environmental regulations.

2. Part 450, Subpart C of 23 CFR is amended to read as follows:

PART 450—PLANNING ASSISTANCE AND STANDARDS

Subpart C—Transportation Improvement Program

Sec.
450.300 Purpose.
450.302 Applicability.
450.304 Definitions.
450.306 Transportation improvement program: General.
450.308 Transportation improvement program: Content.
450.310 Annual element: Project initiation.
450.312 Annual element: Content.
450.314 Annual element: Modification.
450.316 Action required by the metropolitan planning organization.
450.318 Selection of projects for implementation.
450.320 Program approval.

Authority: 23 U.S.C. 105, 134(a), 135(b); secs. 3, 5, 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); secs. 110, 172, 174, and 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

Subpart C—Transportation Improvement Program

§ 450.300 Purpose.

The purpose of this subpart is to establish guidelines for the development, content, and processing of a cooperatively developed transportation improvement program in urbanized areas and to prescribe guidelines for the selection by implementing agencies of annual programs of projects to be advanced in urbanized areas.

§ 450.302 Applicability.

(a) This subpart applies to projects in or serving urbanized areas with funds made available under:

(1) 23 U.S.C. 104(b)(6) (urban systems projects);

(2) 23 U.S.C. 104(e)(4) (Interstate substitution projects);

(3) Sections 3 and 5 of the Urban Mass Transportation Act of 1964, as amended (UMT Act) (49 U.S.C. 1602 and 1604—UMTA capital and operating assistance projects);

(4) 23 U.S.C. 104(b)(1) (projects on extensions of primary systems in urbanized areas), except as provided in this subpart;

(5) 23 U.S.C. 104(b)(5) (projects on the Interstate System), except as provided in this subpart.

(b) Projects under paragraphs (a) (4) and (5) of this section, which are included in the highway safety improvement program, may be excluded from the transportation improvement program at the option of the State.

§ 450.304 Definitions.

(a) Except as otherwise provided, terms, defined in 23 U.S.C. 101(a) are used in this subpart as so defined.

(b) As used herein:

"Annual element" means a list of transportation improvement projects proposed for implementation during the first program year.

"Governor" means the Governor of any one of the fifty States, or Puerto Rico, and includes the Mayor of the District of Columbia.

"Highway safety improvement program" means a program prepared by the State pursuant to 23 CFR Part 924.

"Interstate substitution projects" means projects funded under 23 U.S.C. 103(e)(4) (Withdrawal of Interstate segments and substitution of either nonhighway public mass transit projects or highway projects, or both).

"Interstate System projects" means projects funded under 23 U.S.C. 104(b)(5).

"Metropolitan planning organization (MPO)" means that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as provided in 23 U.S.C. 104(f)(3), and capable of meeting the requirements of Sections 3(e)(1), 5(1), and 8(a) and (c) of the UMT Act (49 U.S.C. 1602(e)(1), 1604(1), and 1607(a) and (c)). This organization is the forum for cooperative decision-making by principal elected officials of general purpose local government.

"Nonattainment area" means a region as defined in Section 171 of the Clean Air Act.

"State implementation plan (SIP)" means a plan approved or promulgated under Section 110 of the Clean Air Act.

"Transportation improvement program (TIP)" means a staged multiyear program of transportation improvements including an annual element.

§ 450.306 Transportation improvement program: General.

(a) The transportation improvement program (TIP) shall be developed and updated annually under the direction of the metropolitan planning organization (MPO) in cooperation with:

(1) State and local officials;

(2) Regional and local transit operators;

(3) Recipients authorized under Section 5(b) (2) or (3) of the UMT Act (49 U.S.C. 1604(b) (2) or (3)); and

(4) Other affected transportation and regional planning and implementing agencies.

(b) The TIP shall consist of improvements recommended from the short-range and long-range elements of the transportation plan developed under § 450.116.

(c) The TIP shall cover a period of not less than 3 years, but may at local discretion cover up to 5 or more years.

§ 450.308 Transportation improvement program: Content.

The TIP shall:

(a) Identify transportation improvements recommended for advancement during the program period;

(b) Indicate the area's priorities;

(c) Group improvements of similar urgency and anticipated staging into appropriate staging periods;

(d) Include realistic estimates of total costs and revenues for the program period.

§ 450.310 Annual element: Project initiation.

Federally funded projects shall be initiated for inclusion in the annual element at all stages in the development of the transportation improvement for which program action is proposed. These projects shall be initiated as follows:

(a) Proposed urban system highway projects shall be initiated by local officials in whose jurisdiction the project is located.

(b) Proposed urban system nonhighway public mass transit projects and Interstate substitution nonhighway public mass transit projects shall be initiated by principal elected officials of general purpose local governments in consultation with local operating officials or by local transit operating officials.

(c) Proposed UMTA Section 3 projects (49 U.S.C. 1602) shall be initiated by recipients authorized under Section 5(b)(2) or (3) of the UMT Act (49 U.S.C. 1604(b)(2) or (3)), by local transit operating officials, or by principal elected officials of general purpose local governments in cooperation with local transit operating officials.

(d) Proposed UMTA Section 5 projects (49 U.S.C. 1604) shall be initiated by recipients authorized under Section 5(b)(2) or (3) of the UMT Act (49 U.S.C. 1604(b) (2) or (3)). Nothing in this paragraph is intended to prohibit or discourage the initiation by such recipients of projects recommended by local transit operating officials or by principal elected officials of general purpose local governments in cooperation with local transit operating officials.

(e) Proposed urban extension and Interstate System projects shall be initiated by the State highway agency.

(f) Proposed Interstate substitution highway projects shall be initiated according to the provisions of this section for the Federal-aid system of which they will be a part.

§ 450.312 Annual element: Content.

(a) Except as provided in § 450.302(b), the annual element shall contain:

(1) Projects initiated under § 450.310 and endorsed under § 450.316; and

(2) For informational purposes, all nonfederally funded projects recommended from the transportation systems management element.

(b) With respect to each project under paragraph (a) of this section the annual element shall include:

(1) Sufficient descriptive material (i.e., type of work, termini, length, etc.) to identify the project;

(2) Estimated total cost and the amount of Federal funds proposed to be obligated during the program year;

(3) Proposed source of Federal and non-Federal funds; and

(4) Identification of the recipient and State and local agencies responsible for carrying out the project.

(c) Projects proposed for Federal support that are not considered by the State and MPO to be of appropriate scale for individual inclusion in the annual element may be grouped by functional classification, geographic area, and work type.

(d) The annual element shall be reasonably consistent with the amount of Federal funds expected to be available to the area. Federal funds that have been allocated to the area pursuant to 23 U.S.C. 150 shall be identified.

(e) The total Federal share of projects included in the annual element and proposed for funding under Section 5 of the UMT Act (49 U.S.C. 1604) may not exceed apportioned Section 5 funds available to the urbanized area during the program year.

(f) In nonattainment areas which require transportation control measures, the annual element shall give priority to projects identified in the transportation control portion of the SIP in accordance with procedures contained in 23 CFR Part 770.

§ 450.314 Annual element: Modification.

The annual element may be modified at any time consistent with the procedures established in this subpart for its development.

§ 450.316 Action required by the metropolitan planning organization.

(a) The TIP, including the annual element, shall be endorsed annually by the MPO.

(b) In nonattainment areas which require transportation control measures, the MPO shall not endorse any project or program which does not conform to the SIP.

(c) The MPO shall submit the TIP including the annual element:

(1) To the Governor and the Urban Mass Transportation Administrator, and

(2) Through the State to the Federal Highway Administrator.

§ 450.318 Selection of projects for implementation.

(a) The projects proposed to be implemented with Federal assistance under Sections 3 and 5 of the UMT Act (49 U.S.C. 1602 and 1604) and nonhighway public mass transit projects under 23 U.S.C. 103(e)(4) shall by those contained in the annual element of TIP submitted by the MPO to the Urban Mass Transportation Administrator.

(b) Upon receipt of the TIP, the State shall include in the statewide program of projects required under 23 U.S.C. 105:

(1) Those projects drawn from the annual element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(6) (Federal-aid urban system) in which it concurs: *Provided, however,* That in any case where the State does not coucur in a nonhighway public mass transit project, a statement describing the reasons for the nonconcurrence shall accompany the statewide program of projects; and

(2) Those projects drawn from the annual element and proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (Federal-aid primary system projects in urbanized areas) and 23 U.S.C. 104(b)(5) (Interstate System projects in urbanized areas); and

(3) Those projects not drawn from the annual element that are proposed to be implemented with Federal assistance under 23 U.S.C. 104(b)(1) (Federal-aid primary system projects in urbanized areas) and 23 U.S.C. 104(b)(5) (projects on the Interstate System): *Provided,* That:

(i) Such project or projects were initiated pursuant to § 450.310(e); and

(ii) Such project or projects are for highway transportation improvements for which there has been a Federal authorization to acquire right-of-way Federal approval of physical construction or implementation where right-of-way acquisition was not previously federally funded.

(c) For each project under paragraph (b)(3) of this section a statement shall

accompany the statewide program of projects which shall:

(1) Include the views of the MPO; and

(2) Indicate how the requirements of 23 U.S.C. 134(a) have been met.

(d) The preparation and endorsement of the TIP and the selection of projects in accordance with this subpart will meet the requirements of 23 U.S.C. 105(d), 23 U.S.C. 134(a), and Section 8(a) of the UMT Act (49 U.S.C. 1607(a)).

(e) The State shall notify the MPO of actions taken under paragraph (b) of this section.

§ 450.320 Program approval.

(a) Upon the determination by the Federal Highway Administrator and the Urban Mass Transportation Administrator that the TIP or portion thereof is in conformance with this subpart and that the area is under planning certification, programs of projects selected for implementation under § 450.318 of this subpart will be considered for approval as follows:

(1) Federal-aid urban system projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by:

(i) The Federal Highway Administrator with respect to highway projects;

(ii) The Urban Mass Transportation Administrator with respect to nonhighway public mass transit projects; and

(iii) The Federal Highway Administrator and the Urban Mass Transportation Administrator jointly in any case where the statewide program of projects submitted pursuant to 23 U.S.C. 105 does not include all Federal-aid urban system nonhighway public mass transit projects contained in the annual element.

(2) Interstate substitution nonhighway public mass transit projects included in the annual element of the TIP will be approved by the Urban Mass Transportation Administrator.

(3) Projects proposed to be implemented under Sections 3 and 5 of the UMT Act (49 U.S.C. 1602 and 1604) included in the annual element of the TIP will be approved by the Urban Mass Transportation Administrator after considering any comments received from the Governor within 30 days of the submittal required by § 450.316(b)(1).

(4) Federal-aid urban extension and Interstate projects included in the statewide program of projects under 23 U.S.C. 105 will be approved by the Federal Highway Administrator.

(b) Approvals by the Federal Highway Administrator or joint approvals by the Federal Highway Administrator and Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with 23 CFR Part 630, Subpart A. Approvals granted under this section will constitute:

(1) The approval required under 23 U.S.C. 105; and

(2) A finding that the program is based on a continuing, comprehensive transportation planning process carried on cooperatively by the States and local communities in accordance with the provisions of 23 U.S.C. 134.

(3) In nonattainment areas which require transportation control measures, a finding that the program conforms with the SIP and that a priority has been given to transportation control measures contained in the SIP in accordance with procedures contained in 23 CFR Part 770.

(c) Approvals by the Urban Mass Transportation Administrator will be in accordance with the provisions of this subpart and with other applicable provisions of 49 CFR Part 613, Subpart B. These approvals will constitute:

(1) The approval required under Section 8(a) of the UMT Act (49 U.S.C. 1607(a));

(2) A finding that the projects are based on a continuing, cooperative and comprehensive transportation planning process carried on in accordance with the provisions of Section 8 of the UMT Act (49 U.S.C. 1607), as applicable;

(3) A finding that the projects are needed to carry out a program for a unified or officially coordinated urban transportation system in accordance with the provisions of Sections 5(1) or 8(c) of the UMT Act (49 U.S.C. 1604(1) or 1607(c)), as applicable; and

(4) In nonattainment areas which require transportation control measures, a finding that the program conforms with the SIP and that a priority has been given to transportation control measures contained in the SIP in accordance with procedures in 23 CFR Part 770.

3. In Part 630, Subpart A, 630.106 is amended by redesignating paragraphs (b) and (c) and (c) and (d) respectively, and adding a new paragraph (b) to read as follows:

§ 630.106 Policy.

* * * * *

(b) Federal support is available only for those major urban transportation investment alternatives that meet local, State, and national goals and objectives in a cost-effective manner.

* * * * *

Title 49—Transportation

PART 613—PLANNING ASSISTANCE AND STANDARDS

4. Part 613, Subpart A of 49 CFR is amended by revising the authority statement to read as follows:

Authority: 23 U.S.C. 104(f)(3), 134, and 315; Sections 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); secs. 110, 172, 174, and 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

5. Part 613, Subpart B of 49 CFR is amended to read as follows:

Subpart B—Transportation Improvement Program

Sec.
613.200 Transportation improvement program.
613.202 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.
613.204 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.
Appendix—Policy and procedures for major urban mass transportation investments.

Authority: 23 U.S.C. 105, 134(a), and 135(b); secs. 3, 5, and 8(c) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602, 1604, and 1607(c)); secs. 110, 172, 174, and 176 of the Clean Air Act; and 49 CFR 1.48(b) and 1.51.

Subpart B—Transportation Improvement Program

§ 613.200 Transportation improvement program.

The transportation improvement program regulations establishing guidelines for the development, content, and processing of a cooperatively developed transportation improvement program in urbanized areas and also prescribing guidelines for the selection, by implementing agencies, of annual programs of projects to be advanced in urbanized areas which are set forth in 23 CFR Part 450, Subpart C, are incorporated into this subpart.

§ 613.202 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.

(a) This section establishes certain additional criteria to be considered by the Urban Mass Transportation Administrator in his/her program approval pursuant to 23 CFR 450.320(a)(3) for all projects proposed for implementation with Federal assistance under Sections 3 and 5 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1602 and 1604), in urbanized areas having a population of 200,000 or more.

(b) The Urban Mass Transportation Administrator will grant program approval for projects under paragraph (a) of this section only after he/she has determined that:

(1) The transportation plan developed pursuant to 23 CFR 450.116 contains TSM strategies and actions which are reflected in the annual element of the transportation improvement program; and

(2) Reasonable progress has been demonstrated in implementing previously programed projects.

§ 613.204 Additional criteria for Urban Mass Transportation Administrator's approvals under 23 CFR 450.320.

The Urban Mass Transportation Administrator will grant project approvals for major urban investments pursuant to 23 CFR 450.320(a)(3) only if he/she determines that the projects meet local, State, and national goals and objectives in a cost-effective manner.

Appendix.—Policy and Procedures for Major Urban Mass Transportation Investments

Since the beginning of the 1970's, the Federal Government has provided an increasing share of the Nation's capital investment in urban mass transportation. In the years ahead, as more and more communities seek Federal Financial aid to improve and expand their mass transportation systems, it is more essential than ever that Federal funds be effectively and efficiently utilized.

Since each metropolitan area has differing characteristics, Federal mass transportation assistance cannot be based on standardized prescriptions. Rather, Federal support should be flexible, relying heavily on local ability to assess present and anticipated transportation needs, identify and evaluate alternative opportunities for improvement, and initiate needed actions.

The Federal Government does, however, have a strong interest in ensuring that Federal funds available for mass transportation investments be used prudently and with maximum effectiveness. While there are no simple or standard procedures that will guarantee this outcome, a careful and systematic evaluation of the implications of alternative courses of action in advance of a Federal commitment should improve the quality of decisions. To this end, a completed corridor refinement study will be required as a conditon of eligibility for Federal assistance for a major mass transportation investment.

A major mass transportation investment is any project which involves new construction or extension of a fixed guideway system (rapid rail, light rail, commuter rail, automated guideway transit) or a busway, except where such projects are part of a demonstration program. Rehabilitation and modernization projects are not included in the scope of this definition.

Rail transit means all forms of rail passenger transportation serving metropolitan areas. It includes "rail rapid transit", "light rail" and "commuter (or regional) rail" technology operating on surface, elevated or sub-surface rights-of-way. The definition excludes busways and "people movers" or other types of automated guideway technology (AGT), although similar rigorous standards are also applicable to those investments.

"Rail Lines" means both extensions to existing metropolitan rail systems and initial segments of new urban or metropolitan rail systems.

I. Increasing the effectiveness of Rail Transit Investments

The Federal Government has a strong obligation to ensure that the Federal assistance dollars are spent prudently and with maximum effectiveness. To this end, UMTA will adhere to the following set of policies which will apply to all rail transit proposals:

1. Any approval for preliminary engineering of a rail transit proposal must be preceded by a federally approved corridor refinement study which considers a full range of modal alternatives such as rapid transit, light rail, busway, people mover and transportation system management (TSM) options, and service and alignment alternatives, as well as a no action alternative. Applicants will be required to show clearly and convincingly the need for partially or fully grade-separated transit service and to demonstrate that the proposed transit solution is, on balance, superior to other options, considering such factors as ridership, capital and operating expenses, transportation service, and social environmental, urban revitalization, and energy conservation objectives.

2. Urban areas will have to demonstrate a compelling need for high-performance transit service in order to obtain Federal assistance for rail rapid transit. The use of partially or fully on surface rights-of-way, may offer a substantially less costly, less disruptive, and more flexible rail transit option, and should be seriously considered, especially in places where extensive underground or elevated construction would otherwise be required.

3. Where the long range element of an areawide plan calls for the construction of an area-wide network or rail lines, UMTA will require that the system be analyzed, approved and built in stages. Initial segments of the system should be proposed in corridors which can justify the need for fixed guideway service within 15 years of the date of the analysis. Each segment should be capable of justification on its own merits. This incremental approach to construction of urban rail transit, is aimed at insuring that the burden of financing the system is spread out in time, that high volume corridors receive priority attention, that benefits of the public investment begin to accrue as soon as possible, that an appropriate balance is maintained between long and short range needs for transportation improvements, and that maximum flexibility is preserved to modify the system in response to advances in technology, changes in growth patterns, and other unforeseen circumstances.

This policy encourages the construction of the most effective segments first and discourages localities from relying on a continued flow of Federal funding to complete unworthy or marginally justified segments of a system.

Each successive segment will normally be subject to a corridor refinement study. Corridors which cannot justify fixed guideway transit service within 15 years of the analysis should be provided with levels and types of service appropriate to their needs, with the level of service being progressively upgraded as demand develops.

4. UMTA will give preference to initial rail segments serving densely populated central portions of metropolitan areas including central cities and close-in suburbs. This policy is designed to target Federal transit investment in areas with the greatest potential payoff, in terms of ridership, relief of congestion, help to transit dependents, energy conservation and air quality improvements.

5. Localities proposing to build rail transit with Federal assistance will be required to commit themselves to the development and implementation of a program of local supportive policies and actions designed to enhance the proposed system's cost-effectiveness, patronage and prospect for economic viability. The Department will require evidence of reasonable progress in carrying out this program of supportive policies as a condition of initial and subsequent construction funding approvals.

The supportive actions shall include the following:

—Zoning policies and development incentives to stimulate high density private real estate development around selected transit stations;

—Land use plans that support or reinforce the developmental impact and shaping influence of the rail transit system;

—Station area improvements in the form of plazas, malls, walkways, open spaces and other pedestrian amenities that might help reverse the physical deterioration of the central business district or revitalize declining residential neighborhoods;

—Coordinated bus and/or paratransit feeder services to the rail system especially in low density surburban areas;

—Adequate parking and other mode transfer facilities at suburban transit stations;

—Pricing, regulatory or traffic control measures aimed at managing the peak-period use of automobiles within rail corridors (e.g., traffic metering, tolls, higher parking fees, elimination of employer-subsidized parking).

6. UMTA will require localities to develop realistic estimates of future operating expenses and to identify and reach a local consensus on the specific means of funding these expenses. In particular, UMTA will require, as a condition of Federal capital assistance, the development of a stable and reliable source of local revenue to cover operating deficits.

7. Full funding contracts will be negotiated with a fixed ceiling on the Federal contribution, subject to a defined method of adjustment for inflation. Localities will be required to complete the project as defined and absorb any additional costs incurred, except under certain specific extraordinary circumstances.

8. UMTA will strengthen its role in monitoring projects in order to prevent over-design, the introduction of unnecessary embellishments, and the use of untested technologies, subsystems, and components which might adversely affect system performance and future operating and maintenance costs.

II. Procedures for Major Urban Mass Transportation Investments

This section outlines the procedures which UMTA will normally follow in reviewing corridor refinement studies, in implementing the Environmental Impact Statement (EIS) requirement of the National Environmental Policy Act of 1969, and in making funding commitments.

1. The procedures set forth in Appendix C of 23 CFR Part 450, Subpart A are used in the development of alternative major urban mass transportation investments in areawide and corridor refinement studies. They are supplemented by the following procedures.

2. After the end of the circulation period for the draft EIS, the applicant should designate, in a separate document, the locally preferred alternative and state a rationale for the choice. This document should clearly state that any recommendation is solely that of the applicant and that UMTA's judgment is reserved until the environmental process is complete.

3. Upon review of the locally preferred alternative report and the comments received on the draft EIS, UMTA will decide whether the corridor refinement study requirements have been satisfied and whether the locally preferred alternative warrants funds for preliminary engineering. This decision will be based upon an appraisal of the cost-effectiveness of the locally preferred alternative to the other alternatives examined in the analysis. The grant may be for preliminary engineering of the locally preferred alternative as well as other promising alternatives evaluated in the draft EIS.

Preliminary engineering should develop system cost, effectiveness and impact information, with particular attention to alternative designs, operations, detailed locaton decisions and appropriate mitigation measures. The final EIS should be developed during preliminary engineering. No action should be taken which would limit the choice of reasonable alternatives studied in the draft EIS until completion of the circulation of the final EIS.

UMTA may admit projects into preliminary engineering whose combined cost exceeds available Federal authorization levels. This will be done in anticipation of any of several possibilities: The withdrawal of projects as a result of changing local priorities; a local decision to use non-Federal resources to finance more than 20 percent of total cost; enactment of additional authorizations; or changing conditions such as the availability of detailed cost estimates which might lead to a later decision that a particular project should not be federally financed.

4. During the execution of preliminary engineering, the applicant will complete all the steps which must precede a Federal indication of intent to fund the project. These steps include providing evidence of firm commitment of the non-Federal capital share, providing evidence of State and/or local consensus regarding the financing of operating deficits, and planning for and gaining financing of operating deficits, and planning for and gaining financial commitment to necessary supportive actions to promote effective utilization of the proposed fixed guideway system.

A letter of intent may be issued for construction in a specific dollar amount only upon completion of the circulation of the final EIS and review of the capital grant application, the transcript of the public hearing, and the detailed cost estimates emerging from preliminary engineering. The decision to issue such a letter will be based upon a comparison of projects then pending.

5. If UMTA determines that the project warrants Federal support, UMTA will also develop with the locality a full funding contract which will (1) fix the total amount of the Federal contributions, subject to a defined method of adjusting for inflation; (2) include a mutually agreeable schedule for anticipating Federal contributions during the life of the project; and (3) require the locality to complete construction of the project as defined, and to absorb an additional cost incurred, except under certain specific "extraordinary" circumstances.

6. Specific annual contributions under the letter of intent and full funding contract will be subject to the availability of appropriations and the ability of the grant recipient to use the funds effectively. UMTA will limit the sum total of letters of intent to the sum of future Section 3 authorizations, less an amount which is necessary for those portions of the Section 3 program which are not covered by letters of intent.

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Part VIII

Water Resources Council

State Water Management Planning Program; Final Guidelines for Program

WATER RESOURCES COUNCIL

18 CFR Part 703 and 740

State Water Management Planning Program; Final Guidelines for Program

AGENCY: U.S. Water Resources Council.

ACTION: Final guidelines by rule.

SUMMARY: These guidelines amend rules published July 29, 1970, and amendments thereto published September 3, 1970, and November 29, 1974, 18 CFR 703.1–13. The Code of Federal Regulations is hereby amended by deleting all of part 703 and inserting in lieu thereof a new part 740. These guidelines set forth the requirements for implementing the State Water Management Planning Program (Program). The Program provides for financial assistance for comprehensive water and related land resources management planning to all States, including the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Virgin Islands. The guidelines are published under the authority of Title III of the Water Resources Planning Act of 1965 (as amended), Pub. L. 89–80 (42 U.S.C. 1962(c)).

EFFECTIVE DATE: These guidelines are effective on October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Denzel L. Fisher, Acting Director, State Programs Division, U.S. Water Resources Council, 2120 L Street, NW., Washington, DC 20037, (202) 254–6446.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 21, 1980, the Acting Director of the U.S. Water Resources Council, Mr. Gerald D. Seinwill, published proposed amendments to the existing rules implementing the State Water Management Planning Program. These rules implemented Title III of the Water Resources Planning Act of 1965 (as amended), Pub. L. 89–80 (42 U.S.C. 1962(c)).

Public hearings were scheduled in San Francisco, CA for August 22, 1980, in Kansas City, MO for August 26, 1980, and in Washington, DC for August 28, 1980. Interested parties were invited to present oral comments at the scheduled hearings or submit written comments to the Water Resources Council no later than 4:30 p.m. EDST, September 5, 1980.

Two States indicated an interest in presenting oral comments at the San Francisco hearings, two States indicated an interest in an oral presentation at the Kansas City hearing, and three States indicated an interest in an oral presentation at the Washington, DC hearing. Considering the interest exhibited in oral presentations and for budgetary purposes, the Council chose to cancel the scheduled hearings for San Francisco and Kansas City in the interest of the Government and the general public. The hearing in Washington, DC was held as scheduled, at which three individuals presented comments on the proposed guidelines.

In addition to the oral presentations, 39 comments were submitted in writing to the Council. The comments, the Council's response to the comments, and the revisions made in the guidelines are indicated below. For clarity, the comments and responses have been arranged according to the section numbers and titles of the proposed and final guidelines to which they pertain.

Section 740.1 Purpose and scope

There were 13 comments received on this section. The major concern expressed in the comments was the inclusion of stated "national objectives" in subsections (c)(2) through (c)(6). While most of these major areas of national concern are acceptable to many States, some comments indicated that it was inappropriate to address these specific areas since they had not been approved by the Congress. Some States also indicated that some of these areas may not have a high priority with respect to their current needs in water resources planning and management. The extent to which States must "address" these areas is further clarified in § 740.4.

In response to the comments received, the purpose of the Act is to provide for the optimum development of the Nation's natural resources through the coordinated planning of water and related land resources. One means of achieving this through the Act is the provision of financial assistance to States to increase their participation in such planning.

Section 2 of the Act declared it to be the policy of the Congress to encourage the conservation, development, and utilization of water and related land resources of the United States on a comprehensive and coordinated basis by the Federal Government, States, localities, and private enterprise with the cooperation of all affected Federal agencies, States, local governments, individuals, corporations, business enterprises, and others concerned.

Further, the President emphasized the role of the States as the focal point for water resources planning and management in his Water Policy Message of June 6, 1978. In that message he proposed to strengthen that role by increasing assistance available to States for the purpose of developing comprehensive water management programs. He further encouraged the development of programs which would emphasize the areas of national concern listed in subsections (c)(2) through (c)(6). Increased State capability in water resources planning and management, coupled with improved cooperation and coordination with Federal, State and local governments should provide the mechanism for States to establish priorities and procedures for implementing water resources programs that will impact regional, interstate and national priorities.

With respect to the above, the key provisions of § 740.1 are considered to be within the scope and intent of Pub. L. 89–80 and the declared policy of the Congress. The scope of the program specifies that State water resources management planning programs address pertinent State goals and objectives as well as specified areas of national concern. This approach allows the flexibility for any State to focus upon critical issues and establish priorities which reflect individual State goals and objectives.

Section 740.2 Definitions

There were 13 comments received in regard to the definitions. The one definition that received most attention was "water conservation." Most comments emphasized that a definition of water conservation should include storage. The current definition, in its broadest sense, does not preclude those activities which would lead to a management decision to develop projects to store water or to develop alternatives which may delay or postpone the need for a storage project. Either course of action may be perceived to be within the traditional interpretation of water conservation.

The given definition of water conservation in the proposed guidelines of July 21, 1980, is considered to be adequately flexible particularly in light of the second part of the definition which states that water conservation means activities designed to "* * * (2) improve efficiency in use and reduce losses and waste of water * * *"

Similarly, the definition of water conservation activities designed to "(1) reduce demand for water * * *" is not all inclusive. It is one aspect of water conservation which may be useful in many circumstances. It is recognized that in some circumstances, this practice may not be appropriate. It remains, however, as a means to conserve water, and is a legitimate and beneficial approach to water conservation.

The third part of the definition, to "(3) improve land management practices to conserve water" was considered by some to be confusing and a weak definition. The use of land and the resultant impact on the use of water is considered to be a significant factor in water resources in most areas of the United States, particularly in light of one State's comments on the qualitative as well as quantitative aspects of water conservation. The emphasis on water conservation in its broadest sense as meaning the most beneficial use of the resource in the most efficient manner is considered to be a logical approach to water conservation and is endorsed by the Council. Again, this part of the definition is not all inclusive and is considered to be a legitimate and beneficial approach to water conservation. The definition as written in the proposed guidelines is considered to encompass these concepts and remains unchanged.

The definition of "State water management planning" was considered by some to be too restrictive with respect to enforcement of regulations, laws or ordinances. Under the existing authority of Title III, the Act specifies that the program is for planning purposes. These guidelines, while adhering to the principle of planning, recognize the need to include management planning in this concept. In regard to this concept, the definition included the development of regulatory and enforcement programs. It does not include the implementation of such programs, however. This is considered to be outside the authority of the Act and has not been included. Therefore, the definition has not been changed. Under pending legislation in Congress to establish a comprehensive State water management program, the enforcement of laws, regulations and ordinances would be considered as eligible.

Other comments received on this section are reflected in minor modifications to the wording of several definitions.

Section 740.3 State Applications

Eight comments were received on State applications. Most were directed toward the requirements that the work plan be developed on the basis of three month intervals. The Council has made the decision to change the requirements to annual reports. Therefore, the requirement to develop the work plan on a quarterly basis has been modified to reflect this change. The work plan, however, may be developed with activities charted on a more frequent basis, even monthly, if a State desires to do so, but the requirement in this section will correspond to the reporting requirement.

One comment requested a clarification of establishing priorities for program elements to be carried out if additional funds become available for redistribution. This subsection has been changed to request that activities, in order of priority, be described for use of additional funds, if available. The activities are to be described in the same manner as those in the scheduled work plan. These activities need not be independent but may supplement or complement those activities described in the proposed work plan.

Some comments suggested that the public involvement section should not require public participation in the development of the application, but only in the planning process. In subsection (c)(6), the Council requests information on the manner in which the general public is involved in the development and modification of the program, i.e., the *process* used by the State in public participation. In development of the application, States are currently required to coordinate through the A-95 process. The Council strongly encourages participation of the general public in *all* phases of the State water management planning process, to the extent practicable.

It was suggested in one comment that the Council provide an estimate of funds to be made available under the program with the application package. Subsection (c)(4) provides for inclusion of any information pertinent to the application and such estimates of funds available to each State will be provided in the application package.

Section 740.4 State Water Management Planning Program

There were 12 comments received on this section. Many comments pointed out the similarity between subsections (a) and (a)(1). The Council agrees with these comments and subsection (a)(1) has been deleted from the final guidelines and the successive subsections numbered accordingly.

Many of the same concerns expressed in reference to section 740.1 were also expressed in reference to subsection (a)(4) and (a)(5), renumbered as (a)(3). Since water conservation was considered as one of five areas of national concern in section 740.1, it has been combined in (a)(3) and is renumbered as section 740.4(a)(3)(v). As expressed previously, these provisions are considered to be within the scope and intent of the Act.

There were several comments which expressed concern over the meaning of the term "address" used in the proposed guidelines. By "address" the Council means that each State must describe existing, ongoing or proposed programs and/or efforts directed toward these major areas of national concern. This does not necessarily mean that each State must include this as a fundable part of the grant program or must be involved in these areas in a "comprehensive" manner as interpreted by the Council. It does mean that the description should include some recognition of the issues at the State level, the relative importance of the issues to the States water resources policy, and the manner in which these issues are being considered by the State.

Other comments were directed toward the meaning of pass-through. Generally, States may pass-through funds to local governments, special districts, regional commissions or other entities in the form of grants for a specific purpose. For example, a State may set aside $50,000 for grants to municipalities, on a competitive basis, to study rehabilitation needs in urban water systems.

Other transfers of funds, such as an interagency agreement with another State agency or a contract with a university to perform specific services would not be considered "pass-through," but usually is considered as a "contractual" or "cooperative agreement" arrangement. These transfers of funds are all considered as acceptable practices in the program, but are not defined as pass-through arrangements.

Section 740.4(a)(5) requests information on the *process* for providing pass-through funds since it is unlikely specific recipients will not be known at the time the application is submitted.

Section 740.5 Review and Approval of State Applications and Programs

Six comments were received, most of which were directed toward the requirements for Council approval of significant revisions to the work plan. This has been changed in the final guidelines to clarify a significant change as an addition or deletion of major activities submitted in the work plan.

It is recognized that the Council should not be concerned with every minor change in State program, and States should have the discretion to revise programs to respond to unforeseen developments. Since budget estimates in the application correspond to major activities, adding or deleting these major activities constitute a "significant change" and requires Council approval.

One comment reflected that the Council should have a deadline for

awarding grants, such as 30 days after the deadline for filing State applications. While the Council agrees that Federal agencies should be prompt in awarding grants, specifying a specific number of days for awarding grants may not guarantee such a deadline can be met. Consideration of applications may sometimes be completed well in advance of the availability of funds. The appropriations for any one fiscal year may not be available until a much later time. Therefore, some flexibility must be maintained in this regard. However, the Council will process requests for financial assistance in the most expeditious manner possible.

Section 740.6 Financial Assistance

There were 15 comments received on this section. Some suggested that the proportional adjustment to the base share be incorporated into the guidelines. The Council agrees and has changed the language to specify that the amount to be allocated on an equal share basis shall not exceed 10 percent of the funds available for grants for any fiscal year.

Some comments suggested that the reciprocal of personal income is not an equitable means of determining need for financial assistance. After examining suggested alternatives in regard to availability of consistently reliable data for both the States and the territories and studying the potential advantages and deficiencies, it was determined that the reciprocal of personal income is an equitable means of measuring "financial need" and has been retained in the final guidelines. The Council will continue to examine alternative means of determining the equitability of all factors in the funding formula and propose changes when considered appropriate.

Section 740.7 Administration of Financial Assistance

Twelve comments were received regarding this section. Most were directed at the proposed requirements to comply with the provisions of Executive Orders 11988 (Floodplain Management), and 11990 (Protection of Wetlands). Most comments questioned the authority of the Council to apply the provisions of a Federal Executive Order to State actions.

The Council recognizes that the Orders' provisions apply only to *Federal* actions. Conducting Federal activities and programs affecting land use, which includes providing grants to State, regional and other entities for water and related land resources planning, is defined as a Federal action subject to these Orders' provisions at Section 1(3) of E.O. 11988, and Section 1(a)(3) of E.O. 11990. This means that the Council must qualify the circumstances under which such assistance can be provided to applicants. It can only approve a grant if the recipient assures the Council that the planning concepts of the Orders are integrated into the planning process supported or assisted by WRC Title III program funds. Since many States are recognized as leaders in national efforts at planning for sound floodplain and wetlands management, the integration of planning concepts such as examination of alternatives and public notification is not considered to place a significant additional burden on the States. These concepts have been included in the assurances section of the application package and have been added as a new § 740.7(b).

Other comments suggested that the requirement for obligating program funds within the grant period may place a restrictive burden on the States, particularly since grant funds are not available at the beginning of the fiscal year. "Grant period" is defined as a 12-month period specified in the grant agreement and does not necessarily begin on October 1 of each year. The starting date is specified in the agreement between the State and the Council and the end of the grant period will be 12 months from that date. The grant period must start during the fiscal year beginning October 1, and will continue for a full 12 months following that date. For example, if a State chooses to begin the grant period on February 1, the grant period will end on January 31 of the following year. The program funds must be obligated within that period and reporting will follow the period specified in the agreement. This allows a full 12 months within which to obligate all program funds.

Some comments stated objections to prohibiting contributions to organizations for the purpose of dues or assessments. Federal Managment Circular 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments" specifies certain costs which are not allowable under grant programs. One such provision is payments to organizations which spend a substantial amount of their time in lobbying efforts. Additionally, contributions, dues or assessments to interstate compacts or commissions paid by grant funds is considered to detract from the State commitment to participate and is not allowed under this section. Special projects by these organizations, specifically outlined in the application and of direct benefit to the applicant, may be funded through the grant program if such payments are over and above the amount contributed as dues or assessments. Under these provisions, this part has remained unchanged.

Several comments reflected the omission of the provision to allow the use of program funds to meet the minimum participation requirements for Level B studies. The final guidelines reflect a recent decision which allows the use of program funds as contributions for Level B studies beginning with FY 1981. Participation in regional water resources planning, such as Level B studies, is recognized as an authorized use of program funds, provided that it is supplemental to minimum required contributions in support of river basin commissions' operating budgets. Accordingly, non-Federal participation can be provided through Title III matched funds or through non-Federal appropriations. Federal funds other than those provided through WRC's regional studies and Title III programs, and non-Federal resources designated to meet cost sharing requirements for other Federal programs may not be used to meet the minimum participation requirement in Level B studies unless specifically authorized by law.

One comment suggested that Federal funds or property should be allowed to be used to match the grant unless it is specifically disallowed by Federal law. The Office of Management and Budget Circular A-102 specifies matching provisions of grant-in-aid programs and is the source of the prohibition against double matching of program funds. However, some Federal laws do include waivers for matching requirements or sources of matching funds in some circumstances. The Federal laws specifying such waivers are the only sources the Council will use. Therefore, the only change in subsection (d) is to clarify the language as suggested by one comment.

Three comments suggested that the non-substitution provisions of subsection (g) would be unenforceable and would not prevent State legislatures from reducing appropriations to State agencies. The Council recognizes the difficulty in enforcing such a provision and that under certain economic conditions or policy changes, budget reductions or reduced appropriations are necessary. However, the purpose of the State water management planning program is to provide program and financial assistance to support the establishment, development or enhancement of comprehensive water management planning programs. Simply

replacing State funds with Federal funds does nothing to enhance existing efforts.

The Council, through its normal monitoring and auditing procedures, will consider such substitutions, when evident, as a demonstration of relative need in water resources management in the determination of available grant funds in subsequent years.

Section 740.8 Reporting

There were 27 comments received on the reporting requirements in this section. Most considered the requirements as excessive in relation to the size of this program. The reports were designed by the Council as a quick reference point on the program status within each State. It is considered as a periodic indicator of accomplishments and/or needs for adjustments.

The Council, however, has carefully considered the comments regarding these requirements and has amended the guidelines to require reports annually. The annual report will include a program status report and a financial status report, which will be due 15 months from the starting date.

In accordance with Treasury Circular 1075, which governs the use of letters of credit, the Council cannot waive the requirements for the Report of Federal Cash Transactions on a quarterly basis. This report consists of Standard Form 272 and will be required 30 working days after the end of each quarter of the grant period, as indicated in the grant agreement. For example, if a State and the Council agree that the grant period begins on April 1, the first quarter of the grant period ends on June 30. The Report of Federal Cash Transactions for the first quarter will be due by July 30. All forms and detailed instructions will be provided by the Council.

Section 740.9 Recordkeeping

One comment indicated that State recordkeeping requirements and procedures should be accepted by the Council. The Office of Management and Budget Circular A-102 prescribes recordkeeping requirements for grants-in-aid to State and local governments. This circular also points out that grantee records and procedures are acceptable if they include the minimum requirements provided in the circular. The Council, therefore, considers this section to be within the scope of OMB Circular A-102 and has not changed the language in the final guidelines.

Section 740.10 Program Review and Assistance

One comment suggested that the annual review should be carried out with flexible evaluation criteria; that each State be reviewed individually; and that the value of onsite visits "as frequently as practicable" is questionable. Another comment indicated that the burden placed on the relatively small Council staff may cause an increase in staff and hoped this would not be the case.

The Council fully intends to maintain flexible criteria for reviewing programs, and will review each State's program on an individual basis. Comparative analyses of programs are useful in some circumstances but will not be the sole criteria for reviewing programs. The need for flexibility has been demonstrated throughout the history of this program and will be maintained.

The site visits in this program will be undertaken as needed and as the resources permit. The Council will carry out its duties and responsibilities in administering this program in the most effective and efficient manner possible and within acceptable staffing and resources levels.

Section 740.11 Federal/State Coordination

Nine comments were received in regard to subsection (b). The comments either questioned the Council's authority to enforce this provision or requested a clarification of "compatible."

The intention of the Council in this section is to encourage the consideration of all related programs within a State. States should consider the impact of Federal programs when implementing State programs and Federal agencies should consider State programs when implementing Federal programs. The Council agrees that the authority does not exist to enforce the provision under the proposed subsection (b) and has deleted that from the final guidelines. The Council, however, encourages such consideration in development of programs at both the State and Federal level and includes that as an objective of the Council's coordination responsibilities under subsection (a).

Section 740.12 Amendments

Three comments were received on procedures for amendments to the program. Two mentioned that State water management agencies should be considered as "appropriate advisory groups" and one suggested that proposed changes should not be placed in effect until the following program year. Amendments to these guidelines will be accomplished through publication of proposed rules in the Federal Register.

To the extent possible, the Council will consult with all States prior to publication. However, the Council relies on smaller groups to provide a rapid response to proposed program changes. The publication of proposed changes in the Federal Register will include an adequate response time prior to final publication. By simultaneously providing proposed changes to all State agencies, response time will be increased.

Under most circumstances, amendments would not be effective until the following grant period. However, there may be instances where the benefits resulting from an amendment necessitate immediate implementation. Specifying the following grant period as the effective date may mean unnecessary delays in program development. Again, the States will have an adequate response time for proposed amendments.

Section 740.13 Supplemental Instructions

Two comments were received in reference to supplemental instructions and both were concerned with the Council issuing substantial changes in the program requirements without the opportunity for prior review by the States.

The Council's use of supplemental instruction are designed to provide clarification of specific administrative requirements, or to deliver additional information pertinent to the final guidelines. The Council will provide prior notification of impending instructions to the extent possible. However, any instructions from the Council may be subject to change should conditions warrant.

Significant changes that are required in the guidelines must go through the proposed rulemaking process and appropriate consultation with advisory groups and review of such proposed changes will be conducted in accordance with section § 740.12.

In accordance with the Council's obligations under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the Council has determined that these guidelines will not constitute a major Federal action having a significant effect on the quality of the human environment, and that an environmental impact statement or assessment is not required. However, in the development and implementation of water resources management programs, States are encouraged to give appropriate consideration to the environmental effects of their proposed actions and to incorporate suitable environmental considerations, to the extent permitted by State law.

In accordance with Executive Order 12044, entitled "Improving Government Regulations," the Director has determined that these proposed guidelines for the State Water Management Planning Program are significant since it is expected to affect State programs substantially. The Acting Director has further determined that a regulatory analysis is not required for the proposed regulations. The program is not likely to impose gross economic costs of $100 million or more a year; nor is it likely to cause a major increase in costs or prices for individual industries, levels of government, geographic regions or demographic groups. Services under the program will be supportive of the overall objectives of the State Water Management Planning Program as they relate to water resources management planning.

Accordingly, the existing Part 703, Chapter VI of Title 18 of the Code of Federal Regulations is amended as set forth below.

Dated: October 24, 1980.

Gerald D. Seinwill,

Acting Director, U.S. Water Resources Council.

Chapter VI of Title 18, Code of Federal Regulations is amended by deleting all of Part 703 and inserting in lieu thereof a new Part 740 as follows:

PART 703—[Removed]

PART 740—STATE WATER MANAGEMENT PLANNING PROGRAM

Sec.
740.1 Purpose and scope.
740.2 Definitions.
740.3 State applications.
740.4 State water management planning program.
740.5 Review and approval of State applications and programs.
740.6 Financial assistance.
740.7 Administration of financial assistance.
740.8 Reporting.
740.9 Recordkeeping.
740.10 Program review and assistance.
740.11 Federal/State coordination.
740.12 Amendments.
740.13 Supplemental instructions.

Authority: Water Resources Planning Act of 1965 (as amended), Pub. L. 89–80, 79 Stat. 244, 42 U.S.C. 1962c; Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, 92 Stat. 3, 41 U.S.C. 501 *et seq.*; E.O. 12044, 43 FR 12660.

§ 740.1 Purpose and scope.

(a) In recognition of the role of the States as the focal point for the management of water and related land resources, this part establishes guidelines for financial and program assistance to States for water management planning programs which address each State's particular needs, which are based on established State goals and objectives, and which take into consideration national goals and objectives.

(b) The purpose of the State Water Management Planning Program (Program) is to provide financial and program assistance to participating States to support the development and modification of comprehensive water management planning programs.

(c) Funds made available under this part shall be used to establish, develop or enhance existing or proposed State water resources management and planning programs that are designed to address pertinent State and national goals and objectives, as well as the goals and objectives of Title III of the Water Resources Planning Act (Act), Pub. L. 89–80, as amended, by addressing in the Program the following—

(1) Coordination of the program authorized by the Act and those related programs of other Federal agencies;

(2) Integration of water conservation with State water management planning;

(3) Integration of water quantity and water quality planning;

(4) Integration of ground and surface water planning;

(5) Planning for protection and management of groundwater supplies;

(6) Planning for protection and management of instream values; and

(7) Enhanced cooperation and coordination between Federal, regional State and local governmental entities involved in water and related land resources planning and management.

§ 740.2 Definitions.

"Act" means the Water Resources Planning Act (as amended), Pub. L. 89–80, 42 U.S.C. 1962 *et seq.*

"Activities" means a series of actions and operations which address the water management problems of the State and have a specific purpose or objective. Activities are further characterized by one or more major tasks and milestones.

"Affected interests" means public and private organizations, local, tribal, State and Federal governments that may be potentially affected by the State water management planning program.

"Application" means a document submitted by a Governor or designee for consideration by the Council for a grant.

"Council" means the Water Resources Council established by Section 101 of the Act.

"Designated agency" means an entity of a State designated by the Governor to act as the grant recipient and to act as liaison with the Council for this Program.

"Fiscal year" means a 12-month period ending on September 30, unless otherwise specified.

"Governor" means the chief executive officer of a State, including the Mayor of the District of Columbia.

"Grant agreement" means a document executed by the authorized official of the Water Resources Council and by the authorized representative of the State agency designated as the grant recipient containing the agreed terms and conditions of the approved grant offer and award.

"Grant period" means a 12-month period specified in the grant agreement, which shall begin during the fiscal year as defined above, during which program funds are authorized to be expended, obligated, or firmly committed by the grantee for the purposes specified in the Act, in the grant agreement and in these guidelines.

"Land area of a State" means the land and inland water area of a State as defined and set forth in the publication "Boundaries of the United States and the Several States" Geological Survey Professional Paper 909, U.S. Government Printing Office, Washington, DC issued in 1976, or revisions thereof.

"Local government" means a local unit of government including a county municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments, sponsor group representative organization (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975) and other regional or interstate government entity; or any agency or instrumentality of a local government exclusive of institutions of higher education and hospitals.

"Milestones" mean key events in the activity implementation schedule. Milestones indicate important dates for design implementation and monitoring tasks. Examples of milestones include but are not limited to hiring of key staff, publication dates, workshop dates, or the completion of specific phases of the implementation schedule.

"Obligation" means orders placed, contracts awarded, grants issued, services received and similar transactions during a given period that require the disbursement of money.

"Per capita income of a State" means the most recent year of official U.S. Department of Commerce per capita income figures for the State.

"Program period" means the period beginning on October 1, 1980, and extending through the authorized life of the Program.

"Program funds" means grant funds provided under the Act, non-Federal funds and the value of in-kind

contributions used for matching purposes.

"Population of a State" means the latest official resident population estimate by the U.S. Department of Commerce available on or before January 1, of the year preceding the fiscal year for which funds under this part are appropriated.

"Related land resources" means any land affected by present or projected management practices causing significant effects on the quantity or quality of the water resource.

"State" means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or the Commonwealth of the Northern Mariana Islands.

"State water management planning" means those activities necessary to effect coordinated decisions for the use of water and related resources within a State or interstate region; which provide for the correction or prevention, respectively, of present and future water and related land resources problems; which consider the potential for water and related land resources use from the standpoint of present and future needs; and which provide for involvement of affected interests. Water management planning activities may include, but are not limited to, planning, data collection and analysis, studies and investigations, program design and coordination, development of regulation and enforcement programs, information dissemination, public meetings, and the coordination of the program with other related programs.

"Task" means a specific action or operation which comprises a part of the implementation effort for an activity.

"Water conservation" means activities designed to (1) reduce the demand for water, (2) improve efficiency in use and reduce losses and waste of water, or (3) improve land management practices to conserve water.

"Water management planning need" is defined as the basis for establishing criteria for assessing each State's need for assistance under the Program.

"Work Plan" means a document listing the major program elements to be performed under the program during each grant period which presents, in chronological order, the major activities and tasks in the program element; which targets major milestones or proposed accomplishments by activity, cost and date; and which will be used in preparing reports to reflect accomplishment of goals and objectives under the participating State's comprehensive program.

§ 740.3 State applications.

(a) The Council shall invite the Governor of each State to submit a State application.

(b) To be eligible for financial assistance under this part, a State shall submit to the Council an original and two copies of a State application executed by the Governor or designee. The State application shall be submitted not later than 90 days from the date of the Council's invitation.

(c) The program application package shall consist of—

(1) The forms and instructions for completing the application;

(2) The criteria to be used by the Council in assessing need for water management planning funds;

(3) Information on the applicable Federal requirements for administering the program; and

(4) Other information pertinent to the application.

(d) A State application shall contain—

(1) The name and address of the designated State agency;

(2) A description of the comprehensive State water management planning program, or modifications thereto, as required by § 740.4(a);

(3) A work plan of the major program activities of the State water management planning program which targets milestones on a semi-annual basis;

(4) A budget and corresponding narrative in accordance with the forms and instructions provided by the Council;

(5) A notice of concurrence by the State clearinghouse in accordance with the Office of Management and Budget (OMB) Circular A-95;

(6) The manner in which the general public is involved in the development and modification of the State program; and

(7) A brief description of activities, in order of priority, which would be carried out if additional funds were made available during the grant period under the provisions of § 740.6(e). This may include supplementing or complementing ongoing activities described in (d)(3) above.

(e) The Governor or designee may request an extension to the submission date by submitting a written request to the Council not less than 30 days prior to the date referred to in paragraph (b) of this section. The extension shall be granted only if, in the Council's judgment, acceptable and substantial justification is shown and the extension would further the objectives of the Act. An extension shall not be granted for more than 30 days.

§ 740.4 State water management planning program.

(a) A State shall submit a description of its proposed State program with the State application, which shall—

(1) Describe water and related land resources problems, needs and opportunities, and the priorities proposed for their resolution;

(2) Specify the goals and objectives which reflect the water resources policy of the State and which address the major problems which are of concern to the State;

(3) Describe the major elements of the State water management program, which should address but not be limited to—

(i) The integration of water quantity and water quality planning and management;

(ii) The protection and management of instream values;

(iii) The protection and management of groundwater supplies;

(iv) The integration of ground and surface water planning and management; and

(v) Water conservation.

(4) Identify Federal, State, or local government, or public or private organizations that will participate and a general description of how they are involved in the managment planning process;

(5) If provisions are made for pass-through of funds, describe the *process* by which recipients will be selected, and the purpose of the pass-through; and

(6) List existing or proposed administrative, legal and/or institutional arrangements to be used in coordinating intrastate, interstate and regional water resources planning activities involving State, local and/or the Federal Government with the proposed water management planning program of the State to assure that all such activities are considered in program implementation.

§ 740.5 Review and approval of State applications and programs.

(a) The Council shall review and approve each State application for financial assistance if it is determined that—

(1) The State water management planning program meets the objectives of the Act;

(2) The State application and the State water management planning program meet the requirements of this part; and

(3) Progress on the previous grant period's work plan is satisfactory, based on the requirements set forth by the Council.

(b) Based on the review of the application, the Council shall determine

the amount of funds to be made available pursuant to § 740.6 and shall notify the designated agency in each participating State of the grant award as soon as possible after funds are apportioned for Council use.

(c) If an application is not approved by the Council, it shall be returned by registered mail with a full explanation of the reasons for that determination. The State shall then be allowed the opportunity to submit a revised application within 30 days after receipt by the State of such notification. Should the State determine that further review is required by the State clearinghouse under OMB Circular A-95, an additional 30 days will be allowed.

(d) If the grant amount requested by a State differs from the grant amount offered by the Council, the Council will request the designated State agency to submit a revised budget and work plan with the acceptance of the grant offer.

(e) The State, upon acceptance of the terms and conditions of the notice of grant award, as presented by the Council, will be granted financial assistance in the amount of the approved final budget.

(f) The work plan for the State water management planning program may be revised at any time by submitting revisions to the work plan and budget to the Council for approval in connection with any proposed significant change (an addition or deletion of major activities specified in the approved work plan) with appropriate provision for A-95 State clearinghouse review. The Council will review the proposed revision and notify the State of its decision no later than 30 days from the date of receipt of the request.

§ 740.6 Financial assistance.

(a) The Council shall provide financial assistance from funds available for each fiscal year to each State having an approved application pursuant to § 740.5.

(b) Within the provisions prescribed by paragraphs (c) and (d) of this section, the Council may grant up to 50 percent of the cost for a State program.

(c) The funds appropriated pursuant to the Act for the fiscal year shall be allocated among the participating States as follows, except that under paragraphs (d)(2) through (d)(4) no State shall be granted a greater or lesser sum of funds which shall be based upon a procedure in which each of the factors of population, land area, and the reciprocal of per capital income, are adjusted such that—

(1) Those States having observations two standard deviations below the mean of each respective factor are equated to the mean-minus-two standard deviations, and

(2) Those States having observations two standard deviations above the mean of each respective factor are equated to the mean-plus-two standard deviations.

(d) Financial assistance for the Program shall be allocated among the participating States from funds available for any fiscal year based on the following formula—

(1) An equal share not to exceed $100,000, the total of which shares shall not exceed 10 percent of the funds available for any fiscal year;

(2) One-third of the remaining balance of the funds after accounting for (1) above in the ratio that the population of each State bears to the population of all States;

(3) One-third of the remaining balance of the funds after accounting for (1) and (2) above in the ratio that the land area of each State bears to the land area of all the States;

(4) One-third of the remaining balance of funds after accounting for (1), (2), and (3) above in the ratio that the reciprocal of all per capital income of a State bears to the sum of the reciprocals for all States; and

(5) The remainder of the funds according to the need for water management planning in each State as expressed by the State and assessed by the Council. In assessing need for water management, the Council shall utilize established criteria, the proposed program, and information made available during program review.

(e) Redistribution of grant funds may occur—

(1) If a State fails to apply for a grant within the period specified in § 740.3, or is unable to match the total allocation reserved under § 740.6(d) for that State, that portion of the reserved allocation will be withdrawn by the Council;

(2) If a State fails to obligate Federal funds within the grant period of the approved or amended grant agreement as prescribed in § 740.7(c), such funds shall be returned to the Council not later than 30 days after submission of the Financial Statement for the grant period unless the Council, based on written request, grants an exception or extension to this time limitation;

(3) Funds available under paragraph (l) of this section shall be available for redistribution to those States requesting additional funds pursuant to § 740.3(d)(7). These funds shall be distributed on the basis of proposals in the application, and the relationship of the State's original allocation to the original allocation of other States requesting redistribution funds; and

(4) Funds available under paragraph (l)(2) of this section shall be added to funds available for distribution for the next fiscal year, if the appropriation legislation for the current year allows such action.

§ 740.7 Administration of financial assistance.

(a) Grants under this part shall comply with the requirements of—

(1) Office of Management and Budget (OMB) Circular A-102, Revised, (34 CFR Part 256), entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;"

(2) Federal Management Circular (FMC) 74-4 (34 CFR Part 255), entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(3) OMB Circular A-73 (34 CFR Part 251), entitled "Audit of Federal Operations and Programs;"

(4) OMB Circular A-95, entitled "Evaluation, Review and Coordination of Federal and Federally assisted Programs and Projects;"

(5) Treasury Circular (TC) 1075, entitled "Regulations Governing Withdrawals of Cash from the Treasury for Advances under Federal Grants and other Programs;"

(6) TC 1082, entitled, "Notification to States of Grants-in-Aid Information"; and

(7) Other procedures which the Council may from time to time prescribe for the administration of financial assistance.

(b) The planning process as required by these guidelines and assisted by WRC Title III program funds shall reflect the concepts of the Council's 1979 publication, *A Unified National Program for Floodplain Management*, and the concepts of floodplain and wetlands identification, avoidance and mitigation as described in the Council's *Floodplain Management Guidelines* (43 FR 6030). In the application for financial assistance, the State shall assure the Council that the following planning concepts have been or will be integrated into the planning process:

(1) Determination of whether proposed activities would be located in floodplains or wetlands, or, even if located outside of them, would have the potential to affect floodplains or wetlands;

(2) Avoidance of performing activities within floodplains or wetlands wherever there is a practicable alternative;

(3) Where avoidance of floodplains cannot be achieved, minimization of adverse impacts and support of floodplain development, and

preservation and restoration of natural and beneficial floodplain values; and

(4) Where avoidance of wetlands cannot be achieved, minimization of adverse impacts and support of new construction in wetlands, and preservation and enhancement of natural and beneficial wetlands values.

(c) Program funds must be obligated within the grant period unless the Council, based on written request, grants an exception or extension to this time limitation. The repeated occurrence of unobligated program funds at the end of the grant period will be considered in determining the need for assistance in subsequent years pursuant to § 740.6(d)(5).

(d) The procurement standards, practices, rules and policies of the State as customarily applied, if in accordance with Attachment O of OMB Circular A-102, shall govern for procurement costs incurred in an approved program.

(e) For all matching funds the sources of a State's cost share shall have no bearing on whether or not such costs can be matched by Federal funds except that—

(1) Other Federal funds or property cannot be used for matching purposes unless specifically permitted by Federal law;

(2) Program funds shall not be used to match Federal funds under any other federally aided program;

(3) Non-Federal funds used to match other federally aided programs shall not be used to match funds provided under the Act; and

(4) Federal funds provided through this program, if duly matched through the requirements of this part, may be used as non-Federal contributions for Level B studies beginning in Fiscal Year 1981.

(f) Any cost incurred for water management planning may be employed for matching a grant awarded under the Act except as specified in this section. Such expenditures must be reasonable, documentable, and directly applicable to the approved program.

(g) Program funds may not be used for—

(1) Items whose costs are not allowable under the provision of FMC 74-4;

(2) Contributions, dues or assessments to support headquarters offices of interstate commissions, compacts, councils, interagency committees, or other similar organizations;

(3) Scholarly or scientific investigations for purposes other than addressing water management problems, needs, concerns or interests specifically identified and explained in the approved program as a priority consideration;

(4) Construction, payment of subsidies, or purchase of land or easements;

(5) Purchase of equipment with a unit cost of $1,500 or more without prior approval of the Council; and

(6) Purchase of equipment with a unit cost of less than $1,500 when the cumulative cost of such equipment in any one grant period exceeds 1 percent of the grant award, without prior approval of the Council.

(h) Federal funds may not be used to substitute for State and local funds that would have been made available for water management planning programs in the absence of the grant funds provided under this part. Federal funds may be used to supplement and complement existing water management planning programs. It does not prevent drawing matching shares from individual programs or from existing agency appropriations, budgets, or resources so long as expenditures are not substituted by Federal funds for the purposes of the Act.

(i) Payments shall be made in accordance with Attachment J of OMB Circular A-102 and TC 1075. Grant funds shall be requested only on an as needed basis.

(j) Financial management procedures shall comply with Attachment G of OMB Circular A-102 and with TC 1075. The applicable Federal requirements shall apply to the State and to local governments or non-governmental entities that receive funds as a sub-grantee for the purposes of the Act.

§ 740.8 Reporting.

(a) The designated agency shall submit program status reports and financial statements in accordance with procedures established by the Council. Instructions and a description of the content of these reports and the appropriate forms will be provided by the Council and will be in accordance with Attachments H, I and K of OMB Circular A-102 and TC 1075.

(b) The annual program report shall be due 90 days after the end of the grant period, as specified in the grant agreement, and shall contain—

(1) A summary description of the major accomplishments and results of the water management planning activities for the year, and an explanation of any work proposed in the work plan that has not been completed;

(2) An updated activity milestone chart, for each major activity in the work plan, showing the completion dates of major tasks;

(3) For those States implementing an evaluation system, a summary of the results of the evaluation efforts on the overall program effectiveness and key water management activities;

(4) A list of publications, public information materials, and other documents prepared in whole or in part with program funds which must duly note the use of Council grant funds in the printing of these documents;

(5) Other pertinent information, including any specific need for assistance; and

(6) An annual Financial Status Report.

(c) The Report of Federal Cash Transactions, as required under the provisions of Treasury Circular 1075, is due 30 days after the end of each quarter of the grant period, as specified in the grant agreement.

§ 740.9 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required by the Council, including records which fully disclose the amount and disposition of financial assistance received; the cost of administration; the total cost of all activities for which assistance is given or used; and any data and information which the Council determines are necessary to protect the interests of the United States and to facilitate an effective financial audit and performance evaluation. The Council and the Comptroller General of the United States shall have access to any books, documents, records or receipts which the Council determines are relevant or pertinent, either directly or indirectly, to any financial assistance provided under this part. Such records shall be retained for a period of three years, which starts from the date of the submission of the annual financial status report for the grant period.

§ 740.10 Program review and assistance.

(a) Each State's program will be reviewed annually by the Council to evaluate program management and accomplishments relative to the approved work plan. The Council shall—

(1) Review progam information including the application, annual reports, and other relevant information; and

(2) Make onsite visits as frequently as practicable to review the State program to—

(i) Provide assistance in the administration of the program, and at the request of the State, specific technical assistance in water resources management;

(ii) Determine whether Council policies, procedures or guidelines need revision to more effectively administer the grant; and

(iii) Gather information on practical or innovative techniques, methodologies, or other relevant information on the program.

(b) Based on the Council's annual review of each State program, the following may occur—

(1) If the program conforms to the requirements of the Act, the State will be advised of its continued eligibility for a grant;

(2) If it appears that the program does not comply with the requirements of the Act in either design or administration, the Council shall ascertain all the relevant facts. The State shall be notified immediately of the apparent inadequacies of the program with citation of specific requirements of the Act, this part, or other relevant instructions which apparently have not been met. The State shall be given timely opportunity to be heard through the filing of written statements and personal presentations in support of their position. If the Council is satisfied that sufficient adjustments have been made in the design and operation of the program, payments to the State will be continued; and

(3) If the Council determines on the basis of all the facts that the program still does not meet the requirements of the Act, the Governor shall be notified of the decision and the reasons therefore, and that no further payments shall be made until the noted inadequacies are satisfactorily resolved.

§ 740.11 Federal/State coordination.

The Council will coordinate the program under this part with similar or related programs of other Federal agencies in an effort to achieve consistency and compatibility in the administration of Federal programs.

§ 740.12 Amendments.

The Council may amend all or portions of these guidelines in accordance with established procedures. If it does, it will—

(a) Consult with appropriate advisory groups;

(b) Publish such proposed rulemaking in the Federal Register; and

(c) Simultaneously provide a copy of such proposed changes to each designated agency.

§ 740.13 Supplemental instructions.

As deemed appropriate, the Council may amplify the guidelines in this part by means of supplemental instructions, and may clarify program or administrative requirements set forth in these guidelines by the means of policy bulletins.

[FR Doc. 80-33707 Filed 10-29-80; 8:45 am]
BILLING CODE 8410-01-M

Federal Register

Thursday
October 30, 1980

Part IX

Department of Transportation

Federal Aviation Administration

FAA Access to Flight Data Recorder and Cockpit Voice Recorder Tapes; Extension of Comment Period

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 20661; Notice No. 80-14A]

FAA Access to Flight Data Recorder and Cockpit Voice Recorder Tapes; Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of extension of comment period.

SUMMARY: This notice extends the period for submission of public comments relating to Notice 80-14 (45 FR 57694; August 28, 1980) until November 26, 1980. Notice 80-14 contains proposals which will allow the Administrator to obtain flight data recorder information and cockpit voice recorder information at any time and at any place. This notice is based on a petition for extension from the Aerospace Industries Association of America, Inc. (AIA). The FAA has determined that it is in the public interest to extend the comment period to encourage submitters to undertake a thorough review of these proposals.

DATES: Comments must be received on or before November 26, 1980.

ADDRESS: Comments on Notice 80-14 may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 20661, 800 Independence Avenue, SW., Washington, D.C. 20591. All comments must be marked "Docket No. 20661." Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Norman C. Miller, Regulatory Projects Branch (AVS-24); Safety Regulations Staff, Associate Administrator for Aviation standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION: Notice 80-14 was issued on August 25, 1980, and published in the Federal Register on August 28, 1980 (45 FR 57694). The notice proposes to allow the Administrator to obtain flight data recorder and cockpit voice recorder information at any time and at any place. This information will be used to study the human factor element associated with aircraft operation and design to determine what, if any, regulatory changes should be made to enhance aviation safety. The proposals contained in the notice will not in any way change the Administrator's policy regarding use of information derived from flight data recorders and cockpit voice recorders in enforcement proceedings. The present comment period closes October 27, 1980. The AIA requested a 60-day extension of the comment period to allow their Human Factors Group to develop comments and proposals. The FAA recognizes the importance of human factors requirements in aircraft operation and design. In view of the 60-day comment period provided for in the original notice and the fact that the AIA study group was formed prior to October 10, 1980, the FAA believes an extension of 30 days is adequate. Accordingly, the comment period for Notice 80-14 is extended until November 26, 1980.

The FAA would also like to take this opportunity to clarify the question of cost burden on the air carriers. It is the agency's intention to assume the costs reasonably related to this program if it is undertaken. The details of this effort will be detailed in an agency order should this proposal become final.

(Secs. 313(a), 601, and 604, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1424); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR Part 11)

Issued in Washington, D.C., on October 24, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-3481 Filed 10-29-80; 8:45 am]

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Thursday
October 30, 1980

Part X

Department of Transportation

Federal Aviation Administration

Airworthiness Standards; Aircraft and Products Design and Procedural Standards for Type Certificates, Type Certificate Amendments, and Supplemental Type Certificates; Public Hearing and Extension of Comment Period

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21, 39, and 91

[Docket No. 20660; Notice 80-13A]

Airworthiness Standards; Aircraft and Products Design and Procedural Standards for Type Certificates, Type Certificate Amendments, and Supplemental Type Certificates; Public Hearing and Extension of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public hearing and extension of comment period.

SUMMARY: This notice announces a public hearing for the purpose of affording interested persons the opportunity to present their positions relating to Notice of Proposed Rulemaking (NPRM) No. 80-13 (45 FR 57688; August 28, 1980), which would amend certain certification procedures regulations applicable to the type design approval of aircraft, aircraft engines, and propellers. As a result of numerous requests for extension of the comment period, as well as for a public hearing, the comment deadline is extended and a public hearing is scheduled.

DATES: Public Hearing: Wednesday, November 12, 1980, 1:00 p.m. to 4:30 p.m.; Thursday, November 13, 1980, 10:00 a.m. to 4:30 p.m.; and Friday, November 14, 1980, 10:00 a.m. to 4:30 p.m. Comment period closes November 26, 1980.

ADDRESS: The hearing will be held at: Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591, Auditorium, 3rd Floor.

Requests to make an oral presentation at the public hearing should identify Docket No. 20660, indicate the subject matter of the presentation and time required, and be sent to: Ms. Ida M. Cronauer, Safety Regulations Staff, AVS-20, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; Telephone: (202) 755-8714.

Comments on Notice 80-13 or this notice may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 20660, 800 Independence Avenue SW., Washington, D.C. 20591, or delivered in duplicate to Room 916 at the same address. All comments must be marked "Docket No. 20660." Comments may be inspected at Room 916 between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

Marvin J. Walker, Regulatory Review Branch (AVS-22), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; Telephone: (202) 755-8714.

SUPPLEMENTARY INFORMATION:

Availability of Additional Copies of Notices

Any person may obtain a copy of Notice 80-13 or this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRMs should request a copy of Advisory Circular No. 11-2 which describes the application procedures.

Background

NPRM No. 80-13, which was published in the Federal Register on Thursday, August 28, 1980, proposed amendments to the certification procedures regulations applicable to the type design approval of aircraft, aircraft engines, and propellers, including major changes, to: (1) Provide a mechanism by which the FAA may act more systematically to ensure that aircraft in service satisfy up-to-date level-of-safety expectations; (2) Ensure that the certification procedures regulations of Part 21 are consistent for the issuance of type certificates, type certificate amendments, or supplemental type certificates in order to ensure the same level of effort by applicants and by the FAA for affected products, irrespective of the type design approval procedure used; and (3) Make other necessary amendments to Part 21 consistent with longstanding administrative practice in the issuance of type certificates, type certificate amendments, and supplemental type certificates. Amendments to Parts 39 and 91 were also proposed to facilitate retroactive application of type design change requirements to aircraft, aircraft engines, and propellers in service when necessary.

Published as part of the notice was an extensive background discussion of factors leading to promulgation of the new rules, as well as a statement of the policy changes envisioned by the FAA which would be implemented by adoption of the proposed amendments. A detailed explanation of each proposed regulatory change was provided. In addition to inviting comments on the substance of the proposals, the notice solicited specific information from the public regarding anticipated economic and other impacts. The comment period was initially 60 days from publication date of the notice, or until October 27, 1980.

Need for Public Hearing

At this writing, the FAA has received 9 written requests for public hearing and 15 written requests to extend the comment period for Notice 80-13 an additional 30 to 120 days beyond the October 27, 1980 deadline. Most of the requests were from aircraft product manufacturers and modifiers, and from aviation trade associations on behalf of their members.

The concerns expressed in the letters dealt with two main topics: (1) the wide ramifications visualized by the aircraft industry due to the proposed policy requiring periodic reevaluation of type certificates and type certificate bases; and, (2) the effect of the proposed upgrading of the level of type design approval procedures upon the aircraft modification industries, and those segments which benefit from it, particularly with respect to supplemental type certificates as set forth in proposed § 21.117(a).

Objections to the latter arise from reading the proposed rule to mean that an applicant for an STC for an aircraft or product must, in all cases, have access to type certification data from the original manufacturer or type certificate holder. The intent, however, as stated in Notice 80-13, is to apply the same procedural regulations to the issuance of STC's as are now applied to type certificates and type certificate amendments with regard to the technical capability of the applicant's engineering staff and the availability of basic engineering data. The proposal allows various ways of approaching this objective. For example, in many cases, a competent applicant can more than adequately demonstrate a substantial basis for design change to a product by the application of sound "reverse" engineering. Basic data also may be developed by test or analysis where appropriate.

In essence, this rule change is a restatement of the need for sound engineering practice. Over the years, the FAA has received many STC applications from companies or individuals who have neither the necessary engineering data or the engineering capability for the task. A heavy burden is thereby placed on the FAA, which is not staffed for this extra function, to do the applicant's engineering work. In such cases the

result has been rejection of the STC application after considerable wasted effort by all parties.

The proposal was, therefore, generated in part by the realization that, in the future, the FAA must insure, before expending significant resources on an STC application, that the STC applicant demonstrates the technical capability, and availability of adequate data, commensurate with the complexity of the task.

Because of these expressed concerns, the FAA has determined that both a public hearing and an extension of the comment period are in the public interest.

Hearing Procedures

Persons who plan to attend the hearing should be aware of the following procedures, which will be followed to facilitate the workings of the hearing:

(a) The hearing will be informal in nature and will be conducted by the designated representative of the Administrator under 14 CFR 11.33. Each participant will be given an opportunity to make a presentation.

(b) The hearing will begin at 1:00 p.m. on November 12, 1980 at the Federal Aviation Administration, 800 Independence Avenue, SW., Auditorium, 3rd Floor. There will be no admission fee or other charge to attend and participate. All hearing sessions will be open to all persons on a space available basis. The presiding officer may accelerate the hearing agenda to enable early adjournment if the progress of the hearing is more expeditious than planned.

(c) All hearing sessions will be recorded by a court reporter. Anyone interested in purchasing the transcript should contact the court reporter directly. A copy of the court reporter's transcript will be filed in the docket.

(d) Position papers or other handout material relating to the substance of the hearing may be accepted at the discretion of the presiding officer. Participants submitting handout materials must present an original and two copies to the presiding officer for approval before distribution. If approved by the presiding officer, there should be an adequate number of copies provided for further distribution to all participants.

(e) Statements made by FAA participants at the hearing should not be taken as expressing a final FAA position.

Request To Make a Presentation

Interested persons are invited to attend the hearing and to participate by making oral or written statements. Written statements should be submitted in duplicate and will be made a part of the rules docket. Persons wishing to make oral statements at the hearing must notify the FAA on or before November 7, 1980, and indicate the amount of time requested for their initial statements. Presentations will be scheduled on a first-come first-served basis as time may permit within the hearing schedule. Request to make a presentation should indicate the subject matter and the time required and be sent to the same address as requests to be heard indicated above.

Public Hearing Schedule

The schedule for the hearing is as follows:

November 12, 1980

Time and Topic

1:00 to 1:30—Presentation of Hearing Procedures.
1:30 to 4:30—Public Presentation and Discussion.

November 13, 1980

10:00 to 12:00—Public Presentation and Discussion.
1:30 to 4:30—Public Presentation and Discussion.

November 14, 1980

10:00 to 12:00—Public Presentation and Discussion.
1:30 to 4:30—Public Presentation and Discussion.

Comment Period Extended

Since participants in this public hearing, as well as other persons unable to attend, may wish to submit further written comments, and since numerous correspondents have expressed a need for more time to prepare their response, the comment period for Notice 80-13 is being extended. The comment period closes on November 26, 1980.

While written comments will be accepted for filing in the rules docket, it must be emphasized that the FAA expects that the most beneficial aspect of this hearing will be the give and take among participants in discussing, in specific detail, the various aspects of this problem.

Written comments should be submitted in duplicate to the address for comments indicated above.

Persons wishing the FAA to acknowledge receipt of comments submitted in response to this notice should submit a self-addressed, stamped postcard with the following statement: Comments to Docket No. 20660. The postcard will be date and time stamped and returned to the commenter.

A report summarizing each FAA/public contact dealing with the substance of this rulemaking action will be filed in the rules docket.

(Secs. 313, 314 and 601 through 610 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1355, and 1421 through 1430); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)))

Note.—The FAA has determined that this document involves proposed regulations which are not in themselves considered to be significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and that a regulatory evaluation is not required.

Issued in Washington, D.C., on October 24, 1980.

Langhorne Bond,

Administrator.

[FR Doc. 80-33821 Filed 10-23-80; 8:45 am]

BILLING CODE 4910-13-M

Federal Register

Thursday
October 30, 1980

Part XI

Environmental Protection Agency

Hazardous Waste Management System: Identification and Listing of Hazardous Waste, and Interim Status Standards for Owners and Operators of Treatment, Storage, and Disposal Facilities; Final, Interim, and Proposed Regulations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[SW FRL 1642-4]

Hazardous Waste Management System; General and Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency.

ACTION: Interim final amendment to rule and request for comments.

SUMMARY: This regulation amends 40 CFR 261.4 to provide that a hazardous waste that is generated in a product or raw material storage tank, transport vehicle or vessel or in a manufacturing process unit is not subject to regulation under 40 CFR Parts 262 through 265 or Parts 122 through 124 or the requirements of Section 3010 of the Resource Conservation and Recovery Act (RCRA) until it is removed from the unit in which it was generated, unless the unit in which it is generated is a surface impoundment or unless the hazardous waste remains in the unit for more than 90 days after the unit ceases to be operated for the purpose of storing or transporting product or raw materials or manufacturing. This regulation also amends 40 CFR 260.10 to modify the definition of "generator" so that it clearly covers persons who remove hazardous wastes from product or raw material storage tanks, transport vehicles or vessels, or manufacturing process units in which the hazardous waste is generated. Finally, this regulation amends 40 CFR 260.10 to add definitions for "transport vehicle" and "vessel." The purpose of this requirement is to allow persons handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements. The effect of these amendments is to reduce the overall costs, economic impact and reporting and recordkeeping impacts of EPA's hazardous waste management regulations.

DATES: Effective Date: For the amendment to 40 CFR 261.4 and the definitions of "transport vehicle" and "vessel," in 40 CFR 260.10, November 19, 1980.

For the amendment to the definition of "generator," in 40 CFR 260.10, April 30, 1981.

Comment Date: This amendment is promulgated as an interim final rule. The Agency will accept comments on it until December 29, 1980.

ADDRESSES: Comments on the amendment should be sent to Docket Clerk [Docket No. 3001], Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact Alfred W. Lindsey, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755-9185. For information on implementation, contact:

Region I, Dennis Huebner, Chief, Radiation, Waste Management Branch, John F. Kennedy Building, Boston, Massachusetts 02203, (617) 223-5777

Region II, Dr. Ernest Regna, Chief, Solid Waste Branch, 26 Federal Plaza, New York, New York 10007, (212) 264-0504/5

Region III, Robert L. Allen, Chief, Hazardous Materials Branch, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-0980

Region IV, James Scarbrough, Chief, Residuals Management Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365, (404) 881-3016

Region V, Karl J. Klepitsch, Jr., Chief, Waste Management Branch, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6148

Region VI, R. Stan Jorgensen, Acting Chief, Solid Waste Branch, 1201 Elm Street, First International Building, Dallas, Texas 75270, (214) 787-2645

Region VII, Robert L. Morby, Chief, Hazardous Materials Branch, 324 E. 11th Street, Kansas City, Missouri 64106, (816) 374-3307

Region VIII, Lawrence P. Gazda, Chief, Waste Management Branch, 1860 Lincoln Street, Denver, Colorado 80203, (303) 837-2221

Region IX, Arnold R. Den, Chief, Hazardous Materials Branch, 215 Fremont Street, San Francisco, California 94105, (415) 556-4606

Region X, Kenneth D. Feigner, Chief, Waste Management Branch, 1200 Sixth Avenue, Seattle, Washington 98101, (206) 442-1260.

SUPPLEMENTARY INFORMATION:

I. Amendment to 40 CFR 261.4

On February 26 and May 19, 1980, EPA promulgated hazardous waste regulations in 40 CFR Parts 260 through 265 (45 FR 12721 et seq. and 45 FR 33066 et seq.) and on May 19, 1980, promulgated consolidated permit regulations in 40 CFR Parts 122 through 124 (45 FR 33289 et seq.). Section 261.2 of these regulations provides that a solid waste is any garbage, refuse or sludge; or any other waste material which is (1) discarded or is being accumulated, stored or physically, chemically or biologically treated prior to being discarded; or (2) has served its original intended use and sometimes is discarded; or (3) is a manufacturing or mining by-product and sometimes is discarded. Section 261.3 provides that a solid waste becomes a hazardous waste when (1) it first meets any of the listing descriptions set forth in Part 261, Subpart D; or (2) it first becomes a mixture containing a hazardous waste listed in Part 261, Subpart D; or (3) it first exhibits one or more of the characteristics of hazardous waste identified in Part 261, Subpart C. Section 261.1 provides that hazardous wastes identified in Part 261 are subject to regulation under Parts 262 through 265 and Parts 122 through 124. The effect of these provisions; particularly § 261.3(b), is to make hazardous wastes subject to regulation at the point where they are generated. The point of generation, however, may be a product or raw material storage tank, transport vehicle or vessel, or a manufacturing process unit. A literal application of the Part 261 regulations would mean that such units are hazardous waste storage facilities, and that their owners and operators must comply with the notification requirements of Section 3010 of RCRA, submit applications for and obtain permits under Part 122 and comply with the Interim Status Standards of Part 265 until a permit is issued or denied. An exception to these requirements is provided in § 262.34 which states that hazardous waste may be accumulated on the site of its generation without a permit for 90 days or less before it is removed and transported off-site for treatment, storage or disposal. For such accumulation, the owner and operator of the unit must notify under Section 3010 and comply with § 262.34, including requirements for containerization, labelling, marking, inspection and personnel training.

Many members of the regulated community have questioned the Agency's intent and wisdom in regulating those units in which hazardous wastes are first generated. These people claim that such units only incidentally hold or treat hazardous wastes and thus should not be subject to the regulations. They contend that such hazardous wastes do not pose a hazard to human health or the environment while they remain in these units.

Commenters on this issue provided several examples of units in which hazardous wastes are generated which currently appear to be, perhaps unnecessarily, subject to the regulations.

The bulk storage of crude oil and even refined petroleum products, such as gasoline, frequently produces a sludge or sediment that periodically must be removed. These sludges and sediments are solid wastes under § 261.2 and frequently may be hazardous wastes either because they are listed (see EPA Hazardous Waste Number K052 in § 261.32) or because they exhibit one or more of the characteristics of hazardous wastes identified in Part 261, Subpart C. The generation of sludges and residues that are hazardous wastes also can occur in the storage of other products and raw materials.

Similarly, sludges and residues are frequently produced in tank trucks, rail tank cars and the tanks or holds of ships and barges that have carried products or raw materials (which are not hazardous wastes). These sludges and residues are periodically removed through washing of the tanks of these transport vehicles and vessels. They are solid wastes and occasionally are hazardous wastes for the same reasons stated above. Where these sludges and residues are hazardous wastes, these vehicles and vessels technically are hazardous waste storage facilities subject to regulation prior to the removal of the hazardous waste.

Other examples occur in a great many manufacturing processes, where hazardous wastes are generated in process units, such as distillation columns, flotation units, and discharge trays of screens and in associated non-waste-treatment process units such as cooling towers. Many of these hazardous wastes are listed in §§ 261.31 and 261.32 (*e.g.*, EPA Hazardous Waste Numbers K009 and K010 in § 261.32). Others are hazardous wastes because they exhibit one or more characteristics of hazardous wastes (*see* 40 CFR Part 261, Subpart C). These hazardous wastes reside in these process units for some period of time—sometimes only minutes, other times for hours or days—and technically cause these units to be hazardous waste storage facilities subject to regulation.

Except for surface impoundments, and non-operating units, EPA did not intend to regulate product and raw material storage tanks, transport vehicles and vessels or manufacturing process units in which hazardous wastes are generated. As represented by the above examples, most of these units are tanks or tank-like units (*e.g.*, distillation units) which are designed and operated to hold valuable products or raw materials in storage or transportation or during manufacturing. Because of their design and operation, these units are capable of holding, and are typically operated to hold, the hazardous wastes which are generated in them, until the wastes are purposefully removed. Thus, these hazardous wastes are contained against release into the environment (except, of course, when abnormal circumstances such as fire or explosion occur) and the risks they pose to human health or the environment are very low and are only incidental to the risks posed by the valuable product or raw material with which they are associated. Based on these conclusions, EPA believes it is not necessary, except as noted below, to require owners and operators of these units to obtain permits for these units or to comply with the requirements of § 262.34 or Parts 264 or 265 with respect to these units.

Except where the unit is a surface impoundment or is not operating, as discussed below, the Agency believes that the hazardous waste generated in such a unit should only be subject to regulation when it is removed from the unit. In most cases, it is only after the removal of hazardous wastes from these units that the wastes have the potential for releasing hazardous constituents into the environment and posing a substantial hazard to human health or the environment.

As one exception to the foregoing, EPA does not believe that surface impoundments in which hazardous wastes are generated should be exempted from the regulations. These units, by definition (see 40 CFR 260.10), are formed in or constructed of earthen materials and often may not be lined with impermeable materials capable of preventing leaching. Any hazardous wastes generated and accumulated or stored in these units will have a much greater potential to leach, leak or otherwise escape from these units into the environment than those hazardous wastes generated and contained in the tanks and tank-like units discussed above. Because of this greater potential for release into the environment, the Agency believes that the hazardous wastes generated in surface impoundments may pose a substantial hazard to human health or the environment and therefore warrant regulation even while they remain in the impoundment. Such regulation will ensure that the impoundment is properly constructed, lined, inspected and operated, and that groundwater monitoring is performed.

As a second exception to the foregoing, EPA does not believe that hazardous wastes generated in manufacturing process units, or product or raw material storage tanks, transport vehicles or vessels should be exempted from regulation when these wastes remain in the units after they have ceased to be operated for the primary purpose of manufacturing or product or raw materials storage or transportation. EPA believes that when operation ceases, the incentive to maintain the integrity of the unit to prevent leaks or other unintended release of products, raw materials or manufacturing intermediates into the environment is substantially reduced. Consequently, the incentive to maintain the unit to prevent leaks or release of hazardous wastes which may remain in the unit after cessation of operation would also be substantially reduced. As stated above, the rationale for exempting hazardous waste from regulation while it remains in the unit in which it was generated is that the unit will have structural integrity against releases and will be operated to prevent such releases. The Agency believes that this rationale does not hold after cessation of operation.

EPA recognizes that manufacturing units and product and raw material storage tanks, transport vehicles and vessels are occasionally taken out of operation for temporary periods that may range from days, to months, and sometimes years, because of temporary declines in business or other business reasons. Units may also be taken out of operation for maintenance or repair. During these temporary shutdowns, hazardous wastes may remain in these units. The Agency also recognizes that these units may be permanently taken out of operation and hazardous wastes may remain in them for some period of time after shutdown. For both temporary and permanent shutdowns, the Agency will allow a reasonable time to remove any hazardous wastes that remain in the unit after operation ceases. Given the presumption that the unit has integrity before cessation of operation, the Agency believes that a reasonable time is 90 days. This time also is consistent with the 90-day accumulation period allowed under § 262.34. If hazardous wastes remain in these units more than 90 days after cessation of operation, EPA believes that these wastes should be fully regulated and that the units should be regulated as hazardous waste storage facilities. Thus, at that point, the owner and operator of the Unit would have to have interim status and comply with the Interim Status Standards of Part 265 or have a permit under Part 122 and comply with permit conditions.

Based on the foregoing assessment, EPA, in this rulemaking action, is amending the regulations by adding an exclusion provision to § 261.4 which

provides that a hazardous waste which is generated in a manufacturing process unit or an associated non-waste treatment unit, or in a product or raw material storage tank, transport vehicle or vessel is not subject to regulation under Parts 262 through 265 or Parts 122 through 124 or the notification requirements of Section 3010 of RCRA until it is removed from the unit in which it is generated, unless the unit is a surface impoundment or unless the hazardous waste remains in the unit for more than 90 days after the unit ceases to be operated for the purpose of manufacturing, or storing or transporting product or raw materials.

II. Definition of Transport Vehicle and Vessel

As indicated in the above discussion, this amendment deals with hazardous wastes that are generated in product or raw material transport vehicles and vessels, as well as those generated in manufacturing units and product or raw material storage tanks. Because the terms "transport vehicle" and "vessel" are not currently defined in § 260.10, definitions of these terms are included in this amendment. These definitions are the same as those in the Department of Transportation regulations governing the transportation of hazardous materials (see 49 CFR 171.8).

III. Generator Responsibilities and Amendment to 40 CFR 260.10

Many members of the regulated community also have asked the question: Who is the generator of hazardous wastes that are generated in manufacturing process units or in product or raw material storage tanks, transport vehicles or vessels? These persons point out that, with respect to stationary product and raw material storage tanks, it is quite common for one person to own and operate the storage tank, a second person to own the product or raw material being stored, and a third person (usually under contract to either the first or second person) to remove and dispose of sludges, sediments and residues that may have been formed in the tank. It also is common for the owner and operator of the tank to also own the stored product or raw material, but to hire another person to remove and dispose of sediments and residues formed in the tanks. There are situations, of course, where the three parties are one person, or where more than three parties are involved.

The same scenarios occur with respect to tank trucks, rail cars, and ships and barges. However, these scenarios are commonly complicated by two additional practices. Oftentimes these transport vehicles or vessels are taken to a central facility for removal of sediment and residues and attendant tank washing or cleaning. Frequently, this central facility is owned or operated by a person other than the owner or operator of the vehicle or vessel and, even more frequently, other than the owner of the product or raw material that produced the sediment or residue. Secondly, the residue or sediment cleaned and removed from a vehicle or vessel may have been produced by two or more products, thus bringing into the picture additional parties—the owners of two or more products. This situation can also occur, but is less common, with stationary storage tanks.

With respect to manufacturing units, the situation typically is not complicated. Usually, the same person owns and operates the unit, owns the manufacturing materials that may generate a hazardous waste and removes any hazardous wastes generated in the unit. However, there are situations where two or more parties are involved. One such situation is where a second party is periodically retained to clean a unit. Another situation is where the hazardous waste is produced by the processing of materials that are owned by two or more persons. This occurs in the reclaiming of spent solvents and spent catalysts where the reclaimer custom-processes batches of spent material without taking ownership of the material.

The definition of "generator" in § 260.10 is "any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 * * *." This definition suggests that the operator of a manufacturing process unit or a product or raw material storage tank, transport vehicle or vessel is a generator of a hazardous waste because it is his "act" of storage or transportation or his "process" of manufacturing that produces the hazardous waste. In the case of storage or transportation, the act of holding the product or raw material enables settling of heavy fractions of material to create hazardous waste sludges or sediments and enables hazardous waste residues to adhere to the tank. In the case of manufacturing processes, the process of manufacturing produces the hazardous wastes.

The owner of the product or raw material being stored or transported and the owner of the materials being manufactured also fit the definition of "generator" of the hazardous waste because their "acts" cause the product or material to be stored, transported or manufactured which leads to the generation of the hazardous wastes. Additionally, it is constituents in their product or material that "produce" a hazardous waste.

The definition of generator, particularly when read in conjunction with the amendment discussed above, also fits the person removing the hazardous waste from a manufacturing process unit or a product or raw material storage tank, transport vehicle or vessel. Although often it is not his "act or process" that produces the hazardous waste, it is his act that causes the hazardous waste to become subject to regulation (except where it is generated in a surface impoundment or remains in a non-operating unit for more than 90 days after cessation of operation).

The definition of generator, depending on the particular factual situation, can include all of the parties discussed above. Both the operator of a manufacturing process unit, or a product or raw material storage tank, transport vehicle or vessel, and the owner of the product or raw material act jointly to produce the hazardous waste generated therein, and the person who removes the hazardous waste from a tank, vehicle, vessel or manufacturing process unit subjects it to regulation. All three parties are involved and EPA believes that all three (and any others who fit the definition of "generator") have the responsibilities of a generator.

Because all three parties contribute to the generation of a hazardous waste and because none of the parties stands out in all cases as the predominant contributor, the Agency has concluded that the three parties should be jointly and severally liable as generators. The Agency will, of course, be satisfied if one of the three parties assumes and performs the duties of the generator on behalf of all of the parties. In fact, the Agency prefers and encourages such action and recommends that, where two or more parties are involved, they should mutually agree to have one party perform the generator duties. Where this is done, the Agency will look to that designated party to perform the generator responsibilities. Nevertheless, EPA reserves the right to enforce against any and all persons who fit the definition of "generator" in a particular case if the requirements of Part 262 are not adequately met, providing such enforcement is equitable and in the public interest.

Given this conclusion, the Agency believes it has an obligation to give guidance to the regulated community on who it prefers to assume the generator

responsibilities and to whom it will initially look to perform the generator duties where more than one party is involved and where EPA does not know which party, by mutual agreement, is appointed to carry out the generator duties, or where no party has been so designated. In the case of hazardous wastes generated in a stationary product or raw material storage tank, EPA will initially look to the operator of the tank to perform the generator responsibilities. EPA believes that this party is in the best position to perform the generator responsibilities. The operator typically is on-site and can determine when a tank contains sludges or residues that may be hazardous wastes. He certainly knows or ought to know when these sludges and residues are being removed and, therefore, when they become subject to regulation, if they are a hazardous waste. Because he is typically on-site, he is in a good position to carry out those duties of a generator which practically must be performed on-site. These include determining whether a hazardous waste exists (§ 262.11), initiating a manifest for off-site shipment (Part 262, Subpart B) and performing the pre-transportation requirements of packaging, labeling and marking (Part 262, Subpart C).

For hazardous wastes generated in a manufacturing process unit, EPA will initially look to the operator of the unit to fulfill the generator duties for the same reasons described above.

For hazardous wastes generated in a product or raw material transport vehicle or vessel which are removed at a central facility which is operated to remove sediments and residues from such vehicles or vessels, the Agency will initially look to the operator of the central facility to perform the generator duties. Following the reasoning outlined above, the Agency believes that the operator of a central facility is the party best able to perform the generator duties. Where hazardous wastes generated in product or raw material transport vehicles or vessels are not removed at a central facility, the Agency will look to the operator of the vehicle or vessel to perform the generator duties.

As discussed above, the person who removes hazardous waste from a manufacturing process unit or a product or raw materials storage tank, transport vehicle or vessel will be jointly and severally liable, along with the owner and operator of the tank, vehicle, vessel or unit and the owner of the product or raw material, as a generator. To clarify that such persons are included in the definition of generator, the Agency, in this rulemaking action, is amending the definition of "generator" in § 260.10 by adding a final clause so that the definition reads "* * * any person, by site, whose act or process produces a hazardous waste identified or listed in Part 261 of this Chapter or whose act first causes a hazardous waste to become subject to regulation."

IV. Accumulation of Hazardous Wastes

A number of questions have been asked about whether the hazardous wastes removed from product or raw material storage tanks, transport vehicles or vessels or manufacturing process units can be accumulated on-site without a permit for up to 90 days after removal and prior to off-site transport in accordance with § 262.34. Because today's amendment to §261.4 subjects such hazardous wastes to regulation only after they are removed from such tanks, vehicles, vessels or units and because there often will be a need to accumulate the removed wastes until a sufficient quantity can be obtained for off-site transport, the Agency believes that the 90-day accumulation provisions of §262.34 should be available to the generators of these hazardous wastes, except where these wastes are generated in a surface impoundment or the wastes remain in the unit more than 90 days following cessation of operation of the unit.

This allowance of 90-day accumulation without a permit is available to any of the persons who are generators, even though the party accumulating the waste on-site may not own or operate the site. This allowance only applies where the accumulation occurs on the site where the removal of hazardous waste from the tank, vehicle, vessel or unit takes place; all of the other conditions and requirements of § 262.34 must, of course, be met. The 90-day accumulation period starts when the hazardous waste is removed from the tank, vehicle, vessel or unit, except in the case where a tank, vehicle, vessel or unit ceases to be operated for its primary purpose, in which case the period starts when operation ceases.

V. Notification and EPA Identification Number Requirements

A number of questions have been asked about how the notification requirements of Section 3010 of RCRA and the EPA Identification Number requirements of §262.12 apply to generators of hazardous wastes generated in manufacturing process units or product or raw material storage tanks, transport vehicles or vessels. Today's amendment to §261.4 provides that such wastes (not including those generated in surface impoundments or retained for more than 90 days in non-operating units) are not subject to regulation, including section 3010 notification, until they exit the units in which they are generated. Thus, only those wastes that are removed during a future notification period are subject to notification.

Section 262.12, though, requires that a generator must not treat, store, dispose of, transport or offer for transportation a hazardous waste without having an EPA Identification Number. Section 260.10 defines a "generator" to be a person "by site" who generates wastes. Therefore a generator must have a separate EPA Identification Number for each site at which he generates hazardous wastes. Where two or more persons are generators, as discussed above, the person who performs the duties of a generator must have and use an EPA Identification Number for the site at which hazardous wastes are removed from a tank, vehicle, vessel or unit. Thus, if the operator of the tank, vehicle, vessel or unit performs the generator duties, he must have an EPA Identification Number for the facility and can use that number with respect to the management of all of his hazardous waste generated at that facility. If the owner of the product or raw material performs the duties of the generator, he must have and use an EPA Identification Number for the site at which the hazardous waste is generated; if he owns products being stored or processed at several sites, he must have and use a separate EPA Identification Number for each site. If the person who removes hazardous wastes from tanks or units performs the generator duties, he must have a separate EPA Identification Number for each site at which he performs these duties.

VI. Effective Date

Section 3010(b) of RCRA provides that EPA's hazardous waste regulations and revisions thereto take effect six months after their promulgation. The purpose of this requirement is to allow persons handling hazardous wastes sufficient lead time to prepare to comply with major new regulatory requirements. For the amendment to § 261.4 promulgated today, however, the Agency believes, that an effective date six months after promulgation would cause substantial and unnecessary disruption in the implementation of the regulations and would be counterproductive for the regulated community and the public. The regulatory provisions that these amendments modify take effect on November 19, 1980. In the absence of the effectuation of these amendments,

operators of a large number of product and raw material storage tanks, transport vehicles and vessels, and manufacturing process units in which hazardous wastes are generated would have to prepare to operate these facilities as hazardous waste storage facilities on and after November 19, 1980. This would involve preparation and submission of a Part A permit application, preparation of a contingency plan and implementation of a number of administrative and operational practices required by Part 265 for hazardous waste storage facilities. The Agency believes it makes little sense to allow these requirements promulgated on May 19 to become effective on November 19, 1980, and then have them substantially modified on a subsequent date, i.e., the six-month effective date for these amendments.

The amendment to § 261.4 in effect suspends regulation of certain facilities by clarifying when certain hazardous wastes are first subject to the hazardous waste regulations. This lessening of regulatory requirements surely is not the type of revision to regulations that Congress had in mind when it provided a six-month delay between the promulgation and the effective date of revisions to regulations. Consequently, the Agency is setting an effective date of November 19, 1980, for the amendment to § 261.4 promulgated in this rulemaking action.

The definitions of "transport vehicle" and "vessel" are necessary for an understanding of the amendment to § 261.4 and consequently they too have an effective date of November 19, 1980.

EPA is making the amendment to the definition of "generator" effective six months after promulgation, as provided in Section 3010(b) of RCRA. Although many persons who remove hazardous wastes from manufacturing units or from product or raw material storage tanks, vehicles or vessels, recognized that in certain situations they fell within the May 19, 1980, definition of generators, the amendment to the definition will probably make some additional persons generators. These people undoubtedly deserve the six month lead time that Congress provided in Section 3010(b). All persons who fit the May 19 definition of "generator" must comply with all applicable generator requirements on November 19, 1980. Only those persons who are made generators by today's amendment to the definition have an additional six months before they must comply with Part 262 requirements.

VII. Regulatory Impacts

The effect of these amendments is to reduce the overall costs, economic impact and reporting and recordkeeping impacts of EPA's hazardous waste management regulations. This is achieved by removing from regulation as storage facilities product and raw materials storage tanks, transport vehicles and vessels, and manufacturing process units that generate hazardous waste. The Agency is unable to estimate these cost and impact reductions because it does not have an estimate of the number of such tanks and units that otherwise would be regulated. For the reasons already discussed, notwithstanding these cost and impact reductions, the Agency believes that human health and environmental protection will not be reduced by this action.

VIII. Request for Comments

The Agency invites comments on all aspects of these amendments and on all of the issues discussed in this preamble, including the interpretation of "generator," the allowance of 90-day accumulation to all generators, and the notification and EPA Identification Number requirements. EPA is providing a 60-day comment period.

The Agency also invites comments on whether the amendment should also apply to hazardous wastes generated in product or raw material containers other than transportation vehicles and vessels (see § 260.10 for definition of the term "containers"). The Agency has not applied this amendment to such hazardous wastes because it is not aware that significant amounts of hazardous wastes are generated in product or raw material containers (exclusive of transportation vehicles or vessels).

The Agency recognizes that a wide variety of situations exist in the real world, and it is anxious to make its regulations and regulatory interpretations reasonable, understandable, and capable of implementation. The Agency can only do this by learning of situations where the regulations do not work well.

Dated: October 24, 1980.

Douglas M. Costle,

Administrator.

Title 40 of the Code of Federal Regulations is amended as follows:

1. Add the following paragraph (c) to § 261.4:

§ 261.4 Exclusions.

* * * * *

(c) Hazardous wastes which are exempted from certain regulations. A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, or in a manufacturing process unit or an associated non-waste-treatment manufacturing unit, is not subject to regulation under Parts 262 through 265 and Parts 122 through 124 of this chapter or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation or product or raw materials.

§ 260.10 [Amended]

2. Amend the definition of "Generator" in § 260.10 to read as follows:

* * * * *

Generator means any person, by site, whose act or process produces hazardous waste identified or listed in Part 261 of this chapter or whose act first causes a hazardous waste to become subject to regulation.

* * * * *

3. Add the following definitions to § 260.10:

* * * * *

"Transport vehicle" means a motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. "Vessel" includes every description of watercraft, used or capable of being used as a means of transportation on the water.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW FRL 1639-1a]

Hazardous Waste Management System: Identification and Listing of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Pursuant to Section 3001 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the Environmental Protection Agency is proposing to amend the characteristic of Extraction Procedure (EP) toxicity (40 CFR 261.24, 45 FR 33122) to apply to hexavalent chromium instead of total chromium. The effect of amending the EP toxicity characteristic will be to narrow the scope of the EP characteristic, making it applicable to a more limited category of chromium-containing wastes. These wastes will then be subject to the management standards issued by EPA under Sections 3002 through 3006 and 3010 of RCRA (Parts 262 through 265, 122 through 124 of this Chapter and 45 FR 12746). As part of this proposal, the Agency is proposing a new analytical method for use in analyzing waste extracts for the presence of hexavalent chromium.

DATES: EPA will accept public comments on the proposed amendment until December 30, 1980. Any person may request a hearing on this proposal by filing a request with John P. Lehman, whose address appears below, by November 20, 1980. The request must contain the information prescribed in § 260.20(d) of this chapter.

ADDRESSES: Comments should be addressed to Docket Clerk, Office of Solid Waste [WH-562], U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Requests for hearing should be addressed to John P. Lehman, Director, Hazardous and Industrial Waste Division, Office of Solid Waste [WH-565], U.S. Environmental Protection Agency, Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 3001 chromium standard."

The public docket for this proposed rulemaking is located in Room 2711, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460 and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Matthew A. Straus, Office of Solid Waste [WH-565], U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, (202) 755-9187.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency is proposing today to amend the characteristic of EP toxicity (40 CFR 261.24, 45 FR 33122) to apply to hexavalent chromium instead of total chromium. This preamble describes the reasons for this proposed amendment, the precise standard being proposed, and a proposed new analytical method for distinguishing between tri- and hexavalent chromium.

I. Basis For a Distinction in the Hazardous Waste Management Regulations Between The Different Valence States of Chromium

On May 19 and July 16, 1980, EPA published its initial regulations implementing Section 3001 of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended (see 45 FR 33084 and 47832). These regulations define the scope of a comprehensive Federal and State program to effectively control the management of hazardous wastes.

Under these regulations, a solid waste becomes subject to the hazardous waste management system in either of two ways: the specific waste is listed in Part 261 Subpart D (45 FR 33122-33124), or exhibits any of the characteristics of hazardous waste identified in Subpart C (45 FR 33121-122). The criteria for listing hazardous wastes and the characteristic of EP toxicity are based upon the total chromium present in the waste and in the waste extract respectively, without differentiating the *type* of chromium present. These regulations thus specify "chromium and compounds, N.O.S." as hazardous constituents for purposes of listing hazardous wastes (*see* Appendix VIII to Part 261, 45 FR at 33132), and specify a maximum concentration level for "chromium" when identifying wastes by means of the EP toxicity characteristic. (*See* § 261.24, 45 FR at 33122.) A number of wastes listed in the May and July regulations contain chromium as a constituent of concern (specifically EPA Hazardous Waste Nos. F006, K002-008, K048-051, K053-058, K061-063, K069, K074, K078-082, K086, and K090-092). Additional wastes are expected to be identified as hazardous because they fail the EP toxicity characteristic for chromium.

Chromium, however, occurs in a number of valence states, of which the trivalent (Cr (III)) and the hexavalent (Cr (VI)) are environmentally significant.[1] The Agency has received many comments arguing that trivalent chromium is sharply distinguishable from hexavalent chrome in its potential to cause significant human health and environmental harm under normally-occurring solid waste management conditions. These commenters' ultimate point is that solid wastes containing exclusively, or virtually exclusively, trivalent chromium are not hazardous due to chromium concentrations, and should not be regulated as if they contain hexavalent chromium.

The Agency has reviewed these comments carefully, and has conducted its own investigation of this question in promulgating the regulations and in response to the comments. We believe that the toxicity and environmental fate of trivalent chromium merits further study, and we intend to investigate these questions further. It is our conclusion, however, that at the present time the hazardous waste management regulations should be amended to reflect a distinction between trivalent and hexavalent chromium. The principal points of distinction between the two types of chromium which we believe justify this regulatory amendment are the differing toxicities and the differing potentials for migration and mobility of chromium (III) and chromium (VI), and the apparent low likelihood that trivalent chromium will oxidize to hexavalent chromium under most plausibly-occurring types of improper waste management. These distinctions are discussed in more detail below.

A. Distinctions in the Environmental Hazards Posed by Trivalent and Hexavalent Chromium

It is generally agreed among the scientific community that the available data show that trivalent chromium is less toxic than the hexavalent form. The carcinogenicity of various hexavalent chromium compounds in human and animal models has been well documented (NAS, 1974; NIOSH, 1975; U.S. EPA, 1978). EPA's Carcinogen Assessment Group (CAG) has determined that there is substantial evidence that hexavalent chromium compounds are carcinogenic in man. Data on the carcinogenicity of trivalent chromium are inadequate. There have been no epidemiological studies on workers using trivalent chromium compounds; rats showed a weak carcinogenic response to chromium (III)

[1] Chromium valence states of −2 to +6 have been reported, but most of these are too unstable to be of significance in biological and environmental processes. *See generally*, U.S. EPA, *Water-Related Environmental Fate of 129 Priority Pollutants*, Vol. I, EPA-440/4-79-029a (1979).

acetate. (Hueper and Payne, 1962; Maltoni, 1974).

It is further agreed that only hexavalent chromium presently is known to pose a serious threat of mutagenicity. Chromuim compounds induce chromosomal abberrations in human and animal leukocytes, and mutations in bacteria and yeasts (EPA, 1978; Petrilli and deFlora, 1977, 1978; Nakumoro, 1978). In these studies, trivalent chromium compounds have a weak response, while hexavalent compounds show significantly higher activity.

Acute and chronic toxicity problems associated with exposure to hexavalent chromium include penetrating skin ulcers, perforation of the nasal septum, inflammation of the larynx, as well as damage to kidneys and lungs. (Casarett and Doull, 1979; NAS, 1974; NIOSH, 1975; Bovett et al., 1977.) These effects do not occur upon exposure to chromium (III). The only well-documented adverse consequence of exposure to trivalent chrome is allergic dermatitis (also a property of Hexavalent chromium compounds) (Casarett and Doull, 1979)[2]

Various direct applications of trivalent chromium to humans are actually considered to be desirable. Trivalent chromium is required for proper metabolic functioning. It serves as a cofactor for the action of insulin, and is necessary for normal glucose utilization (Toepfer, et al., 1977). The Food and Drug Administration also has approved the use of trivalent chromium-containing pigments in cosmetics. (21 CFR 73.2326 and 73.2327.) No such applications of hexavalent chrome have been approved, nor are they considered to be beneficial.

Thus, at the present time, there are well-recognized distinctions between the human health and environmental hazards posed by tri- and hexavalent chromium.

B. Migratory Potentials of Trivalent and Hexavalent Chromium

Trivalent chromium appears to have significantly lower migratory potential than hexavalent chromium, and to have significantly less mobility should it migrate from a waste matrix. Most trivalent chromium salts are virtually insoluble. Trivalent chromium, moreover, is strongly adsorbed by clays and by organic soil materials (U.S. EPA, 1978, Bartlett, 1976; and Griffin, 1979), decreasing the possibility of exposure via a groundwater exposure pathway even if migration occurs. In contrast, hexavalent chromium salts are very soluble and therefore have high migratory potential.

Groundwater and leachate monitoring data submitted by various leather tanners appear to confirm the relative immobility of trivalent chromium under normally-occurring waste disposal conditions. (*See, e.g.,* Comments of Tanners' Council of America, August 18, 1980, pp. 7–13; Comments of Dr. Robert M. Lollar, Technical Director of Tanners' Council, August 12, 1980, pp. 6–7.) In addition, the Agency has obtained groundwater and leachate monitoring data from sites accepting large quantities of tannery waste (which wastes contain high concentrations of trivalent chrome), in some cases for long periods of time (from 20 to 86 years). These sites show no evidence of chromium contamination of groundwater. (Comments of Berwick Sewer District, June 30, 1980; Comments of Irving Tanning Co., July 15, 1980.) Groundwater contamination did not occur even in cases of prolonged worst-case management of trivalent chromium-containing wastes (*see* Comments of Wolverine World Wide, Inc., August 15, 1980, Attachment 1, pp. 2, 9–13 (improperly sited landfill with high water table and permeable soil co-disposing tannery wastes with other industrial wastes without any particular precautions still does not show evidence of trivalent chromium groundwater contamination)).

C. Potential of Trivalent Chromium to Oxidize to Hexavalent Chromium

In developing the present regulatory regime based upon total chromium, the Agency was aware of the differing potentials for hazard of tri- and hexavent chromium, and also of their differing migratory potentials. Our concern was that trivalent chromium, under waste management conditions, could oxidize to the hexavalent form, which would render it highly mobile and toxic. (*See, e.g.,* U.S. EPA, Listing Background Document for Leather Tanning and Finishing Industry, pp. 733–34, May 2, 1980.) Further analysis indicates, however, that such oxidation is not likely to occur under most waste management practices. Although the oxidation of trivalent chromium can occur on a theoretical basis (Carlin, 1965; U.S. EPA, 1977), oxidation is unlikely to occur in normal land disposal situations. Thus, oxidation does not take place except under alkaline and aerobic conditions (Robertson, 1975). Even then, the rate of oxidation is very slow unless manganese dioxide is present (Schroeder and Lee, 1975). These conditions are not ordinarily found in landfill or impoundment disposal situations, since these are typically anaerobic environments. (Ham, 1979.) Monitoring data submitted in comments likewise supports the conclusion that oxidation of trivalent chromium is unlikely when these wastes are land disposed. (*See* Comments of Alley, Young & Baumgartner, Inc., July 11, 1980; Comments of Salz Leathers, Inc., July 14, 1980, exh. B.)[3]

Given the relatively low toxicity of trivalent chromium, its low migratory potential, and the lack of indication of potential for oxidation under usual land disposal conditions, the Agency does not believe that land disposal of trivalent chromium-containing wastes in common landfill or impoundment situations poses a present or potential hazard to human health or the environment via soil migration to groundwater. We therefore believe it necessary to recognize a distinction between tri- and hexavalent chromium-containing wastes when land disposed.

Our research indicates, however, that trivalent chromium oxidizes to the hexavalent form when materials containing chromium (III) are incinerated or similarly treated by a destructive oxidation process. The incineration ash will certainly be contaminated with chromium (VI) (Comments of Tanners' Council of America, *supra,* p. 6), and we expect that hexavalent chromium will be present in incinerator emissions as well (U.S. Dept. of the Interior, 1979). As a result, we believe that chromium-bearing wastes (*i.e.,* wastes containing both valence types) continue to require Subtitle C regulation when managed by incineration or similar processes. Our contemplated regulatory approach for these wastes is described in Part II. C below.

D. Impact of the Proposed Distinction On Other Regulatory Programs

We note, at this point, that certain other of the Agency's regulatory programs regulate on the basis of total chromium. Our porposed action involves only the hazardous waste management program, and is based on a perceived distinction in the substantiality of hazard posed by tri- and hexavalent chromium-containing wastes when disposed on land.

Different considerations underly the Agency's other programs. For example,

[2] Various aquatic species likewise are more susceptible to the hexavalent form of chromium.

[3] Ultraviolet light-sensitized oxidation of trivalent chromium has been demonstrated under laboratory conditions (Stephens, 1977). This oxidation did not take place, however, when lake water was tested. In any case, we do not believe that these experimental conditions reflect those normally occurring in a waste disposal environment.

the National Interim Primary Drinking Water standards are for total chromium. This is because pre-treatment of drinking water by chlorination may result in oxidation of trivalent chromium. (Guidelines for Canadian Water Quality, 1978; Sorg, 1979; U.S. EPA, 1976.) Total chromium is thus the appropriate parameter. (U.S. EPA, 1976.)

All chromium compounds also are regulated as toxic under the Clean Water Act (CWA). In part, this reflects the Congressional determination to list all chromium compounds as toxic pollutants under CWA Section 307(a)(1). In addition, the Administrator has a great deal of flexibility in making listing (or delisting) determinations under CWA Section 307. He is to consider a series of enumerated factors, to assign appropriate weight to each, and to arrive at a final determination by balancing the different elements. The identification process under RCRA is much less flexible and is to some extent more stringent, in light of the significantly more impactive consequences of a RCRA hazardous waste determination. Thus, wastes are not to be identified as hazardous unless they are capable of posing a "substantial" hazard to human health or the environment. In light of these differing statutory schemes, regulatory action affecting chromium-containing wastes has no direct bearing on the status of chromium as a toxic pollutant under CWA Section 307(a).

II. Regulatory Action

A. Proposal To Amend the Characteristic of EP Toxicity

In order to reflect the differing environmental hazards posed by trivalent and hexavalent chromium-containing wastes when disposed on land, the Agency is proposing to amend the extraction procedure to apply to hexavalent chrome instead of to total chromium. We are not, however, proposing to change the maximum concentration level of hexavalent chromium in the EP extract, which would consequently remain at 5.0 mg/l. This level is based on the National Interim Primary Drinking Water Standard, which was established to reflect the known toxicity of the hexavalent form.[4] (Sorg, 1979; U.S. EPA, 1976.)[5] Other countries and organizations also have adopted this level for chromium in drinking water, and have indicated explicitly that the standard is for hexavalent chromium. (WHO, 1970; NAS, 1977; Sorg, 1979 (describing Japan's drinking water standard for hexavalent chromium).) Since the underlying drinking water standard in fact reflects human health and environmental dangers of hexavalent chromium, we feel justified in retaining this standard when regulating solely on the basis of hexavalent chrome.

We stress that under our proposal, all wastes are to be tested for the characteristic of EP toxicity based on hexavalent chromium when the amended characteristic is finalized. We wish particularly to clarify this point because of other regulatory action taken today delisting certain chromium-bearing wastes and granting temporary exclusions from hazardous waste status for other such wastes (published elsewhere in Part XI of this issue).

All of these wastes will be subject to the amended EP toxicity characteristic and generators of these wastes consequently will have to test their waste extracts for the presence of hexavalent chromium.

B. Proposed Analytical Method Distinguishing Between Tri- and Hexavalent Chromium

The proposal to amend the EP toxicity characteristic to apply only to hexavalent chromium requires that there be an analytical method which distinguishes between these two valence states. EPA's Office of Research and Development has developed such a procedure. The method (fully described in Appendix A to this preamble) is based on the separation of hexavalent chromium from solution by the coprecipitation of lead chromate with lead sulfate at a pH of 3.5. The precipitate is resolubilized in nitric acid and quantified by atomic absorption spectroscopy. Since trivalent chromium does not precipitate under such conditions, the method offers a means of determining the presence and concentration of the hexavalent state in admixture with the trivalent form. Comments are solicited on the application of this method to EP extracts.

This method has been evaluated using effluents containing high concentrations of organic material, samples where matrix interferences have been encountered with the more usual chelation/extraction procedures. Further evaluation presently is being conducted with a wide variety of industrial wastes and EP extracts. The procedure will be finally promulgated after review of comments and after an adequate supportive data base is available.

C. Incineration of Chromium-Containing Wastes

The Agency contemplates regulating wastes which contain both tri- and hexavalent chromium in one circumstance,[6] namely when a chromium-bearing waste is incinerated or destructively oxidized by a similar process. Such control is necessary because trivalent chromium oxidizes to hexavalent chromium during incineration. (U.S. Dept. of Interior, 1979). Incinerated wastes containing trivalent chromium thus should be regulated as if they contain hexavalent chromium. The Agency intends in the near future to adopt appropriate regulations under Parts 261 and 266 regulating these types of chromium-bearing wastes. Regulatory action is being deferred at the present time, however, due to the need to implement other parts of the hazardous waste management program, and also because incineration of trivalent chromium-containing wastes does not appear to be widespread,[7] limiting the possibility of environmental insult during this interim period. Furthermore, the Agency needs more time to develop regulatory standards to apply to facilities incinerating trivalent chromium-containing wastes. For these reasons, we are not proposing any standards for incineration of trivalent chromium-containing wastes at this time.

EPA is, however, anxious to obtain comments on this contemplated approach. We specifically solicit comments to the following questions:

1. When incineration of chromium-containing wastes causes oxidation of

[4] The maximum concentration level of the EP toxicity characteristic, of course, is established at two orders of magnitude above the Drinking Water Standard.

[5] As noted above, the standard also establishes a margin of safety in light of oxidation of chromium as a result of drinking water treatment (Sorg, 1979).

[6] There also is one other situation where wastes might be regulated based on total chromium. The Agency still has some concern that trivalent chromium from waste disposal sites could migrate to public water systems where it would be oxidized during chlorination to the hexavalent state. We believe the likelihood of this occurring to be remote in light of the low migratory potential of trivalent chromium. However, should migration of trivalent chromium from improper waste disposal occur in concentrations sufficient to interfere substantially with treatment of public water systems, or otherwise cause public health concerns, we view our imminent hazard authority under Section 7003 of RCRA as sufficient to enjoin further contamination. We are also prepared in this circumstance to exercise our listing authority under Subtitle C to address the particular site creating the problem.

[7] For example, the tanning industry, a principal generator of trivalent chromium-bearing wastes, does not presently incinerate any of its wastes, although a few individual tanneries and the Tanners' Council in collaboration with the U.S. Bureau of Mines are investigating the feasibility of waste incineration. (U.S. Dept. of Interior, 1979.) Several POTW's do, however, use the Zimpro process to incinerate tannery sludges.

trivalent chromium to hexavalent chromium, will this oxidized hexavalent chromium be emitted to the air as a result of incineration or will it remain in the incinerator ash? How effective are available stack scrubbing devices in removing any chromium from the off-gases?

2. If chromium-bearing wastes are to be regulated as hazardous when incinerated or when subjected to similar destructive oxidation processes, what concentration of chromium should be present in the waste to trigger regulatory controls? What is the correlation between concentrations of total chromium in a waste, and concentrations of hexavalent chromium, in incinerator emissions? Do conditions of incineration or pyrolysis affect this ratio?

3. What management standards should be applied to facilities incinerating chromimum-bearing wastes during the interim status period? Are subparts A, B, C, D, E, G, H, and O of the Part 265 interim status standards appropriate?

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

It is proposed to amend Title 40 CFR Part 261 as follows:

§ 261.24 [Amended]

1. In § 261.24, *Characteristic of EP Toxicity,* amend by revising the entry for EPA Hazardous Waste Number D007 Table 1 as follows:

EPA hazardous waste number	Contaminant	Maximum concentration (milligrams per liter)
D007	Chromium (VI)	5.0

2. In Appendix II to Part 261 EP Toxicity Test Procedure, revise *Analytical Procedures for analyzing Extract Contaminants* as follows: [1]

Analytical Procedures For Analysing Extract Contaminants

The test methods for analyzing the extract are as follows:

(1) For arsenic, barium, cadmium, lead, mercury, selenium, silver, endrin, lindane, methoxychlor, toxaphene, 2, 4-D [2, 4-dichlorophenoxyacetic acid], or 2, 4, 5-TP [2, 4, 5-trichlorophenoxypropionic acid]: "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods." Solid Wate Information, U.S. Environmental Protection Agency, 26 W St. Clair Street, Cincinnati, Ohio 45268 [SW-846, 1980].

(2) For chromium (VI): Method 8.545 in "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods." Solid Waste Information, U.S. Environmental Protection Agency, 26 W. St. Clair Street, Cincinnati, Ohio 45268.

[1] Note: See FR Doc. 80-33871 published at the end of this Part IX of the Federal Register.

Appendix A—Method of Analysis for Hexavalent Chromium

Method 8.545 Hexavalent Chromium by Coprecipitation With Lead Sulfate

1. Scope and Application

1.1 This method covers the determination of dissolved hexavalent chromium Cr(VI) in Extraction Procedure EP) extracts.

1.2 The method may be used to analyze samples containing more than 5 μg of Cr(VI) per liter. In many cases, dilution of the extract will be necessary to achieve an optimal concentration range for Furnace Atomic Absorption spectrometry. The dilution of the sample extract is desirable since it will reduce the likelihood of interferences from sulfate and chloride ions (see 4.1) which are present in many extracts and to increase the reproducibility of the method.

2. Summary of the Method

2.1 The method is based on the separation of Cr(VI) from solution by coprecipitation of lead chromate with lead sulfate in a solution of acetic acid. After separation the supernate (containing Cr(III)) is drawn off, the precipitate is resolubilized in nitric acid as trivalent chromium Cr(III) and quantified by furnace atomic absorption spectrometry.

3. Sample Handling and Preservation

3.1 For guidance on sample handling and glassware cleaning procedures see Section 8.49.

3.2 The sample to be evaluated for the Extraction Procedure characteristic should not be acidified, but instead transported and stored at 4°C until analysis.

3.3 Since stability of Cr(VI) is not completely understood at this time, the analysis should be carried out as soon as possible.

4. Interferences

4.1 Samples containing either sulfate or chloride in concentrations above 1000 mg/liter should be diluted before proceeding to step 9.1.

5. Instrument Parameters (Furnance Atomic Absorption Spectrometry)

5.1 Drying Time and Temperature: 30 sec at 125°C.

5.2 Ashing Time and Temperature: 30 sec at 1000°C.

5.3 Atomizing Time and Temperature: 10 sec at 2700°C.

5.4 Purge Gas Atmosphere: Argon

5.5 Wavelength: 357.9 nm

5.6 Other operating parameters should be set as specified by the particular instrument manufacturer.

6. Special Apparatus

6.1 Glassware

6.1.1 Filtering flask, heavy wall, 1 liter capacity

6.1.2 Centrifuge tubes, heavy duty, conical, graduated, glass stoppered, 10 ml capacity

6.1.3 Pasteur pipets, borosilicate glass, 0.0 cm

6.2 Centrifuge: any centrifuge capable of reaching 2000 rpm and accepting the centrifuge tubes described in 6.1.2. may be used.

6.3 pH Meter: a wide variety of instruments are commerically available and suitable for this work.

6.4 Test Tube Mixer: any mixer capable of thorough vortex is acceptable.

7. Reagents

7.1 Lead Nitrate Solution: Dissolve 33.1 grams of lead nitrate, $Pb(NO_3)_2$ (analytical reagent grade), in deionized distilled water and dilute to 100 ml.

7.2 Ammonium Sulfate Solution: Dissolve 2.7 grams of ammonium sulfate, $(NH_4)_2SO_4$ (analytical reagent grade) in deionized distilled water and dilute to 100 ml.

7.3. Calcium Nitrate Solution: Dissolve 11.8 grams of calcium nitrate, $Ca(NO_3)_2 \cdot 4H_2O$ (analytical reagent grade) in deionized distilled water and dilute to 100 ml. 1 ml=20 mg Ca.

7.4 Nitric Acid, Concentrated, distilled reagent grade or spectrograde quality.

7.5 Acetic Acid, Glacial: ACS reagent grade 7.5.1 Acetic Acid, 10% (v/v): Dilute 10 ml glacial acetic acid to 100 ml with deionized distilled water.

7.6 Ammonium Hydroxide, 10% (v/v): Dilute 10 ml concentrated ammonium hydroxide, NH_4OH (analytical reagent grade), to 100 ml with deionized distilled water.

7.7 Hydrogen Peroxide, 30%: ACS reagent grade.

7.8 Potassium Dichromate Standard Solution: Dissolve 2.8285 grams of dried potassium dichromate, $K_2Cr_2O_7$ (analytical reagent grade), in deionized distilled water and dilute to 1 liter. 1 ml=1 mg Cr (1000 mg/1).

7.9 Trivalent Chromium Working Stock Solution: To 50 ml of the potassium dichromate standard solution (7.8) add 1 ml of 30% H_2O_2 (7.7) and 1 ml concentrated HNO_3 (7.4) and dilute to 100 ml with deionized distilled water. 1 ml=0.5 mg Cr(III). Prepare fresh monthly or as needed.

8. Calibration

8.1 At the time of anlaysis, prepare a blank and a series of at least four calibration standards from the Cr(III) working stock (7.9) that will adequately bracket the sample and cover a concentration range of 5 to 100 ug Cr/1. Add to the blank and each standard, before diluting to final volume, 1 ml 30% H_2O_2 (7.7), 5 ml concentrated HNO_3 (7.4), and 1 ml calcium nitrate solution (7.3) for each 100 ml of prepared solution. These calibration standards should be prepared fresh weekly, or as needed.

8.2 The listed instrument condition (5) and calibration concentration range are for a Perkin-Elmer HGA-2100 based on the use of a 20 ul injection, continuous flow purge gas and non-pyrolytic graphite. The use of simultaneous background correction is required for both calibration and sample analysis.

9. Procedure

9.1 Transfer a 50 ml portion of the filtered sample to a 100 ml Griffin beaker and adjust to a pH of 3.5±0.3 by adding dropwise volumes of 10% acetic acid. Note: Care must

be exercised not to take the pH below 3. If the pH is inadvertently lowered to <3, 10% NH_4OH (7.6) should be used to readjust the pH to 3.5 ±0.3.

9.2 Pipet a 10 ml aliquot of the adjusted sample into a centrifuge tube (6.1.2). Add 100 ul of the lead nitrate solution (7.1), stopper the tube, mix the sample and allow to stand for 3 minutes.

9.3 After the formation of lead chromate, to help retain Cr(III) complex in solution, add 0.5 ml glacial acetic acid (7.5), stopper and mix.

9.4 To provide adequate lead sulfate for coprecipitation add 100 ul of ammonium sulfate solution (7.2), stopper and mix.

9.5 Place the stoppered centrifuge tube in the centrifuge, making sure that the tube is properly counterbalanced. Start the centrifuge and slowly increase the speed to 2000 rpm in small increments over a period of 5 minutes.

Note.—The speed of the centrifuge must be increased slowly to insure complete coprecipitation.

9.6 After centrifuging remove the tube and withdraw and discard the supernate using the apparatus detailed in Figure 1. As the pasteur pipet is lowered into the tube the supernate is sucked over into the filtering flask. With care the supernate can be withdrawn to within approximately 0.1 ml above the precipitate.

9.7 To the remaining precipitate add 0.5 ml concentrated HNO_3 (7.4), 100μl 30% H_2O_2 (7.7) and 100μl calcium nitrate solution (7.3). Stopper the tube and mix using a vortex mixer to disrupt the precipitate and solubilize the lead chromate. Dilute to 10ml, mix and analyze in the same manner as the calibration standard (8.2).

10. Verification

10.1 For every sample matrix analyzed verification is necessary to determine that neither a reducing condition nor chemical interference affecting precipitation is present. This must be accomplished by analyzing a second 10 ml aliquot of the pH-adjusted filtrate that has been spiked with Cr(VI) (7.7). The amount of spike added should double the concentration found in the original aliquot. Under no circumstance should the increase be of less than 30μg Cr(VI)/1. To verify the absence of an interference the spike recovery should be between 85% and 115%.

10.2 If the addition of the spike extends the concentration beyond the calibration curve the analysis solution should be diluted with blank solution, and the calculated results adjusted accordingly.

10.3 If the result of verification indicates a suppressive interference, the sample should be diluted and reanalyzed.

11. Analytical Notes

11.1 Nitrogen should not be used as a purge gas because of possible CN band interference.

11.2 The use of pyrolytic graphite should be avoided when possible, since in some situations an enhancement effect has been reported.

11.3 Pipet tips have been reported to be a possible source of contamination.

11.4 The method of standard addition should be used in accordance with the general methods given in the manual "Test Methods for Evaluating Solid Waste," SW-846.

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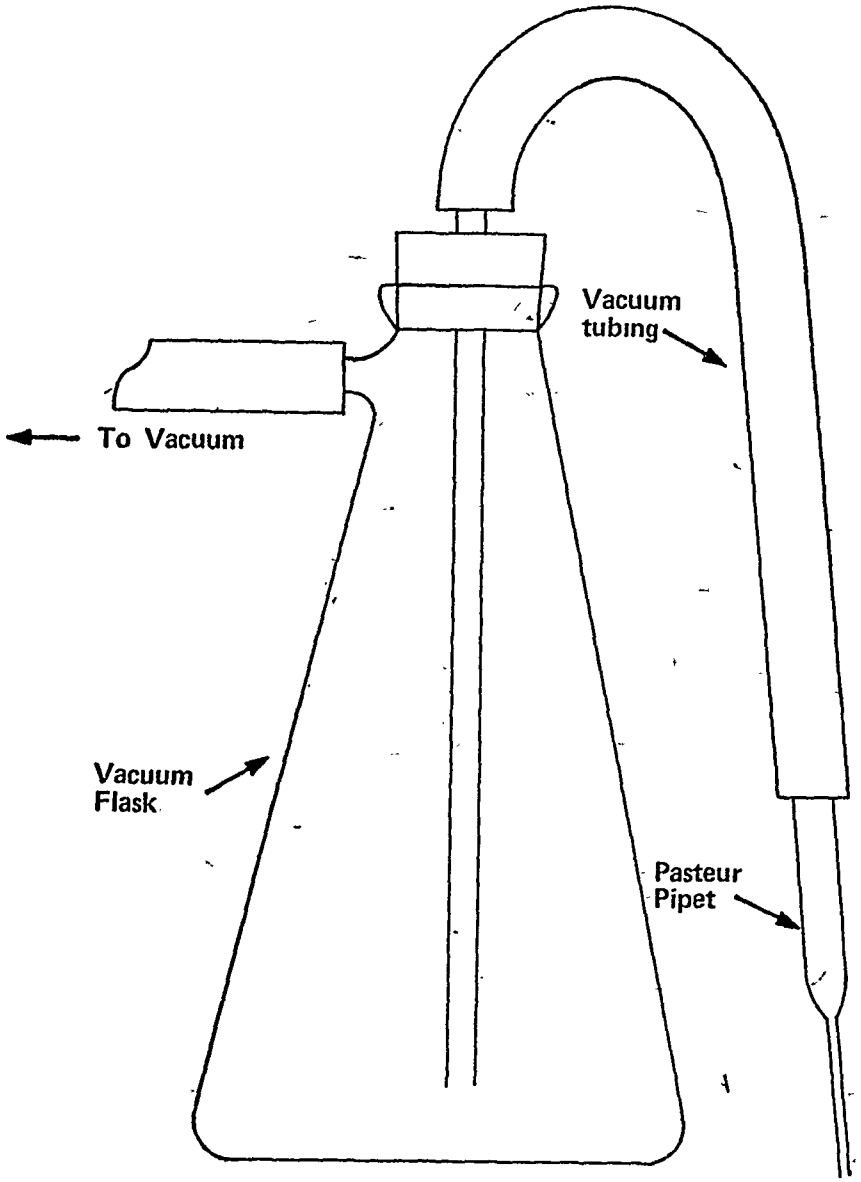

FIGURE 1

[FR Doc. 80-33807 Filed 10-29-80; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW FRL 1639-1b]

Hazardous Waste Management System: Identification and Listing of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Interim Final Rule and Request for Comments.

SUMMARY: This rule amends § 261.4 of the Resource Conservation and Recovery Act (RCRA) hazardous waste management regulations by temporarily excluding from hazardous waste status wastes which presently are deemed hazardous solely due to the presence of chromium, but contain trivalent chromium exclusively (or nearly exclusively), are generated from processes which use trivalent chromium exclusively (or nearly exclusively), and are typically and frequently managed in non-oxidizing environments. Specific wastes excluded under this standard are tannery wastes listed as hazardous in § 261.32 (EPA Hazardous Waste Nos. K053 to K058); waste leather scrap from the leather tanning industry, the shoe manufacturing industry and other leather product manufacturing industries; and wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process listed as hazardous in § 261.32 (EPA Hazardous Waste No. K074).

Other wastes also may be temporarily excluded if they meet the standard set out above. To be eligible for a temporary exclusion, a waste generator or group of generators must petition the Agency to grant their waste a temporary exclusion and show why their waste meets the temporary exclusive standard. Petitions will be processed under the procedures set forth in § 260.20 of the hazardous waste regulations. Generators of wastes already determined to be within the temporary exclusion need not file petitions.

This amendment is taken in conjunction with two other regulatory actions. The first is a proposal to amend the characteristic of EP toxicity to apply only to hexavalent chromium. These temporary exclusions will remain in effect only until that proposed amendment is acted upon finally. The second regulatory action is a final delisting of certain chromium-bearing waste streams. The termporary exclusion provision is necessary to allow these delistings to have their intended effect, and therefore is being adopted as an interim final regulation.

DATES: Effective Date: This amendment, in the form published today, is interim final Agency action. It becomes effective on November 19, 1980.

EPA will accept public comments on this interim final regulation until December 30, 1980. Any person may request a hearing on this interim final rule by filing a request with John P. Lehman, whose address appears below, by November 20, 1980. The request must contain the information prescribed in § 260.20(d) of this chapter.

ADDRESSES: Comments should be sent to Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Requests for hearing should be addressed to John P. Lehman, Director, Hazardous and Industrial Waste Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 3001/Temporary Exclusion."

The public docket for this interim final rule is located in Room 2711, U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460 and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Matthew A. Straus, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C., (202) 755-9187.

SUPPLEMENTARY INFORMATION:

I. Temporary Exclusion From Subtitle C Regulation for Certain Chromium-Bearing Wastes

The Agency today has proposed to amend the characteristic of EP toxicity in 40 CFR 261.24 to apply to hexavalent rather than to total chromium (published elsewhere in Part XI of this issue of the Federal Register). The Agency also has taken final regulatory action today with respect to a number of hazardous waste listings (published elsewhere in Part XI of this issue), including the delisting of certain trivalent chromium-bearing waste streams. The present action is necessary to allow these other actions to have their intended effect. Thus, until the characteristic of EP toxicity is amended finally, all wastes remain subject to the existing standard based upon total chromium. We are concerned that the characteristic as it now stands identifies as hazardous certain trivalent chromium-bearing wastes which are unlikely to create a substantial present or potential hazard to human health or the environment when mismanaged, imposing significant regulatory burden without achieving any statutory purpose. A temporary exclusion for this limited class of wastes is needed to prevent this result.

We consequently will exclude temporarily from hazardous waste status certain chromium-bearing wastes. It must be emphasized that this exclusion will apply only insofar as the wastes would be hazardous because they fail the EP toxicity characteristic for chromium or because they are listed solely because of their chromium content. If they are hazardous for any other reason (*i.e.*, they fail the EP characteristic for any constituent but chromium, fail any other characteristic, or are listed for any other reason) they remain in the RCRA control system. The factors which must be present for a chromium-bearing waste to qualify for this temporary exclusion are:

—The waste contains trivalent chromium exclusively (or nearly exclusively);
—The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively), which process does not generate hexavalent chromium; and
—The waste is typically and frequently managed in non-oxidizing environments.

If a generator or an industry-wide group of generators can demonstrate that its (or their) wastes satisfy these prerequisites, the Agency will grant the waste a temporary exclusion and the waste will not require subtitle C management during an interim period. When the amended EP toxicity characteristic becomes final, this temporary exclusion will no longer be in effect, and waste generators will have to analyze their EP extracts for the presence of hexavalent chromium.

Our basis for selecting these factors and our views as to how these factors will be applied are as follows. In light of our decision to distinguish between tri- and hexavalent chromium for purposes of subtitle C regulation, wastes containing exclusively or nearly exclusively trivalent chromium may well not be hazardous. There is, however, a problem in demonstrating the absence of hexavalent chromium, due to the present lack of an analytical method which distinguishes between trivalent and hexavalent chromium at low ppm concentrations in waste extracts. (The Agency today proposed adoption of such a method, but is undertaking further study of the method before final promulgation.) In evaluating requests for temporary exclusions, we therefore will regard waste and waste extract

analytical data for chromium (VI) as highly relevant, but not as determinative. We also contemplate that generators will demonstrate the absence of hexavalent chromium by using process chemistry information, *i.e.*, showing that the industrial process generating the waste does not generate hexavalent chromium, so that hexavalent chromium will not be found in the wastes or will be present only in minimal concentrations.[1] In addition to process information, leachate and groundwater monitoring data and EP extract analyses are highly probative, since if chromium is shown to be present in substantially immobile form, the likelihood is that it is present in the trivalent state.

We also believe that at present there is no adequate assurance that chromium-bearing wastes do not contain potentially harmful concentrations of hexavalent chromium unless the industrial process itself is trivalent chromium-based. Although we are aware that the standard method of treatment of hexavalent chromium-containing wastewaters is to reduce the chromium and to precipitate it as chromium (III) hydroxide, we believe that this process is often incomplete, absent a strong economic incentive to fully reduce all chromium present. Certainly, we believe it would be highly imprudent to exclude from regulation these wastes, even temporarily, absent much greater assurance that they do not contain potentially dangerous amounts of hexavalent chromium.

Finally, to assure that any trivalent chromium which migrates from the waste will not oxidize to the hexavalent state, we will require that the wastes be managed typically and frequently in non-oxidizing environments. A non-oxidizing environment is one in which there is either a relative lack of oxygen or one which contains reducing agents sufficiently strong to cause reduction of the contaminant in question. These conditions ordinarily are present in landfills and surface impoundments. (Ham, R. A., et al., 1978, Background Study on the Development of a Standard Leaching Test.)

The Agency believes that site monitoring data is particularly important in demonstrating that chromium-bearing wastes are being managed in non-oxidizing environments. Thus, a demonstration by means of leachate and groundwater monitoring data that chromium remains essentially immobile in its actual management environment indicates that chromium remains in the insoluble and strongly adsorbed trivalent state, and therefore is not being oxidized (*see e.g.*, Comments of Berwick Sewer District, July 16, 1980; Comments of Alley, Young & Baumgartner, July 11, 1980 where appropriate leachate and groundwater monitoring data is presented).

II. Wastes Meeting the Temporary Exclusion Factors

We are presently aware of three groups of wastes meeting the temporary exclusion factors. The first group are the tannery wastes listed as hazardous in § 261.32 (EPA Hazardous Waste Nos. K053–058), and any other waste scrap leather generated by the leather tanning industry. As shown in the comments of many individual tanners and the comments of the Tanners' Council of America, these wastes contain nearly exclusively trivalent chromium. The industrial process generating the waste likewise utilizes trivalent chromium. Hides, in fact, cannot be tanned successfully with hexavalent chromium. Tanners thus either use trivalent chromium as a tanning agent, or, should trivalent chromium be unavailable, use hexavalent chromium and reduce it so that the tanning process can be completed. In either case, there appears to be an overwhelming commercial incentive to keep hexavalent chromium out of the process and hence out of the process wastes.

These wastes furthermore ordinarily are managed in non-oxidizing landfill environments. We therefore believe that an adequate showing has been made to justify the temporary exclusion of these wastes due to their chromium content.[2]

The second group of wastes within the temporary exclusion is waste leather scrap from the shoe manufacturing and other leather product manufacturing industries.[3] These wastes are substantively identical to tannery wastes (being composed of the same trivalent chromium-tanned hides involved in the tanning process), and so contain trivalent chromium exclusively or nearly exclusively. These wastes also are ordinarily managed in landfills, and so are unlikely to be oxidized.

The third group of wastes within the temporary exclusion are wastewater treatment sludges from the production of TiO_2 (titanium dioxide) pigment using chromium bearing ores by the chloride process (EPA Hazardous Waste No. K074). The chromium in the process effluent is trivalent, arising directly from the entirely trivalent component of the rutile or ilmenite ores used as a raw material. At no stage of the manufacturing process is there an opportunity for oxidation of the trivalent chromium. The resultant sludges thus are expected to contain only trivalent chromium. (*See* Commments of E.I. du Pont de Nemours & Co., September 15, 1980, pp. 8–10 describing the TiO_2 manufacturing process, and showing that only chromium (III) is present; leachate data submitted in these comments likewise tends to show that only trivalent chromium is present.) These wastes are usually disposed of in landfills or by ocean dumping. One plant uses a lined lagoon and one uses deep-well injection. (U.S. EPA Hazardous Waste Listing Background Document, July 7, 1980, pp. 87–89.) These disposal situations do not offer opportunity for the oxidation of the chromium component. (Ham, 1979; Fukai, R., 1967, Valency State of Chromium in Sea Water, *Nature* 213: 901).

III. Procedures for Obtaining a Temporary Exclusion

The temporary exclusion is not limited to the wastes discussed specifically in Part II above. Other wastes also may meet the temporary exclusion factors and will be excluded if a proper showing is made to the Agency. Eligibility for a temporary exclusion may be requested by filing a petition for rulemaking under § 260.20(a). Petitions may be filed by individual generators, or on an industry-wide basis. Each petition must demonstrate why the wastes in question meet the temporary exclusion standards. Petitions then will be processed by the Agency in accord with the procedures set forth in § 260.20 (c)-(e). It should be noted that generators of the wastes which already have been determined to be within the temporary exclusion (*i.e.*, the wastes discussed in II. above) are not required to petition the Agency.

IV. Interim Final Promulgation

The temporary exclusion for this limited class of chromium-bearing wastes is being promulgated in interim final form. Thus, the three types of

[1] Hexavalent chromium concentrations below 5 mg/l certainly will be considered minimal. This level is based on the maximum concentration level for hexavalent chromium to be contained in the amended characteristic of EP toxicity.

[2] Since these wastes were listed for reasons in addition to their chromium concentrations, the temporary exclusion for chromium does not by itself remove them from the hazardous waste management system. We are, however, delisting tannery wastes for these additional factors in an action taken elsewhere in today's Federal Register. The net result of these actions will be that these tannery wastes will no longer be listed, will not be considered hazardous if they fail the EP toxicity characteristic for total chromium, but will be hazardous if they fail the EP toxicity characteristic for any other constituent, or fail any other characteristic.

[3] These wastes were not listed, but some may fail the test for the characteristic of EP toxicity for chromium.

wastes now within the temporary exclusion are no longer subject to the hazardous waste regulations based on their chromium content. The provision also is final for purposes of the 90-day petition deadline under Section 7006. The public will, however, have an additional opportunity to comment on the provision before it is published as a "final final" regulation.

The Agency does not take this procedural course lightly, but believes that unusual circumstances justify our action. First, many affected persons effectively have had the opportunity to comment on the substance of the provision by virtue of their comments on the interim final portions of the May 19 and July 16 regulations, principally the hazardous waste listings in § 261.32. Thus, much of the data supporting today's action was supplied in comments submitted by the tanning industry and (to a lesser extent) the titanium dioxide production industry. We therefore believe that the policy underlying the prior notice and comment requirement has been substantially satisfied here.

Second, as already noted, immediate action is necessary to give effect to final regulatory action taken today delisting waste streams from the tanning and TiO_2 production industries. These delisting actions present no prior notice and comment issues because the listings themselves were not yet promulgated in final form. However, certain of the delisted wastes might still fail the EP for total chromium, and would consequently remain in the system until the EP toxicity characteristic is amended finally. Immediate promulgation of the temporary exclusion consequently is necessary to allow the delistings to have their intended consequence.

Finally, we believe that use of advance notice and comment procedures would be impracticable and contrary to the public interest, and therefore that good cause exists for adopting these regulations in interim final form (*see* 5 U.S.C. 553(b)(B)). Although the "good cause" exception is narrow, courts have emphasized that "(i)t is an important safety value to be used where delay would do real harm." *U.S. Steel Corp.* v. *EPA*, 595 F.2d 207, 214 (5th Cir., 1979). We believe delay in promulgating the temporary exclusion could cause significant harm to the regulated community, particularly to the tanning industry. The tanners have indicated that there is a severe shortage of hazardous waste landfill capacity, especially in New England where many tanneries are located, so that disposal costs will increase very substantially even if hazardous waste management is required for only a short period. (*See, e.g.*, Comments of A. C. Lawrence Leather Co., July 10, 1980.) Courts have approved immediate promulgation of rules in like circumstances where failure to implement regulations would cause severe market dislocations. *See De Rieux* v. *Five Smiths, Inc.*, 499 F.2d 1321, 1332 (TECA), *cert. denied* 419 U.S. 896 (1974) (promulgation of government price controls); *Reeves* v. *Simon*, 509 F.2d 455, 458–59 (TECA 1974), *cert. denied*, 420 U.S. 991 (1975) (gasoline station fuel allocation regulations). The same principle applies here.

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

Title 40 CFR Part 261 is revised as follows:

1. In § 261.4, Exclusions, paragraph (b)(6) is added to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(6) (i) Wastes which fail the test for the characteristic of EP toxicity because chromium is present or are listed in Subpart D due to the presence of chromium, which do not fail the test for the characteristic of EP toxicity for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively (or nearly exclusively) trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively (or nearly exclusively) and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in (i)(A), (B) and (C) (so long as they do not fail the test for the characteristic of EP toxicity, and do not fail the test for any other characteristic) are

(A) Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/ wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chorme tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

[FR Doc. 80-33088 Filed 10-29-80; 8:45 am]

BILLING CODE 6560-26-M

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40 CFR Part 261

[SW FRL 1639-1c]

Hazardous Waste Management System; Identification and Listing of Hazardous Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final action amending interim final regulation.

SUMMARY: This regulation removes from the list of regulated hazardous wastes the wastes from the leather tanning industry and the titanium dioxide production industry which were listed as hazardous in interim final form in the Federal Register on May 19, 1980 (45 FR 33124) and July 16, 1980 (45 FR 47834). The preamble also discusses why other listed waste streams containing chromium will still be listed due to the presence of chromium. This action is

being taken as a result of other regulatory action taken concerning the regulation of chromium-bearing wastes under the hazardous waste managment program in documents published elsewhere in this Part XI of this Federal Register.

EFFECTIVE DATES: This action is effective on publication.

ADDRESSES: The public docket for this regulation is located in Room 2711, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Matthew A. Straus, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M St., S.W., Washington, D.C. 20460, (202) 755-9187.

SUPPLEMENTARY INFORMATION:

I. Decision To Delist Wastes From TiO_2 Production and From the Leather Tanning and Finishing Industry

In other regulatory action taken today, the Agency has indicated that its principal regulatory concern in regulating chromium-bearing wastes under the hazardous waste management program is hexavalent rather than total chromium. The Agency consequently has reviewed all of the interim final and proposed waste listings in 40 CFR Part 261, Subpart D which listed chromium as a waste constituent of concern, and reevaluated these wastes to determine if they should continue to be listed due to the presence of chromium. We have decided that two groups of wastes, those from titanium dioxide production by the chloride process, and those from leather tanning and finishing, no longer should be listed due to chromium. We have further determined that leather tanning and finishing industry wastes also should not be listed for any other basis at the present time. We consequently are delisting both groups of wastes.[1]

We also reviewed all of our other listings of chromium-bearing wastes (except for those wastes for which the comment period has been extended). We believe that all of these other wastes are likely to contain significant concentrations of hexavalent chromium, and therefore we are not amending our initial listings. We note further that many of these wastes are listed for constituents other than chromium, and our actions today do not in any way affect these additional bases for listing.[2]

A. Wastes Generated From TiO_2 Production

On July 16, 1980, the Agency adopted as an interim final listing, under 40 CFR § 261.32 wastewater treatment sludges from TiO_2 production via the chloride process (*see* 45 *FR* at 47834). On reevaluation, we have decided not to list this waste stream because it is derived from a trivalent chromium-based process and contains trivalent chromium exclusively or virtually exclusively. The titanium dioxide production process results in a waste stream which contains chromium (III) chloride. The presence of this compound results from the fact that the rutile and ilmenite ores used as raw materials can contain as much as 45% chromium (III) oxide. The chromium-bearing waste stream from this process thus contains chromium only in the trivalent form, and the resulting wastewater sludges therefore are not expected to contain any hexavalent chromium.

B. Wastes Generated by the Leather Tanning and Finishing Industry

The Agency's May 19 interim final waste listings included seven waste streams generated by the leather tanning and finishing industry (EPA Hazardous Waste Numbers KO53-059). These wastes were listed for the presence of chromium, chromium and lead, and (in the case of the wastewater treatment sludges generated by plants in certain subcategories) chromium and reactivity. With respect to chromium, the Agency has determined that these wastes contain exclusively or virtually exclusively trivalent chrome and therefore do not warrant listing on this basis. The leather tanning process depends on the chemical reaction of trivalent chromium with the free amine and hydroxyl groups on the hides' protein chains. This reaction will not occur if hexavalent chromium is used, so that there is a very strong commercial justification for the absence of hexavalent chromium in these wastes. Although it is true that if the trivalent tanning agent is not readily or economically available, tanneries use hexavalent chrome as a starting material, the chromium is then reduced to the trivalent state either before use in the tanning process or *in situ* during the tanning process (a "two bath" process now largely obsolete). Both economics and the recognized dangers inherent in the unnecessary risk in handling hexavalent chromium serve to assure the conversion to the trivalent form.[3]

The wastes resulting from the tanning process, therefore, are overwhelmingly in the trivalent state. In addition, leachate and groundwater monitoring data submitted by individual tanners indicate that the chromium contained in these wastes has low migratory potential under most waste management conditions, and also that it has very limited mobility should migration occur, confirming that these wastes contain chrome (III), rather than the highly mobile hexavalent chromium.

Certain tanning wastes were listed because of the presence of lead. Substantial data submitted by industry indicate convincingly, however, that lead is not typically used in the tanning process, nor is it found in process wastes, in regulatorily significant amounts or concentrations. We consequently believe continued listing on this basis is inappropriate. Furthermore, these wastes remain subject to the EP toxicity characteristic, so that those wastes containing excessive concentrations of lead will still be brought into the hazardous waste management system.

Two wastewater treatment sludges were listed as hazardous due to reactivity, more specifically because of the possibility of release of harmful concentrations of hydrogen sulfide gas under usual waste management conditions. Historical waste management data submitted by industry indicates, however, that harmful release of hydrogen sulfide does not occur typically and frequently in waste management practice. Rather, this problem is more likely to occur during the tanning process, prior to waste generation. (Comments of Robert M. Lollar, Technical Director, Tanners' Council of America, August 12, 1980.)

We have determined to delist these sludges for reactivity. We again note, however, that the wastes remain subject to the reactivity characteristic, so that these wastes should be deemed hazardous if harmful hydrogen sulfide generation occurs, or has occurred, during waste management. For example, if a generator is aware of prior dangerous release of hydrogen sulfide in managing these sludges, for example from storing these sludges in enclosed tanks, EPA must be notified that the wastes are reactive, and the wastes must be managed pursuant to Subtitle C regulatory controls. We also note that the Agency is working to quantify the present provision in the reactivity characteristic governing hydrogen sulfide and hydrogen cyanide-generating

[1] We also are removing any reference to these wastes from Appendix VII to Part 261.

[2] We also note that the Agency may choose not to finalize the listing of certain of these waste streams for independent reasons when finalizing the May 19 interim final list of hazardous wastes.

[3] Thus, in one tanning facility visited by the Agency, when trivalent chromium is not available, a twenty percent excess of reductant is added to the hexavalent chromium to ensure that reduction will go to completion.

wastes (§ 261.23(a)(5)), and that these sludges will be subject to the revised characteristic when promulgated.

EPA is also investigating the possibility that these tannery wastes may be hazardous for reasons other than those for which they were listed originally. A possible source of waste contamination is use of hexavalent chromium-containing chrome pigments, and of benzidine and benzidine congener dyes in the finishing process. For example, dyes derived from the chemicals benzidine, 3,3'-dimethylbenzidine, and 3,3'-dimethoxybenzidine comprise approximately one fourth of the 3.1 kkg of dyes used by the tanning industry (MRI, 1979, "A Preliminary Materials Balance for Dyes and Pigments from Benzidine and Three Benzidine Derivatives." EPA Contract No. 68-01-3896, Draft Final Report, August 31, 1979), and may be present in these wastes. We are concerned about the potential carcinogenicity of the dyes themselves, and about the possible reduction of the dyes in the waste streams by heat, light, and chemical reducing agents, or their metabolism *in vivo* to the carcinogenic parent compounds benzidine, 3,3'-dimethylbenzidine and 3,3'-dimethoxybenzidine. In addition, certain biocides (notably phenolic derivatives) are used in the tanning process, and may contaminate process wastes. The Agency solicits information as to these practices, as to concentrations of these materials and their breakdown products in process wastes, and as to whether the wastes thereby should be considered to be hazardous.

II. Retention of Chromium as a Waste Constituent of Concern in Other Hazardous Waste Listings

Certain of the other May 19 and July 16 interim final and proposed waste listings are of wastes containing chromium as a waste constituent of concern. (*See* 45 FR 33123-124, 33137; and 45 FR 47833-834, 47836). We have reevaluated these listings to determine if the wastes should continue to be listed due to the presence of chromium.[4] It is our conclusion that all of these chromium-bearing waste streams should continue to be listed as hazardous due to chromium content because all derive from processes which use or produce a waste stream which contains hexavalent chromium. The basis for our conclusion is set out below.

[4] This discussion does not apply to chromium-containing waste streams for which the comment period has been extended. Industrial painting wastes, paint manufacturing wastes, and wastes from ferroalloys production are in this category.

The chromium-containing waste streams we have listed in interim final form or have proposed for listing are generated in the manufacture of inorganic pigments (EPA Hazardous Waste Nos. K002-008), in petroleum refining (EPA Hazardous Waste Nos. K048-051), in the manufacture of iron and steel (EPA Hazarous Waste Nos. K061-063), in secondary lead smelting (EPA Hazardous Waste No. K069), in electroplating (EPA Hazardous Waste No. F006), and in ink formulation (EPA Hazardous Waste No. K086). The chrome pigment process wastes are believed to contain hexavalent chromium because the production process requires the use of chromates, which are necessarily hexavalent chromium-containing compounds. Electroplating industry wastes likewise derive from processes using chromates, and so also are expected to contain hexavalent chromium. Chromate (Cr (VI)) pigments are constituents of the listed ink formulations, so that process wastes also should contain hexavalent chromium.

The various listed petroleum refining wastes likewise use chromates, in this case as corrosion inhibitors in cooling towers. The listed wastes from this industry are all derived from cooling tower wastewater streams, and thus are expected to contain hexavalent chromium.

The iron and steel industry and secondary lead industries generate chromium-containing emission control dusts and sludges. These production processes involve oxidative processes occurring at elevated temperatures, conditions known to cause oxidation of chromium (III) to chromium (VI). Spent pickle liquor, another listed waste from the steel industry, likewise is generated in oxidizing conditions (the pickling operation itself), and so will contain chrome (VI).

We are aware that treatment of chromium-containing wastewaters most often consists of the reduction of hexavalent chromium to the trivalent state and the subsequent precipitation of chromium (III) hydroxide. If the reduction is not carried out to completion, however, the hexavalent chromium may be entrained in the chromium (III) hydroxide precipitate. Further, in light of the large concentrations of chromium present in these wastewater streams, and the very small concentrations of the carcinogen hexavalent chromium needed to make a treatment sludge hazardous, we do not believe that the chromium in these wastewater streams will be fully reduced, so that these wastes remain capable of causing substantial harm if mismanaged.

Dated: October 27, 1980.

Douglas M. Costle,

Administrator.

Title 40 CFR, Part 261 is amended by deleting from the lists of hazardous wastes contained in § 261.32 the following waste streams:

§ 261.32 [Amended]

K053—Chrome (blue) trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

K054—Chrome (blue) shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

K055—Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

K056—Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

K057—Wastewater treatment sludge generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

K058—Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

K059—Wastewater treatment sludges generated by the following subcategory of the leather tanning and finishing industry: hair save/non-chrome tan/retan/wet finish.

K074—Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

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40 CFR Part 265

[SW FRL 1623-7]

Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Revisions to final rule and interim final rule.

SUMMARY: The Resource Conservation and Recovery Act (RCRA) hazardous waste regulations, as promulgated May 19, 1980, in §§ 265.112(a) and 265.142(a) require owners or operators of all hazardous waste facilities to have closure plans, as well as cost estimates based on these plans, on the effective date of the regulations. At the same time, owners or operators of hazardous waste disposal facilities are also required in §§ 265.118(a) and 265.144(a) to have post-closure plans and associated cost estimates.

The Agency is amending these regulations to allow the owners or operators of all hazardous waste facilities to have up to six months *after* the effective date of these regulations to prepare a written closure plan, post-closure plan (if applicable), and cost estimates for closure and post-closure (if applicable).

The Agency is extending the period for preparing closure and post-closure plans for disposal facilities because planning for closure and post-closure at these facilities is an extremely important activity. Because these plans are so important, the Agency believes that it should provide owners or operators more time to prepare them so that they will be well thought out.

EFFECTIVE DATE: November 19, 1980.

FOR FURTHER INFORMATION CONTACT: Lawrence G. Buc, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9190.

SUPPLEMENTARY INFORMATION:

I. Authority

This amendment is issued under the authority of Sections 1006, 2002(a), and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6905, 6912(a), and 6924.

II. Background

The RCRA hazardous waste regulations, as promulgated May 19, 1980, 45 FR 33064 *et seq.* in Sections 265.112(a) and 265.142(a) require owners or operators of all hazardous waste facilities to have closure plans, as well as cost estimates based on these plans, on the effective date of the regulations (November 19, 1980). At the same time, owners or operators of hazardous waste disposal facilities are also required in §§ 265.118(a) and 265.144(a) to have post-closure plans and associated cost estimates. The amendments to the regulations EPA is promulgating today modify these requirements.

The amended regulations allow the owner or operator of a hazardous waste facility up to May 19, 1981 (six months after the effective date of these regulations) to prepare a written closure plan, post-closure plan for a disposal facility, and cost estimates for closure and post-closure for a disposal facility. An owner or operator of a facility who decides to close his facility within this six-month period must nevertheless submit a closure plan and post-closure plan for a disposal facility at least 180 days before the date he expects to begin closure as required in 40 CFR Part 265, Subpart G, §§ 265.112(c) and 265.118(c).

The Agency is extending the period for preparing closure and post-closure plans for disposal facilities because planning for closure and post-closure at these facilities is an extremely important activity. Because these plans are so important, the Agency believes that it should provide owners or operators more time to prepare them so that they will be well thought out.

As a necessary consequence of extending the time for preparing closure and post-closure plans for facilities, EPA is extending the time for preparing closure and post-closure cost estimates for facilities. Cost estimates must be based on the closure and post-closure plans, so they cannot be prepared until the plans have been prepared.

The Office of Management and Budget recently approved EPA's Part 264 and 265 reporting requirements under the Federal Reports Act on the condition that EPA extend until May 19, 1981, the deadline by which disposal facilities (landfills, land treatment facilities, and surface impoundments which intend to close as landfills) must prepare closure and post-closure monitoring and maintenance plans. The Agency is convinced that owners or operators of *all* facilities, given an additional six months, will be able to prepare better plans and more accurate cost estimates. For this reason, and to avoid confusion as to when these plans are required, EPA is granting the time extension to all facilities.

Dated: October 27, 1980.

Douglas M. Costle,
Administrator.

For the reasons described above, Title 40 of the Code of Federal Regulations is amended as follows:

§ 265.112 [Amended]

1. In § 265.112(a), in the first sentence, replace the phrase "On the effective date of these regulations" with the phrase: "On May 19, 1981."

§ 265.118 [Amended]

2. In § 265.118(a), in the first sentence, replace the phrase "On the effective date of these regulations" with the phrase: "On May 19, 1981."

§ 265.142 [Amended]

3. In § 265.142(a), in the first sentence, replace the phrase "On the effective date of these regulations" with the phrase: "On May 19, 1981."

§ 265.144 [Amended]

4. In § 265.144(a), in the first sentence, replace the phrase "On the effective date of these regulations" with the phrase: "On May 19, 1981."

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40 CFR Part 261

[WH-FRL 1648-4]

Hazardous Waste Management System: Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Technical amendment; final rule.

SUMMARY: In its regulations on the identification and listing of hazardous waste, the Environmental Protection Agency (EPA) is amending the section "Analytical Procedures for Analyzing Extract Contaminants" in Appendix II of Part 261. This amendment merely clarifies confusing references to two sets of analytical methods, each of which delineates the same methods insofar as the applicability of the subject section of Appendix II. Therefore, this amendment does not change the substance of Appendix II.

EFFECTIVE DATE: This action is effective immediately.

FOR FURTHER INFORMATION CONTACT: David Friedman, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 755-9187.

SUPPLEMENTARY INFORMATION: The section on "Analytical Procedures for Analyzing Extract Contaminants" in Appendix II of Part 261 promulgated on May 19, 1980 (45 FR at 33128) referenced certain water and wastewater analytical methods and implied that these methods should be used in analyzing EP Toxicity Procedure extracts. That section also referenced "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods" and implied that these methods should be used to analyze these same extracts. These

references to two sets of references have confused the regulated community and have generated many inquiries to the Agency for clarification. Because the latter reference incorporates and clarifies for use in analyzing EP extracts the methods described in the former references, EPA is today promulgating the following technical amendment to change the subject section of Appendix II so that only the latter reference is used.

Dated: October 24, 1980.

Douglas M. Costle,

Administrator.

Title 40 of the Code of Federal Regulations is amended by deleting the existing language under the section of Appendix II of Part 261 titled "*Analytical Procedures for Analyzing Extract Contaminants*" and substituting the following language:

The test methods for analyzing the extract are as follows:

(1) For arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, endrin, lindane, methoxychlor, toxaphene, 2,4-D[2,4-dichlorophenoxyacetic acid] or 2,4,5-TP [2,4,5-trichlorophenoxypropionic acid]: "Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods," [SW-846], U.S. Environmental Protection Agency, Office of Solid Waste, Washington, D.C. 20460.

(2) [Reserved]

For all analyses, the methods of standard addition shall be used for quantification of species concentration.

[FR Doc. 80-33871 Filed 10-29-80; 8:45 am]

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federal register

Thursday
October 30, 1980

Part XII

Department of Agriculture

Farmers Home Administration

Biomass Energy and Alcohol Fuels Loans and Loan Guarantees; Final Rule

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1990

Biomass Energy and Alcohol Fuels Loans and Loan Guarantees

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Energy Security Act (Pub. L. 96-294) enacted June 30, 1980, contains, as its Title II, the Biomass Energy and Alcohol Fuels Act of 1980. Under Subtitle A of Title II, the Secretary of Agriculture is authorized and directed to carry out a financial assistance program for biomass energy. This rule making contains the guidelines for implementing the program which the Act requires to be established to enable applications for financial assistance to be solicited.

EFFECTIVE DATE: This Final Rule will become effective October 30, 1980.

FOR FURTHER INFORMATION CONTACT: Weldon Barton, Director, Office of Renewable Resources, FmHA, Room 5175, South Building, Washington, D.C. 20250. Telephone 202-447-7195. The Final Impact Statement describing the options considered in developing this Final Rule and the impact of implementing each option is available on request from Earle Gavett, USDA, Room 116-A, Administration Building, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedure established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "significant." This regulation does not directly affect any FmHA programs or projects which are subject to A-95 Clearinghouse review.

Brief Description of the Program: On June 30, 1980, the Energy Security Act (Pub. L. 96-294) was enacted. Title II of the Energy Security Act is composed of the Biomass Energy and Alcohol Fuels Act of 1980. Under Subtitle A of Title II, the Secretary of Agriculture is authorized and directed to carry out a financial assistance program for biomass energy, and the Secretary of Agriculture has designated the Farmers Home Administration as the USDA Agency primarily responsible for the implementation of this program. This Final Rule contains FmHA's regulations for implementing financial assistance under this program in the form of loans and loan guarantees.

1. Introduction

Proposed regulations (the "August Proposal") were published on August 5, 1980, (45 FR 51818) to implement Subtitle A of the Biomass Energy and Alcohol Fuels Act of 1980 (the "Act"). Substantial written comments (72 responses) and testimony (82 witnesses at public hearings in Macon, Georgia; Des Moines, Iowa; and Lubbock, Texas) were received pursuant to publication of the August Proposal. The comments, especially those which addressed the six areas highlighted in the August Proposal for particular attention, have been generally constructive and helpful, containing many detailed suggestions, some of which have been incorporated in this Final Rule. FmHA thanks all commentors for the assistance they have given and hopes the Final Rule has benefitted from the comments and the additional FmHA consideration which the comments have directed to the various aspects of the August Proposal.

2. Solicitation of New Applications; Existing Applications Under Other FmHA Programs

The FmHA begins to solicit applications for both insured and guaranteed loans under this program immediately upon publication of this Final Rule.

In the case of new or pending applications for loans or loan guarantees under the Farm Ownership or other existing Farmer Program loan programs of FmHA, where the application involves a biomass energy or fuel alcohol project which is financially or technically integrated with the farming operation as a whole, FmHA will continue to receive and process such applications under such existing programs. Applicants with this type of project may, however, apply or reapply under the program implemented by this Final Rule, if reasonable assurance of repayment of the insured loan from the project's income can be ascertained as described below in this preface and in the Final Rule, and if the project is otherwise eligible under this Final Rule.

3. Price Guarantees and Purchase Agreement Authorities, Continuance Assistance

Approximately 10 percent of the written comments received suggested that, in addition to the loan and loan guarantee authorities, implementation at this time of the price guarantee and purchase agreement authorities of the Act (§§ 215 and 216) is necessary. FmHA has considered the arguments advanced by the commentors and others, but is not convinced the purposes of the Act will be served by such implementation at this time. Subtitle A is essentially a commercialization, rather than a technology development and piloting program. Therefore projects involving inadequately developed and pilot stage technologies will be directed to other existing programs that are designed for such purposes. The loan and loan guarantee financial assistance proposed here should prove to be adequate and workable for purposes of the Subtitle A commercialization program. The insured or guaranteed loans provided in this regulation can be combined with other existing incentives to comprise an attractive package for investors and lenders. This program, therefore, should be viable without the additional incentives that might be afforded by price guarantees and purchase agreements.

The continuance assistance provisions in § 1990.215 of the August Proposal have been omitted from the Final Rule because development of implementing procedures (which are unlike existing FmHA procedures) would unduly delay the issuance. It is expected that such procedures can be developed if the program experience shows a need.

4. Priority Based on Type of Primary Fuel

The August Proposal (§ 1990.5(a)(1)(i)), carrying out § 217(a)(1)(A) of the Act, provided that priority should be given to projects that use a fuel other than natural gas or petroleum as the primary fuel for biomass projects. The August Proposal also required that all projects use the most cost-effective primary fuel system, based upon established DOE procedures for life cycle cost analysis.

A number of witnesses at the hearings and written comments pointed out that coal boilers and related equipment are much more expensive than natural gas, and, in addition to adding substantially to the initial cost of projects, the emphasis on coal or biomass fuels rather than oil or gas, may be inconsistent with the requirement in Appendix A of the August Proposal that the most cost-effective fuel system be used.

The Act, itself, recognizes the priority is not to be absolute and § 217(a)(1) expressly provides that it shall not be construed to exclude financial assistance for any project which does not use "a primary fuel other than petroleum or natural gas". Moreover, the Conference Report (S. Rep. No. 96-824), page 252, gives, as examples of petroleum or natural gas use as primary

fuel which would not violate the priority provision, the use of such fuel for "flame stabilization" or where such fuel is "commercially unmarketable."

Pursuant to the primary objective of this program to reduce the dependence of the United States on imported petroleum and natural gas by financing increased production and use of biomass energy resources, FmHA will provide financial assistance to projects using fuel other than petroleum and natural gas to the maximum extent possible. FmHA is particularly interested in receiving applications that will use coal, biomass materials, and such fuels other than petroleum and natural gas, and the regulations provide that priority will be given to such applications in funding decisions. The regulations also require that all projects use the most cost-effective primary fuel system, based upon established procedures for life cycle cost analysis (See Appendix A). Particularly with respect to small scale projects, FmHA encourages combination projects which make it feasible to use fuel other than petroleum or natural gas—such as a combination methane digester and alcohol distillery whereby the methane produced from animal residue is used as the primary fuel for the alcohol distillery.

While the statute does not exclude financial assistance for projects using petroleum or natural gas, based upon the above priority and related provisions, it should be clear to applicants that the avoidance of petroleum or natural gas as the primary fuel for the project will be a fundamental consideration in project selection.

FmHA has concluded that the application of this statutory priority relating to use of primary fuels requires careful exercise of discretion in the administration of the priority rather than any revision in the statement of the priority in the Final Rule. To assure such attention to proper administration, any project proposing to use petroleum or natural gas as primary fuel will be reviewed by, and require the specific concurrence of, FmHA's National Office in this respect. In addition, the requirement in Appendix A relative to the most cost-effective fuel system has been revised to permit greater flexibility of application and remove inconsistency in the August Proposal in this regard.

5. Priority Based on Innovative Technology.

In addition to use of primary fuel other than petroleum or natural gas, as discussed above, the August Proposal (§ 1990.5 (a)(1)(ii)), carrying out § 217 (a)(1)(B) of the Act, states that priority for financial assistance under Subtitle A of Title II, and the most favorable financial terms available, shall be provided to project proposals which apply improved or new technologies.

Approximately 10 percent of the written comments opposed the treatment of this priority on the grounds that it was inconsistent with the Act's objective of reducing petroleum imports, or that it conflicted with the primary fuel priority discussed in the preceding subdivision, or that it violated the cost-effectiveness requirements of Appendix A.

As in the case of the primary fuel priority discussed in the preceding subdivision, the Act recognizes that the priority is not absolute and expressly provides (§ 217 (a)(1)) that noninnovative projects are not excluded. The Conference Report, moreover, states (page 253) that while assistance to duplicative technologies is to be minimized in the designing of the overall program, this bias against duplicative technology projects was not intended to apply to "the production of liquid biomass fuels." FmHA has, therefore, concluded that the Final Rule should retain the language of the August Proposal in this respect.

With respect to liquid biomass fuels projects, therefore, the Farmers Home Administration will be interested in receiving proposals which evidence the resources, including management capability, necessary for successful operation and the use of newer technologies. Priority will be given to non-scarce fuels and new technology. FmHA will welcome proposals involving the colocation of alcohol plants with corn milling plants, grain handling facilities, cattle feedlots, electrical generating plants, or other such combinations that can improve the economics of the project and provide experienced management resources. FmHA also will welcome projects involving the acquisition for retrofit or conversion of existing plant or equipment to alcohol production, where it is demonstrated that this will meet priorities for other than scarce fuels and will contribute to the economic viability of the enterprise and the speed with which it can be brought on production line.

An effort will be made to encourage different types of fermentable feedstocks so that the financial assistance program as a whole reflects a variety of feedstock materials that can be converted with available technology. Also, since in the case of small-scale projects a variety of technologies is not generally available, assistance to small-scale non-alcohol projects (such as methane) will be provided without regard to the duplication of technologies.

The statute authorizes financial assistance for projects both that convert biomass materials into a refined liquid, gaseous or solid fuel and that convert equipment so that such equipment can directly combust wood or other unrefined biomass into energy for industrial purposes. Examples of projects eligible for financial assistance that would produce non-liquid fuels include projects to convert animal residues into methane gas and to densify wood into pellets or other compact forms.

This area presents a special problem of implementation concerning the proper scope of financial assistance in terms of project type. Although the Conference Report provides that the duplication of similar technologies in the non-liquid fuels area should be minimized in the overall design of the financial assistance program, many of the newer gasification and liquefaction technologies in this area are not yet ready for commercial scale application. FmHA wishes to accommodate to the extent practicable emerging technologies as they become ready for adoption on a commercial scale.

6. Application Solicitation for Intermediate-Scale Projects

The August Proposal (§ 1990.205(b)(2)(i)) provided that intermediate-scale project applications would be received on a "simultaneous" solicitation basis rather than by the "continuous" solicitation process that was proposed for small-scale projects. Approximately 30 percent of the written comments addressed this issue and approximately 80 percent of these commentors were opposed to the "simultaneous" solicitation as provided in the August Proposal.

While the "simultaneous" solicitation procedure is described in the Act (§ 212(b)(1)), it is not mandated by the Act. The Conference Report (page 247) points out that § 212(b)(2) of the Act authorizes the Secretary to adopt other procedures "which will result in more expeditious processing."

The Conference Report states: "The Conferees encourage the Department of Agriculture to use existing Farmers Home Administration procedures which provide for a single ongoing solicitation with projects reviewed on a sequential basis for purposes of expediting administration of this title."

The concerns most frequently expressed in the written comments were that the "simultaneous" solicitation

would overwhelm FmHA staff resources, favor larger organization applicants, and result in less expeditious processing than could be expected from the continuous solicitation method currently used in existing FmHA programs with which staff and applicants are familiar.

For purposes of the Final Rule, FmHA has decided, for the most part, to receive and process applications on a continuous basis. However, FmHA reserves the right in the future to employ the "simultaneous" solicitation method to achieve purposes under the Act that may not be fully satisfied through the "continuous" process.

The continuous solicitation procedure for intermediate scale biomass energy projects is effective immediately and the FmHA hereby solicits the submission of applications as of this date. Applications may be submitted to any office of the FmHA during regular business hours.

The following are specific dates on which applications will be officially received by FmHA, for purposes of implementing the statutory requirement that a decision be made on each individual application within 120 days of its receipt. The first such date is November 17, 1980. The second such date is December 17, 1980. Subsequent dates will be February 16, 1981, April 16, 1981, and the 16th day of alternate months thereafter, (provided that if the 16th day of any such month falls on Saturday or Sunday, the date will be the following Monday). The number of successive two-month intervals for receipt of applications will be subject to the availability of funding authority and in no event will commitments be made after September 30, 1984.

The State Director will date stamp the application with the relevant official receipt date regardless of when submitted, and official evaluation will not begin until that date.

Applicants are encouraged to participate in discussions and conferences with the FmHA prior to the submission of an application. The official application receipt dates are intended to allow time prior to such dates for discussions and conferences between FmHA and applicants to occur.

If an applicant fails to meet a particular official receipt date, he or she may submit at any subsequent time and need not await the next official receipt date although the 120 days for a decision on the application will not begin to run until the next official receipt date.

Applications may be submitted personally or by mail; if an application is submitted by mail, it must be received in an FmHA office prior to the close of business on the relevant official receipt date in order for the 120 days for a decision to begin to run on that date.

FmHA will evaluate such applications on a comparative basis to the extent necessary to achieve the purposes of the Act, including effectively to implement the priorities of the Act and these regulations.

7. Application Solicitation for Small-Scale Projects

The August Proposal (§ 1990.105 (b)) provided for continuous solicitation of small-scale project applications. Commentors were substantially in agreement that this was the preferable method for small-scale projects, and this Final Rule retains such a procedure.

Approximately 15 percent of all written comments further suggested that small-scale projects procedures should be simplified and technical, financial and other requirements should be relaxed, particularly for very small, on-farm projects. The August Proposal, in accordance with Congressional intent as reflected in the Conference Report, sought to incorporate existing FmHA procedures to the fullest possible extent consistent with the relevant statutory provisions and objectives. Thus, multi-million dollar loan guarantees of intermediate and large-scale projects under the Act were considered analogous (for purposes of the scope, kind and amount of detailed regulations which would be appropriate) to similar size business and industrial loans under other FmHA programs. Even the small-scale biomass energy project loans may be up to $1 million, an amount far in excess of the loan limits of FmHA's Farm Ownership program, from which some commentors proposed adopting regulations for simplification purposes.

FmHA has included certain changes in the Final Rule that are designed to make it easier for applicants proposing on-farm projects to participate. Where the project is located on a farm and whether or not the project products will be used on the farm, a lien need not be taken on the entire farm when it is not needed to secure a loan. Interim construction financing from a commercial lender will not be required where it is clearly demonstrated that such financing is not available at competitive terms, and will never be required for projects involving less than $100,000 of funding. In determining the income from a farm project for purpose of ascertaining whether there is reasonable assurance of repayment of the insured loan from the project's income, the appropriate financial credits will be attributed to a project's income for biomass fuel used on the farm rather than sold commercially. Such credits will be computed based upon the prevailing commercial price of the fuel displaced.

The Biomass Energy and Alcohol Fuels Act of 1980, Title II, is basically one which seeks the commercialization of biomass energy production to reduce the Nation's dependence on petroleum imports. Commercial type projects that demonstrate financial feasibility are the concern of the Act. If there are on-farm projects that cannot demonstrate the capability for repayment of the insured loan from the project's income, (including byproduct credits, credits for fuel used on the farm rather than sold commercially, and available tax credits and other government incentives), but nevertheless are desired by applicants for fuel dependability or other reasons related to the whole farm operation, it is possible they may qualify under the FmHA Farm Ownership loan program which will remain available to applicants.

8. Relationship to Existing FmHA Regulations

(a) *Personal Liability.* The Preamble to the August Proposal stressed the FmHA intention to "adhere to the maximum extent practicable to the existing FmHA regulations, procedures and forms applicable to other programs administered by it", recognizing, of course, statutory differences and differing program objectives. The August Proposal itself, however, was intended to include only those FmHA "other program" regulations which it specifically identified as applicable to the Biomass energy programs. Accordingly, some commentors expressed opposition to "other program" FmHA regulations which were not part of the August Proposal. An example is § 1980.443 (b) of the FmHA Business and Industry Program requiring, "usually", personal liability of certain stockholders and owners for repayment of FmHA guaranteed loans (opposed in at least five written comments). The August Proposal (§ 1990.213 (b)) did not incorporate this provision but it did use § 1980.443 (a) from the Business and Industry Program, which deals more generally with security requirements to provide reasonable assurance of repayment of the loan. Thus, the matter of stockholder and owner liability in the biomass energy program will depend on the circumstances as to what FmHA needs in order to have reasonable assurance of repayment. The Final Rule will follow the August Proposal in this respect.

(b) *Borrower-Lender Conflict of Interest.* Approximately 5 percent of the

written comments on the August Proposal sought permission for lenders to hold stock or be directors of the borrower or otherwise engage in relationships which in FmHA's other programs are prohibited because of the potential risk of conflict of interest. Commentors urged that the conflict of interest bar would discourage investors and unduly restrict the program. FmHA has concluded there is insufficient reason to revise the August Proposal to expressly reject existing FmHA practice, particularly in the light of the Conference Report expressions favoring use of FmHA procedures as much as possible.

(c) *Conditional Commitment to Guarantee Until "Substantial Completion."* Approximately 10 percent of the written comments and several witnesses at the hearings objected to the application of a procedure for this program, which FmHA has used in other programs involving construction of projects, whereby interim financing is used during construction and the guarantee of the loan is not finalized until substantial completion. A number of commentors objected, particularly to their perceived stringency of the test applied to determine when a project is substantially completed for this purpose.

The Final Rule continues the basic procedure that a conditional commitment will be made prior to substantial completion of construction, because this procedure helps importantly to assure that construction will adhere to plans and specifications and will result in a plant which performs successfully. The technical guidelines in Appendix A describe that, to the extent possible, FmHA will determine successful completion on the basis of the inspection engineer's certification and a start-up and continuous operation period of at least 72 hours or four consecutive batch runs, as appropriate, to demonstrate sustainable performance. In the case of an insured loan, interim construction financing prior to final closing of the FmHA loan will be required except for very small projects involving a loan of less than $100,000 and in other situations where interim financing is clearly demonstrated to be unavailable at reasonable rates and terms. This approach, adopted in the Final Rule, should provide the basis for a viable program and, at the same time, provide needed safeguards to achieve projects designed and constructed for successful and efficient operation.

(d) *Other Technical Requirements.* Approximately 12 percent of the commentors on the August Proposal objected to their perceived stringency of other aspects of the technical guidelines, including the requirement for qualified engineers who have designed similar facilities and the provisions for performance bonding and warranties on construction materials. A number of comments also called for simplified technical review and requirements for very small facilities.

The Final Rule recasts the technical requirements in important respects to make the guidelines practical and functional. FmHA recognizes that the technical guidelines must be sufficiently flexible to be applied to different project development situations, including turnkey projects, those projects involving separate design and construction firms, package plants, and others. The technical guidelines in Appendix A of the Final Rule for planning, bidding, performance of development, and related activities are based upon FmHA's experience in administering lending programs for rural water systems, waste treatment systems, and other projects involving construction of physical facilities and chemical processes. The Final Rule is designed in this regard basically to apply normal business practices and contracting requirements in order to achieve successful project development at financial charges commensurate with the services performed.

The Final Rule does not adopt generally-simplified technical procedures for very small projects, because at this stage of technology development such projects are particularly risky from a combined technical and financial perspective. One reason for retaining eligibility under the FmHA Farm Ownership loan program for small on-farm projects that are integrated financially and technically with the farming operation as a whole, is the recognition that fuel alcohol projects, for example, may need to attain a "community" size in order to operate continuously and in a manner that can reasonably assure repayment of the loan from project (including by-product) income. FmHA also recognizes the urgency to develop certifiable package units for small-scale production of alcohol and other biomass fuels which can assist in handling technical considerations, and FmHA is actively supporting such developments.

(e) *Elaboration of Certain Other Elements.* Several commentors on the August Proposal recommended that, for purposes of clarity and easier reference, those parts of existing FmHA program regulations that were incorporated by reference in the August Proposal should be spelled out verbatim in this regulation. This has been done for the most part in the Final Rule, except where a provision element is particularly lengthy, has already been published and is readily available to the public, and if included verbatim in this regulation would have rendered the Final Rule unjustifiably cumbersome.

Additionally, the Final Rule provides substantially more elaboration, based upon existing FmHA regulations for other lending programs, of equity and security requirements, transfers and assumptions, and other elements that were treated by reference and more summarily in the August Proposal.

9. Equity Requirements

(a) *Priority for Equity Beyond Minimum Requirements.* Approximately 7 percent of the written comments objected to the priority consideration provided in the August Proposal for applications showing equity in excess of the minimum required under the regulations (§§ 1990.5(a)(1)(iii), 1990.103(c) and 1990.203(b)). The commentors felt that otherwise meritorious applications might suffer because of the proposed priority for borrowers who have more available assets. The Final Rule includes only the minimum 20 percent equity for guaranteed loans and only the minimum 10 percent equity for insured loans, and does not include the priority for additional equity that was in the August Proposal, since other Final Rule provisions will sufficiently assure the financial soundness of the applications and will satisfy the statutory requirements (§ 217(a)(4) (B) and (C)) that "the person receiving such financial assistance will bear a reasonable degree of risk" and that "the amount of financial assistance provided for a project is not greater than is necessary to achieve the purposes of the Act." FmHA judgments as to economic feasibility, adequacy of security offered and other matters affecting assurance of loan repayment may, of course, be made in light of the amount of equity proposed, but greater flexibility in making such judgments will be possible by this change from the August Proposal.

(b) *Minimum Equity Requirements; Loan Limitations.* The public comment on equity requirements and loan limitations was multifaceted, and there was a great deal of confusion regarding the precise impact of the equity requirements and loan limits. About 12 percent of the commentors favored an equity requirement lower than 20 percent for projects involving guaranteed loans. Other commentors,

however, emphasized the basic importance of the equity contribution (including fully adequate equity for initial operating capital) as crucial to the success of the projects, and they recommended that FmHA retain all equity requirements contained in the August Proposal.

The Final Rule retains the minimum equity requirements of 10 percent for insured loans and 20 percent for guaranteed loans that were included in the August proposal. However, FmHA in all cases will require sufficient equity in the project itself to provide reasonable assurance of a viable project which can repay the loan out of the project's income.

With regard to loan limitations, the Final Rule provides that an insured loan cannot exceed 90 percent of the total estimated construction cost for the project. A guaranteed loan cannot exceed 90 percent of the total estimated construction cost of the project, and the amount of the guarantee cannot exceed 90 percent of the principal and interest of the loan. The Final Rule includes examples of permissible loan purposes; working capital is the primary, major cost item that cannot be deemed "construction" and therefore cannot be financed with a guaranteed loan.

For a 5 million gallon plant, therefore, the following example indicates roughly the financial arrangements that might be applicable:

Estimated total project cost=$10.5 million
Working capital and other non-construction costs=$1.5 million
Construction costs=$9.0 million
Guaranteed loan=$8.1 million (90% of $9 million)
Maximum portion of loan guaranteed=$7,290,000 (90% of $8.1 million)

In this illustration, the minimum equity requirement for the project could be met at least partially by the non-construction costs and the 10 percent of construction not financed by the guaranteed loan, to the extent that such project costs are met with capital contributions that are considered equity under this Final Rule. The example above is, of course, simplified compared to any actual project situation, and is intended only to illustrate the basic way that the equity, loan limitation, and loan guarantee limitation provisions interrelate.

10. Guarantee Fee

Approximately 3 percent of the written comments opposed the guarantee fee requirement (§ 1990.212) that was stated in the August Proposal on the grounds that it was an impediment to full participation in the program. FmHA has concluded that the provision should be changed because of general government budget pressures, the value of the guarantee to the participants, and the congressional intent to have existing FmHA practices generally followed.

11. Geographical Dispersion and Size Variation of Projects

In carrying out the insured loan and loan guarantee program in this Final Rule, FmHA will seek to provide for wide geographical dispersion and size variation of biomass energy and alcohol fuels projects to the extent consistent with the selection of those projects which otherwise conform to the requirements of the Final Rule. In view of the fact that FmHA has already assisted with loan guarantees a number of projects in excess of 7.5 million gallons under its regular Business and Industry Program, the Agency hopes for and encourages applications for projects below 7.5 million gallons which will contribute to the wide geographical dispersion of projects. Geographical and size variation in projects will assist in achieving a wide variation in feedstocks and technologies which is also an objective of the program. The establishment of Biomass Energy Loan Review Committees within FmHA State Offices will enable FmHA to emphasize project selection on a wide geographical basis.

12. Editorial and Other Clarification Revisions.

Suggestions relating to style and for clarity made by some commentors have been adopted in the Final Rule.

(a) As noted above, cross-references to specific other FmHA program regulations in several cases have been replaced by setting out the substance of the other program regulation in full in the Final Rule. Where such replacement, however, would have involved extensive repetition of a lengthy regulation, the cross-reference was retained.

(b) Additional definitions suggested by the comments have been included in § 1990.3.

(c) To improve the clarity of the Final Rule, § 1990.5(b), relating to certain statutory eligibility requirements, was moved to and becomes § 1990.10, to be juxtaposed with other eligibility provisions of the Final Rule.

(d) Certain additional provisions common to the insured and guaranteed program have been moved to Subpart A from Subparts B and C. Thus, a new § 1990.9 *Loan Purposes* was created in Subpart A for the list of examples of permitted loan construction costs formerly in Subparts B and C. Similarly, "Organization and Administrative" provisions were moved into Subpart A (§ 1990.4(a)) from the two former locations in Subparts B and C.

(e) Section 1990.25 now relates to Planning and Performing Development in accordance with Appendix A, replacing the "Trade Secrets" provision. The Trade Secrets subject is covered by applicable law generally so as to make the original provision unnecessary.

13. FmHA Forms.

The basic application forms to be used for the insured loan and loan guarantee parts of this program are published as Exhibit A to this regulation. Form FmHA 1990-2, "Application for FmHA Biomass Energy Insured Loan Assistance," will be used for insured loan applications; Form FmHA 1990-1, "Application for FmHA Biomass Energy Loan Guarantee Assistance," will be used for loan guarantee applications; Appendix A, "Biomass Energy Project Technical Information," will accompany the applications for both insured and guaranteed loans.

The provision of application forms specifically adopted for this program from existing FmHA forms is intended to clarify to the extent possible the basic application requirements for lending assistance under this program. In addition, since applicants may apply for guaranteed loans regardless of size of project, including for small-scale projects below one million annual gallons, FmHA has attempted to make the basic application for guaranteed and insured loans as similar as possible consistent with the difference in substantive requirements, in order to make it easier for applicants to consider the alternative of insured or guaranteed loan financing for small-scale projects.

Certain other existing FmHA forms, as described in the Final Rule and in the basic forms, must accompany the basic forms to make up a complete application package. Copies of all forms that are applicable may be obtained from any FmHA office.

14. *Other Significant Changes.* The final rule prohibits combining insured and guaranteed loans. This prohibition was not in the proposed rule, but FmHA determined that it would not be practical to merge the two types of loans. FmHA determined that the guaranteed loan appeals procedure should be the same as for all of its other guaranteed programs for consistency of administration. This was a change from the proposed rule. Since the projects

should be commercially feasible and quality projects are desired, FmHA in the final rule does not permit deferral of interest and prohibits deferral of principal beyond the second year. The Act authorizes the Secretary to require adequate security. FmHA determined that a pledge of revenues from projects was significant and should be specifically set forth in the regulation. FmHA determined that the total insured loans, initial and subsequent, should not exceed $1 million for a project. This was clarification of the proposed rule.

15. USDA-DOE Consultation and Project Review Procedures.

The Memorandum of Understanding and related documents, which describe consultation and project review and concurrence procedures, will be published subsequently in the Federal Register. The categories of projects exempted from such review are published as Exhibit B to this Final Rule.

16. Bureau of Alcohol, Tobacco, and Firearms Permit.

The Final Rule includes a clarification of the requirements regarding ATF permitting and loan or loan guarantee applications under this Regulation. Applications are advised to consult with the nearest ATF office regarding specific permitting requirements applicable to their operations. Evidence of filing the application for a permit with AFT, and acknowledgement by ATF of such application, must be submitted with the loan application. This procedure is designed to assure that the applicant is taking the full steps necessary to secure a permit, even though such an applicant may not be able to give final assurance that permitting will occur in cases where an insured loan is considered for approval prior to construction.

Note.—This document has been reviewed in accordance with FmHA Instruction 1901-G, "Environmental Impact Statement." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-191, an Environmental Impact Statement is not required.

(Sec. 212(e)(2) of the Biomass Energy and Alcohol Fuels Act of 1980; 7 CFR 2.23; 7 CFR 2.70)

Dated: October 27, 1980.

Thomas L. Burgum,

Deputy Assistant Secretary for Rural Development.

A new Part 1990 is added to Title 7 of the Code of Regulations to read as follows:

PART 1990—BIOMASS ENERGY AND ALCOHOL FUELS LOANS AND GUARANTEES

Subpart A—General Provisions

Sec.
1990.1 Introduction.
1990.2 Program objectives.
1990.3 Definitions.
1990.4 Organization and administration; case and identification numbers.
1990.5 Receiving and processing applications.
1990.6—1990.8 [Reserved]
1990.9 Loan purposes.
1990.10 Ineligible projects.
1990.11 Positive energy balance.
1990.12 Protein use.
1990.13 Availability of feedstocks.
1990.14 Amount of necessity for financial assistance.
1990.15 Risk.
1990.16 Competition.
1990.17 Byproduct values.
1990.18—[Reserved]
1990.19 Legal capacity.
1990.20—[Reserved]
1990.21 Department of energy review or concurrence.
1990.22 Security, maturity, repayment schedules and other terms.
1990.23 Compliance with statutes and regulations.
1990.24 Patents and proprietary rights.
1990.25 Planning and performance of development.
1990.26—1990.27—[Reserved]
1990.28 Access to records.
1990.29 Full faith and credit; incontestability.
1990.30 Guarantee termination.
1990.31 Fees.
1990.32 Loan servicing, default and liquidation.
1990.33 Assistance period.

Subpart B—Biomass Energy Project Insured Loans

Sec.
1990.101 Eligibility.
1990.102 Loan purposes.
1990.103 Loan amount limitations; equity and working capital.
1990.104 Subsequent loans.
1990.105 Receiving and processing applications.
1990.106 Evaluation criteria.
1990.107—1990.109—[Reserved]
1990.110 Maturity and repayment schedules.
1990.111 Interest rate.
1990.112 Security.
1990.113 Loan closing
1990.114 Default.
1990.115 Loan servicing and liquidation.

Subpart C—Biomass Energy Project Loan Guarantees

Sec.
1990.201 Eligibility.
1990.202 Loan purposes.
1990.203 Loan guarantee amount limitations and equity requirements.
1990.204 Subsequent loan guarantees.
1990.205 Receiving and processing applications.
1990.206 Evaluation criteria.
1990.207—1990.209—[Reserved]
1990.210 Maturity and repayment schedules.
1990.211 Interest rates.
1990.212 Guarantee fee and lender fees and charges.
1990.213 Security.
1990.214 Loan closing and servicing.
1990.215 Continuous assistance.
1990.216 Default.
1990.217 Liquidation and settlement.
1990.218 Protective advances.
1990.219 Transfer and assumption.
1990.220 FmHA Forms incorporated in Subpart C.

Appendix A.—Planning, Performing Development, and Technological Feasibility Requirements for Biomass Energy Projects.

Exhibit A-1—Application for FmHA Biomass Energy Loan Guarantee Assistance, Form FmHA 1990-1.

Exhibit A-2—Application for FmHA Biomass Energy Insured Loan Assistance, Form FmHA 1990-2.

Exhibit B—Determination of Exempt Categories.

Authority.—Sec. 212(e)(2) of the Biomass Energy and Alcohol Fuels Act of 1980, Pub. L. 96-294, 94 Stat. 687, (42 U.S.C. 8812).

Subpart A—General Provisions

§ 1990.1 Introduction.

This Subpart A contains the general regulations and prescribed forms which are applicable to the Farmers Home Administration program for financial assistance to biomass energy and alcohol fuels projects pursuant to the Biomass Energy and Alcohol Fuels Act of 1980 (Pub. L. 96-294, Title II). Additional regulations for the program are found in the various subparts of Part 1990. These regulations apply to lenders, holders, borrowers and other parties involved in making, insuring, guaranteeing, holding, servicing or liquidating loans. "Financial Assistance" for purpose of this regulation shall mean the forms of financial assistance described in Subpart B (Insured Loans) and Subpart C (Guaranteed loans).

§ 1990.2 Program objectives.

The objectives of the financial assistance program in Part 1990 are to reduce the dependence of the United States on imported petroleum and natural gas by financing increased production and use of biomass energy resources. Such increased production and use will be on an economically and environmentally feasible basis that does not impair the nation's ability to produce food and fiber.

§ 1990.3 Definitions.

(a) For purposes of this Part, the following general definitions apply. Additional definitions may be found in

the Subparts relating to the particular type of financial assistance involved.

(1) The "Act" means the Biomass Energy and Alcohol Fuels Act of 1980 (Pub. L. 96-294, Title II).

(2) "Alcohol" means methanol, ethanol and any other alcohol which is produced from biomass which is suitable for use by itself or in combination with other substances as a substitute for petroleum or petrochemical feedstocks. The term does not include alcohol for beverage purposes.

(3) "Applicant" means any person who has filed an application for financial assistance under this Part with the appropriate FmHA representative designated in this Part.

(4) "Application" means a proposal for financial assistance in the form and containing the information required by this Part.

(5) "Assignment Guarantee Agreement" (Form FmHA 449-36) means the signed agreement among FmHA, the lender, and the holder, setting forth (specifically or by reference) the terms and conditions of an assignment of a guaranteed portion of a loan or any part thereof.

(6) "Biomass" means any organic matter which is available on a renewable basis, including agricultural crops and agricultural wastes and residues, wood and wood wastes and residues and animal waste; but not municipal wastes or aquatic plants.

(7) "Biomass energy" means biomass fuel which consists of any gaseous, liquid, or solid fuel produced by conversion of biomass; or energy or steam derived from the direct combustion of biomass for the generation of electricity, mechanical power, or industrial process heat.

(8) "Biomass energy project" or "project" means any facility (or portion of a facility) located in the United States which is primarily for the production of biomass fuel and byproducts; or the combustion of biomass for the purpose of generating industrial process heat, mechanical power, or electricity (including cogeneration).

(9) "Borrower" means an applicant who has a loan made or guaranteed under this Part.

(10) "Cogeneration" means the combined generation by any facility of electricity or mechanical power and steam or other forms of useful energy (such as heat) which are used for industrial, commercial, heating (including direct heating), or cooling purposes.

(11) "Conditional Commitment for Guarantee" (Form FmHA 449-14) means FmHA's advice to the lender that the material it has submitted is approved subject to the completion of the conditions and requirements set forth in "Conditional Commitment for Guarantee."

(12) "Construction" means (i) the construction or acquisition of any biomass energy project; (ii) the conversion of any facility to a biomass energy project; or (iii) the expansion or improvement of any biomass energy project which increases the capacity or efficiency of that facility to produce biomass energy. The term "construction" includes the acquisition of necessary equipment and machinery; the acquisition of necessary land and its improvements; and, capital costs necessary to meet environmental standards. Such term does not include the acquisition of any facility which was operated as a biomass energy project before the acquisition.

(13) "Continuous solicitation" means the method of receiving, evaluating, and processing applications for financial assistance under this Part by which applicants may file their applications at any time after the effective date of this Part.

(14) "Cooperative" means any agricultural association, as that term is defined in section 15(a) of the Act of June 15, 1929, as amended (46 Stat. 18; 12 U.S.C. 1141j), commonly known as the Agricultural Marketing Act.

(i) As used in Section 15(a) of that Act, the term "farmers" means producers of agricultural commodities and other agricultural products, including among others, ranchers, dairy men, planters and nut and fruit growers.

(ii) "Farm" means a tract of land, improvements and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock.

(15) "Federal agency" means any Executive agency, as defined in Section 105 of title 5, United States Code.

(16) "Finance Office" means the office which maintains the FmHA financial records. It is located at 1250 Market Street, St. Louis, Missouri 63103, (Phone 314-622-4400).

(17) "FmHA" means the United States of America, acting through the Farmers Home Administration, an Agency of the United States Department of Agriculture. References to the National Office, Finance Office, State Office, State Director, District Director, or other FmHA office or official should be read as prefaced by "FmHA."

(18) "Guaranteed Loan" means a loan made and serviced by a lender for which FmHA has entered into a Form FmHA 449-35, "Lender's Agreement," and for which FmHA has issued a Form FmHA 449-34, "Loan Note Guarantee."

(19) "Holder" means that person (other than the lender) lawfully owning all or any part of the guaranteed portion of the loan with no servicing responsibility.

(20) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(21) "Insured loan" means a loan directly made and serviced by FmHA as lender.

(22) "Intermediate scale biomass energy project" means a biomass energy project with an anticipated annual production capacity of more than 1 million gallons of anhydrous ethanol per year (or its energy equivalent of other forms of biomass energy) but less than 15 million gallons of anhydrous ethanol per year (or its energy equivalent of other forms of biomass energy). Energy equivalent is defined in greater detail in a Notice which appeared in 45 F.R. 52911 (August 8, 1980).

(23) "Lender" means the person or organization making and servicing the loan which is guaranteed under Subpart C. The lender is also the party requesting a loan guarantee. The provisions of § 1980.13 shall govern eligibility of lenders.

(24) "Lender's Agreement" (Form FmHA 449-35) means the signed agreement between FmHA and the lender setting forth (specifically or by reference) the lender's loan responsibilities when the Loan Note Guarantee is issued.

(25) "Letter of Conditions" means a letter issued by FmHA to an applicant setting forth the conditions under which FmHA will make an insured loan under the Act.

(26) "Note" means an evidence of the debt. In those instances where FmHA makes an insured loan or guarantees a bond issue, "note" shall also be construed to include "Bond" or other evidence of indebtedness where appropriate.

(27) "Person" means any individual, company, cooperative (as defined in paragraph (a)(14) or otherwise) partnership, corporation, association, consortium, unincorporated organization, trust, estate, or any entity organized for a common business purpose, any State or local government (including any special purpose district or

similar governmental unit) or any agency or instrumentality thereof, or any Indian tribe or tribal organization. "Entity" means any person other than an individual.

(28) A "primary fuel" is the predominant fuel used by the biomass energy project.

(29) "Simultaneous solicitation" means the method of receiving, evaluating, and processing applications for financial assistance under this Part by which applicants may file their applications only on or before a fixed date in accordance with a Federal Register notice, at which time all applications so received will be evaluated and processed together on a comparative basis and decisions will be made thereon simultaneously.

(30) "Small scale biomass energy project" means a biomass energy project with an anticipated annual production capacity of not more than 1,000,000 gallons of anhydrous ethanol per year or its energy equivalent of other forms of biomass energy.

(31) "Solar energy resources" for this purpose includes wood, bagasse, corn stover and other biomass, among others.

(32) "State" means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(33) "Transfer and Assumption" means the conveyance by a debtor to an assuming party of the assets, collateral, and liabilities of the loan in return for the assuming party's binding promise to pay the debt outstanding. In relation to transfer and assumption cases, where appropriate, "liquidation" and "loan" shall be construed to mean "transfer and assumption," "promissory note" shall be construed to mean "assumption agreement," and "borrower" shall be construed to mean "assuming party" or "transferee."

(34) "Principal Owner" means an owner (member, stockholder, partner, or person in an entity) who owns or controls a 20 percent interest in the applicant. If no owner owns or controls at least a 20 percent interest, all owners will be considered to be principal owners, except when the applicant is a corporation listed on a major stock exchange and for those so listed if required by FmHA.

§ 1990.4 Organization and administration; case and identification numbers.

(a) *Organization and administration of program.* (1) The biomass energy project insured loan and guarantee program is administered by the FmHA Administrator through a State Director serving each State, and such State Director is the focal point for the program and the local contact person for processing and servicing activities, subject to his or her delegation of specific responsibilities to others.

(2) Administrative arrangements established by FmHA in relation to this program include the establishment of: (i) An Office of Renewable Resources which will assist the Administrator with, among other things, the administration of this program; (ii) a Biomass Energy Loan Division in the National Office; (iii) Biomass Energy Loan Review Committee in the National Office of FmHA; and (iv) Biomass Energy Loan Review Committees in State Offices of FmHA.

(3) *Office of the General Counsel (OGC).* In performing the FmHA functions with respect to Biomass Energy and Alcohol Fuel Loans, the advice and assistance of OGC may be sought. In loanmaking, it is the responsibility of the lender to ascertain that all requirements for making, securing, and servicing the loan are duly met. If FmHA Has any questions concerning the lender's resolution of these matters, it should consult with OGC.

(4) *Delegation of Authority.* The State Director may delegate his or her duties and responsibilities stipulated in this Regulation, other than loan approval authority.

(b) Applications will be assigned a case number for identification in accordance with the provisions of § 1980.12.

§ 1990.5 Receiving and processing applications.

(a) *Priority.* (1) In all cases, priority in the selection of applications for funding shall be given to a biomass energy project that:

(i) uses a primary fuel other than petroleum or natural gas in the production of biomass fuel, such as geothermal energy resources, solar energy resources, waste heat, or coal, (primary fuel does not include incidental use of petroleum or natural gas, for example, for flame stabilization. Fuels which are not commercially marketable by reason of quality, quantity or distance from existing transportation system would not be considered as petroleum or natural gas for this purpose); or

(ii) applies new technologies which expand the possible feedstocks, produces new forms of biomass energy, or produces biomass fuel using improved or new technologies.

(2) A project which does not use a priority-qualifying fuel or technology may, nevertheless, be considered for financial assistance under this Part without priority.

(b) *Continuous or Simultaneous Solicitation.* FmHA procedures permit alternative methods for receiving and processing applications for biomass energy project financial assistance. The respective Subparts will specify such applicable procedures, including whether applications will be received and processed continuously (continuous solicitation) or will be received by one designated date pursuant to Federal Register Notice of Solicitation, and considered and acted on together (simultaneous solicitation).

(c) *Evaluation Criteria.* Applications which meet eligibility requirements will be evaluated in accordance with criteria stated in applicable Subparts of this Part.

(d) *Application and Procedures.* (1) Financial assistance will be considered for any biomass energy project only on the basis of an application submitted by the applicant, in such form and under such procedures as are prescribed in the respective Subparts of this Part.

(2) The application shall include information regarding the construction costs of the biomass energy project and estimates of operating costs and income, including the sale of any by-products.

(3) Each applicant shall provide access at reasonable times to such other information and such assurances as FmHA may require.

(4) As a condition precedent to receiving financial assistance, applicants must consent to such examinations and reports regarding the biomass energy project as FmHA may require.

(5) With respect to each biomass energy project for which financial assistance is provided, the applicant will furnish such reports and records relating to the project as FmHA determines to be necessary.

(e) *Notice of Denial with Reasons.* (1) If any application for financial assistance for a biomass energy project is denied, the applicant will be provided written notice thereof with the reasons for the disapproval.

(2) Applicants (both borrower and lender, if guaranteed loan) may resubmit applications following such denial, provided all exceptions noted by FmHA are addressed and the application is substantially modified to reflect such changes. Such a resubmittal shall be considered as a new application.

(f) *Appeals.* Procedures in §§ 900.51–53 for insured loans and 1980.80 for guaranteed loans shall apply to review

of FmHA actions or determinations under this Part.

§§ 1990.6–1990.8 [Reserved]

§ 1990.9 Loan purposes.

(a) A loan which may be made and insured or guaranteed under this Part 1990 shall be used only for the construction of a biomass energy project.

(b) Construction as defined in § 1990.3(a) includes acquisition, conversion and expansion of existing facilities but not the acquisition of facilities operated as a biomass energy project before the acquisition.

(c) Construction costs for a facility which produces biomass energy other than biomass fuel includes only costs related to constructing or converting boilers, on-site machinery and handling equipment which are necessary for the use of biomass as a fuel.

(d) With respect to projects producing biomass fuel and byproducts, construction costs may include portions of such facility related to the production of such byproducts.

(e) Other examples of permissible construction loan purposes include:

(1) Costs of acquisition of real property, including engineering fees, surveys, title insurance, recording fees, surveys, real estate commissions, and legal fees incurred in connection with land acquisition, site improvements, site restoration, access roads and fencing;

(2) Reasonable fees and charges only if specifically listed and disclosed on Form FmHA 1990–1, "Application for Biomass Energy Loan Guarantee Assistance," or 1990–2, "Application for Biomass Energy Insured Loan Assistance." Authorized fees include professional fees to prepare environmental reports and those necessary services rendered by professionals, such as engineers, architects, lawyers, accountants, and appraisers. The amount of the fee will be what is reasonable and customary in the community or region where the project is located. Any fees for professional or expert services are to be fully documented and justified on the Form FmHA 1990–1 or 1990–2, and are subject to FmHA review and approval. Only approved fees and charges may be funded out of loan proceeds.

(3) Equipment purchase, placement and testing costs;

(4) Materials, labor, and utility services during construction;

(5) Costs to provide safety and environmental protection equipment, facilities;

(6) Interest costs until closing of permanent financing or completion of construction, whichever is later;

(7) Necessary and appropriate insurance and bonds of all types related to the construction of the project;

(8) A reasonable contingency reserve;

(9) Guarantee fee; and

(10) Other necessary and reasonable costs, as approved by the FmHA.

(f) Costs that are not considered as allowable construction costs include the following:

(1) Working capital;

(2) Interest except as provided in paragraph (e)(6) of this section;

(3) Fees and commissions charged to the borrower, including finder fees for obtaining the Federal guarantee, packaging fees, commitment fees and other similar fees or charges;

(4) General and administrative expenses, including company organizational expenses; and operating expenses;

(5) Goodwill, franchise, trade, or brand name costs;

(6) Dividends and profit sharing to stockholders, employees, and officers;

(7) Expenses not paid or incurred by the applicant;

(8) Costs that are excessive or are not directly required to construct the project, as determined by FmHA.

§ 1990.10 Ineligible projects.

(a) Projects which use aquatic plants or municipal waste as feedstock are ineligible for financial assistance under this Part.

(b) Biomass energy projects which will have an anticipated annual production capacity of 15 million gallons or more of anhydrous ethanol (or the energy equivalent of other forms of biomass energy) are ineligible for financial assistance under this Part except that, with the concurrence of the Department of Energy in accordance with § 1990.21, they may be considered for financial assistance under this Part if they will use wood or wood wastes or residues or are owned and operated by a cooperative as defined in § 1990.3(a)(14).

(c) Biomass energy projects which propose to produce any amount of beverage alcohol will be ineligible for financial assistance under this Part.

(d) No loan shall be guaranteed if the interest on such loan is excludable from gross income for purposes of Chapter 1 of the Internal Revenue Code of 1954.

§ 1990.11 Positive energy balance.

(a) The Btu content of motor fuels to be used in the facility involved to produce the biomass energy must not exceed the Btu content of the biomass fuel to be produced in the facility (positive energy balance).

(b) In determining the existence of a Positive Energy Balance, account will be taken of any displacement of motor fuel or other petroleum products which the applicant has demonstrated would result from the use of the biomass fuel produced in the facility involved. The applicant has the burden of proving such displacement.

(c) Displacement for this purpose would include displacement occurring after the fuel is produced as a result of marketing operations or manner of use of biomass fuel as through octane enhancement. This would allow consideration of decreased consumption of fuel by a refinery because ethanol blending reduces the severity of reforming to provide gasoline with sufficient octane level for marketing.

(d) The term "motor fuel" means gasoline, kerosene; and middle distillates (including diesel fuel).

(e) The Positive Energy Balance shall be determined by considering only the project for which financial assistance is requested.

§ 1990.12 Protein use.

Financial assistance will not be provided for a biomass energy project if the process used by the project will not extract the protein content of the feedstock for utilization as food or feed for readily available markets in any case in which to do so would be technically and economically practicable.

§ 1990.13 Availability of feedstock.

(a) Financial assistance will not be provided for a biomass energy project unless necessary feedstocks are available and may reasonably be expected to continue to be available in the future.

(b) For biomass energy projects using wood, or wood wastes or residues from the National Forest System, the determination of feedstock availability shall take into account current levels of use by then existing facilities.

§ 1990.14 Amount necessary for financial assistance.

(a) The amount of financial assistance provided for a biomass energy project will not be greater than is necessary to achieve the purposes of the Act, including maximizing the production of biomass energy.

(b) In making this determination, other types of financial assistance requested and awarded for the project shall be taken into account.

§ 1990.15 Risk.

(a) Any person receiving financial assistance for a biomass energy project must bear a reasonable degree of risk in the construction and operation of the project.

(b) The respective Subparts of this Part and the prescribed loan documents and other agreement forms will specify the manner in which such reasonable degree of risk shall be borne.

§ 1990.16 Competition.

Following evaluation of the markets involved, due consideration will be given to promoting competition, in providing financial assistance for biomass energy projects.

§ 1990.17 Byproduct values.

In determining the amount of financial assistance to be provided to a biomass energy project, the potential value of byproducts, if any, and the costs attributable to their production, will be considered.

§ 1990.18 [Reserved]

§ 1990.19 Legal Capacity.

An applicant must possess the legal capacity to contract for the loan and construct, maintain and operate the project.

§ 1990.20 [Reserved]

§ 1990.21 Department of Energy review or concurrence.

Section 212 of the Act requires review by the Department of Energy before certain applications for biomass energy project financial assistance may be approved and, in addition, for certain other such applications the concurrence of the Department of Energy. Prior to committing to issue or issuing a loan or loan guarantee, FmHA shall, to the extent and in the manner required by the Act, consult with and, where applicable, obtain the concurrence of DOE. A Memorandum of Understanding between USDA and DOE which describes consultation and project review and concurrence procedures will be published subsequently in the Federal Register. The categories of projects exempted from such review are published as Exhibit B to this Regulation.

§ 1990.22 Security, maturity, repayment schedules and other terms.

Applicable Subparts of this Part contain the regulations for security, maturity, repayment schedules and other terms of biomass energy project loans, which the Act requires to be reasonable and meet standards sufficient to protect the financial interests of the United States.

§ 1990.23 Compliance with statutes and regulations.

(a) *Environmental Impact Assessments and Statements.* Procedures for FmHA compliance with the National Environmental Policy Act of 1969 stated in § 1980.40 and Subpart G of Part 1901 will apply to this Part.

(b) *Equal Opportunity and Non-discrimination Requirements.* Procedures for compliance with the Equal Credit Opportunity Act of 1974, as stated in §§ 1910.2 and 1980.41, and with Executive Order 11246, Title VI of the Civil Rights Act of 1964 and other civil rights laws, as stated in Subpart E of Part 1901, will apply to this Part.

(c) *Floodplain or Mudslide Hazard Area: Wetlands.* For projects subject to floodplain or mudslide hazards or located in wetlands, procedures stated in § 1980.42 and § 1943.23(a) and in Executive Orders 11988 and 11990 will apply to this Part.

(d) *Clean Air Act and Water Pollution Control Act Requirements.* Procedures for compliance with the Clean Air Act (42 U.S.C. 1857) and the Federal Water Pollution Control Act (33 U.S.C. 1318) stated in § 1980.43 will apply to this Part.

(e) *National Historic Preservation Act.* Procedures for compliance with the National Historic Preservation Act of 1966 stated in 1980.44 and Subpart F of Part 1901 will apply to this Part.

(f) *Bureau of Alcohol, Tobacco, and Firearms Permit.* Applicants requesting loans for the production of alcohol fuel should be advised to consult with the nearest Bureau of Alcohol, Tobacco and Firearms (ATF) regional regulatory administrator concerning the specific requirements applicable to their operations. Evidence of filing the application for a permit with ATF, and acknowledgement by ATF of such application, must be submitted with the loan application.

(g) *Truth in Lending, Real Estate Settlement Procedures Act.* Procedures for compliance with the Truth in Lending Act stated in § 1901.401 and with the Real Estate Settlement Procedures Act stated in § 1901.406 will apply to this Part.

(h) *Privacy Act of 1974; Right to Financial Privacy Act of 1978.* Procedure for compliance with the Privacy Act of 1974 stated in § 1910.3(a) (3) and (4) and § 1980.451(i)(18) and with the Right to Financial Privacy Act of 1978 stated in § 1980.46 will apply to this Part.

(i) *Other Federal, State and local requirements.* In addition to the specific requirements of this regulation, proposals for facilities financed in whole or in part with an FmHA loan or guarantee will be coordinated with all appropriate Federal, State and local agencies in accordance with the following:

(1) Compliance with special laws and regulations. Applicants and/or lenders will be required to comply with any Federal, State or local laws, regulatory commission rules, ordinances, and regulations which are presently in existence or may be later adopted which affect the project including, but not limited to:

(i) Organization and authority to design, construct, develop, operate and/or maintain the proposed facilities;

(ii) Borrowing money, giving security therefor, and raising revenues for the repayment thereof;

(iii) Land use zoning;

(iv) Health, safety, and sanitation standards;

(v) Protection of the environment and consumer affairs.

(j) In compliance. The applicant and/or lender will be in compliance with this section effective with the date of loan closing for insured loans and issuance of the Loan Note Guarantee for guaranteed loans.

§ 1990.24 Patents and proprietary rights.

Patents and other propriertary rights accruing to the borrower and resulting from the project will remain with the borrower, except that such rights shall be, in the case of default, treated as project assets in accordance with terms and conditions in the loan agreement.

§ 1990.25 Planning and performance of development.

Planning and performance of development shall be in accordance with Appendix A.

§§ 1990.26–1990.27 [Reserved]

§ 1990.28 Access to records.

FmHA representatives shall have access (including the right to make copies) at reasonable times to all records relating to biomass energy projects. To the maximum extent practicable, records, and information required for regulatory and other purposes will be used also for purposes of this Part.

§ 1990.29 Full faith and credit and incontestability.

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the lender or holder has actual knowledge at the time it becomes such lender or holder or which lender or holder participates in or condones. The guarantee and right to require purchase will be directly

enforceable by holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the Loan Note Guarantee by the lender. The Loan Note Guarantee will be unenforceable by the lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. As used in this paragraph and in any Loan Note Guarantee (including those now outstanding) in which the phrase appears, "use of loan funds for unauthorized purposes" refers to the situation in which the lender in fact agrees with the borrower that loan funds are to be so used and the phrase "unauthorized purpose" means any purpose not listed by the lender in the completed application as approved by FmHA.

§ 1990.30 Guarantee termiantion.

Any loan guarantee under this Part shall not be terminated, canceled or otherwise revoked, except in accordance with its terms and shall be conclusive evidence that such guarantee complies fully with the Act and of the approval and legality of the principal amount, interest rate and all other terms of the securities, obligations, or loans of the guarantee.

§1990.31 Fees.

(a) Fees, if any, charged for financial assistance provided under this Part shall be as stated in the applicable Subparts of this Part.

(b) All fees and charges must be specifically documented and justified on the application. Allowable fees will be those reasonable and customarily charged borrowers in similar circumstances in the ordinary course of business and are subject to FmHA review and approval.

(c) Packaging fees include services rendered by the lender or others in connection with preparation of the application and seeing the application through to final decision. These services may or may not be performed by an investment banker. If an investment banker provides needed assistance in addition to the packaging of the loan, additional charges may be added to the packaging fees. The maximum allowable packaging fees are two percent of the total principal amount of the loan up to $1 million and on all amounts over $1 million an additional one-forth percent up to a total maximum fee of $50,000. Packaging fee, investment banker fees, and any other fees and charges, not specifically provided for in this section, are permitted subject to FmHA review and approval. Packaging fees, investment banker fees, and any other similar fees or charges shall not be paid from loan proceeds.

§ 1990.32 Loan servicing, default, and liquidation.

Loan servicing, default and liquidation regulations relating to financial assistance provided under this Part are stated in the applicable Subparts of this Part.

§ 1990.33 Assistance period.

No financial assistance under this Part may be committed or entered into after September 30, 1984, but contracts in existence on that date shall remain in effect for the period specified therein.

Subpart B—Biomass Energy Project Insured Loans

§ 1990.101 Eligibility.

In addition to the eligibility requirements stated in Subpart A applicable generally to all financial assistance under this Part, applications for biomass energy project insured loans must meet the requirements in this Subpart.

(a) *Credit Elsewhere.* (1) The loan-applicant shall certify and FmHA shall determine that the applicant is unable, without such loan, to obtain sufficient credit elsewhere at reasonable rates and terms, taking into consideration prevailing rates and terms for loans for similar purposes and periods of time, to finance the construction of the biomass energy project for which such loan is sought.

(2) The procedure for determining and documenting the unavailability of credit elsewhere is as follows:

(i) When, based on FmHA's knowledge of other lenders programs, the review of the application indicates there is no possibility for the applicant to obtain the credit needed from other lender(s), this conclusion and the basis for it will be recorded in the running record and further verification or checks will not be necessary.

(ii) If FmHA questions whether or not the applicant is able to obtain the credit needed from other lenders, such lenders will be contacted and the findings recorded in the running record.

(iii) If FmHA receives letters or other written evidence from a lender(s) indicating that the applicant is unable to obtain satisfactory credit, these will be included in the loan docket.

(iv) Property and interest in property owned and income received by an individual applicant and by principal owners of an entity will be considered and used by an applicant in obtaining credit from other sources.

(b) *Small-scale Biomass Energy Projects.* Only small scale biomass energy projects, as defined in § 1990.3(a)(30), are eligible for insured loans under this Subpart B.

§ 1990.102 Loan purposes.

(a) An insured loan may be made for the construction of small-scale biomass energy projects. Examples of permissible construction costs are listed in § 1990.9.

(b) An insured loan may not be combined with a guaranteed loan under this Part 1990.

§ 1990.103 Loan amount limitations; equity and working capital.

(a) No insured loan under this Subpart B (with any overrun costs added by subsequent loans included) may exceed $1 million for a project.

(b) No insured loan under this Subpart B may exceed 90 percent of the total estimated cost of construction of the project as concurred in by FmHA.

(c) The applicant will be required to contribute sufficient tangible assets to provide reasonable assurance of a successful project. A minimum of 10 percent equity on the applicant's balance sheet and assurance of adequate working capital will be required at the time of loan closing for insured loans.

§ 1990.104 Subsequent loans.

If the total estimated costs of construction of a small-scale biomass energy project after an insured loan is made exceed the total estimated costs of construction as concurred in by FmHA, an additional insured loan may, upon application, be made for such additional estimated total cost of the project as does not exceed 10 percent of the total costs of construction initially estimated.

§ 1990.105 Receiving and processing applications.

(a) *Continuous Solicitation of Applications.* Applications for small-scale biomass energy project insured loans will be received and processed on a first-come, first-served basis, unless a simultaneous solicitation is announced by Federal Register publication of notice.

(b) *Preapplication.* (1) Applicants may file preapplications described in paragraph (b)(3) of this section if they desire an expression of FmHA's preliminary views and advice prior to assembling the complete application or they may present the complete application in one package, including the material required in paragraphs

(b)(3) and (c)(1) of this section, and, in the case of an entity, the following:

(i) A complete list of owners showing the address and the percentage of ownership in the entity by each;

(ii) A current (within 60 days of filing) personal financial statement from each of the principal owners. Any other owner whose financial statement, in the judgment of the loan approval official, would be pertinent to a consideration of the financial strength of the entity will also be required to provide personal financial statements.

(iii) A current (within 60 days of filing) financial statement from the entity.

(iv) A copy of the cooperative's or corporation's charter, or any partnership agreement, any articles of incorporation and bylaws, any certificate or evidence of current registration (good standing) and a resolution(s) adopted by the Board of Directors or members or stockholders authorizing specified officers of the cooperative, corporation, or partnership to apply for and obtain the loan and execute required debt, security and other instruments and agreements.

(2) A preapplication will be in the form of a letter and will not commence the running of the 120 days statutory period for processing applications.

(3) Preapplication letters should include:

(i) Applicant's name and address, telephone number and contact person;

(ii) Amount of loan request;

(iii) Brief description of the project and process;

(iv) Amount of applicant's equity;

(v) Anticipated loan maturity;

(vi) Type and availability of feedstocks;

(vii) Record of any pending or final regulatory or legal (civil or criminal) action against the applicant, principal owners, officers and directors, or partners;

(viii) A current (within 90 days of filing) balance sheet and latest profit and loss statement, and financial statements of existing businesses for the last 3 years, including in the case of farmers information on crop and livestock production;

(ix) A detailed projection of gross revenue, net earnings, and cash flow statements for 3 years including assumptions upon which such forecasts are based;

(x) Sales projections indicating the percent of the local market the project expects to obtain including assumptions upon which such projections are based.

(4) If preapplication information indicates the project will not meet FmHA's minimum credit standards for a sound loan, is ineligible, or that funds or loan authority are not available for the project, FmHA will so inform the applicant. The applicant will be notified in writing with reasons for the decision indicated. If it appears that the project meets basic eligibility requirements and credit standards, and loan authority is available, FmHA will inform the applicant in writing and request completion of the application.

(c) *Applications.* (1) A complete application may be filed with any FmHA office and will consist of at least the following:

(i) Form FmHA 1990-2 "Application for Biomass Energy Insured Loan Assistance";

(ii) For entities, the information required by paragraph (b)(1) of this section;

(iii) Form FmHA 449-10 "Applicant's Environmental Impact Evaluation";

(iv) Architectural or engineering plans, if applicable;

(v) Independent (or FmHA) appraisal reports of all property which will serve as collateral or fulfill equity requirements;

(vi) For existing businesses, a pro forma balance sheet at start-up and for at least 3 additional projected years indicating the necessary start-up capital, operating capital and short-term credit based on financial statements for the last 3 years, or more (if available); and projected cash flow and earning statements for at least 3 years supported by a list of assumptions showing the basis for the projections;

(vii) For new businesses, a pro forma balance sheet at start-up and for the next 3 years, projected cash flow (monthly first year, quarterly for 2 additional years) and projected earnings statements for 3 years supported by a list of assumptions showing the basis for the projections;

(viii) Any credit reports obtained by FmHA;

(ix) Form FmHA 400-1, if construction costing more than $10,000 is involved;

(x) Copies of building permits, if applicable, and any necessary certifications and recommendations of appropriate regulatory or other agency having jurisdiction over the project including any pollution control agency;

(xi) Acknowledgement of receipt of permit application by Bureau of Alcohol, Tobacco and Firearms, Department of Treasury;

(xii) Feasibility studies of the technical and economic aspects of the project in form and substance conforming to Appendix A;

(xiii) Any additional information required by FmHA.

(d) *FmHA Evaluation of Application.* (1) FmHA will evaluate the application. FmHA will make a determination whether the borrower is eligible, the proposed project is feasible, the loan is for an eligible purpose, and there is reasonable assurance of repayment ability, sufficient collateral, and sufficient equity. If FmHA determines it is unable to make the loan, the applicant will be informed in writing within 120 days after receipt of the application. Such notification will include the reasons for denial.

(2) If FmHA determines it is able to make the loan, the loan approval official will prepare a letter of conditions listing all requirements which the applicant must agree to meet within a specified time before the application will receive further consideration for approval. All letters of condition will be addressed to the applicant, signed by the State Director and mailed or handed to the appropriate applicant representatives by FmHA.

Requirements listed in the letter will include those relative to:

(i) Maximum amount of loan which may be considered.

(ii) Repayment schedule.

(iii) Contributions required of applicant users or members.

(iv) Security requirements.

(v) Title to property.

(vi) Organization.

(vii) Business operations.

(viii) Insurance and bonding.

(ix) Construction contract documents and bidding.

(x) Accounts, records and audit reports required.

(xi) Other requirements which must be met, including submission of evidence of compliance with applicable statutes and regulations.

(e) *Loan Processing.* Dockets for insured loans for small-scale biomass energy projects will be processed as follows:

(1) The State Director will prepare and sign the letter of conditions and forward it to the applicant.

(2) National Office concurrence is required if the project will use natural gas or oil as the primary fuel source or involves non-standard technology. The State Director will forward to the National Office the relevant material from the docket as required by the National Office. On receipt of National Office concurrent to approve, the State Director will proceed as in paragraph (e)(3) of this section.

(3) The State Director will sign and discuss the requirements of the letter of conditions with the applicant and afford an opportunity to execute Form FmHA 442-46. If the applicant declines to execute Form FmHA 442-46, the State Director will document the reasons for

such declination. If the applicant executes Form FmHA 442-46, the State Director will proceed with loan processing.

(4) When approving the loan, which shall be within 120 days after receipt of the application, the loan approval official will indicate on all copies of Form FmHA 1940-1, "Request for Obligation of Funds," the approval is subject to the Letter of Conditions. The loan approval official will sign an original and one copy of Form FmHA 1940-1. One copy of the form will be sent to the Finance Office; a signed copy of the form will be sent to the applicant on the date of loan approval.

(f) *Interim Financing.* For insured loans of $100,000 or more, if it is possible for the applicant to borrow funds at reasonable rates and terms on an interim basis during construction period from commercial sources, such interim financing will be obtained so as to preclude the necessity for multiple advances of FmHA funds. Procedures for multiple advances and interim financing under § 1942.17(n)(92) and Part 1902 Subpart A will apply.

§ 1990.106 Evaluation criteria.

(a) In addition to the criteria and eligibility requirements stated in Subpart A (including § 1990.5(c) and §§ 1990.10-17) and in other sections of this Subpart B including §§ 1990.101-103, insured loans for small-scale biomass energy projects may be made only if:

(1) There is reasonable assurance of repayment of the insured loan from the project's income (including by-product income) received by the borrower. For this purpose, "income" includes, in the case of on-farm projects, appropriate financial credit for biomass fuel used on the farm and not sold commercially, such credit to be computed at the prevailing commercial market value of the displaced purchased fuel.

(2) The project is technically feasible and there is acceptable evidence that the applicant will initiate and complete the project in a timely and efficient manner.

§ 1990.107-1990.109 [Reserved]

§ 1990.110 Maturity and repayment schedules.

(a) Repayment Period. Each loan will be scheduled for repayment over a period not to exceed the lesser of (1) 30 years from the date of the note, or (2) the expected average useful life of the major physical assets essential to the project.

(b) Repayment schedules will be in accordance with projected operations. Amortized installments, either monthly, quarterly or semi-annually, will be required and may include deferred payments. All collections will be applied to interest until such interest has been paid. Also, when a full installment is not paid when due, the payment made will be applied first to accrued interest.

(c) Deferred payments. Principal payments may be deferred in whole or in part for a period not to exceed the end of the second full calendar year after the estimated date of loan closing.

§ 1990.111 Interest rate.

Insured loans for small-scale biomass energy projects shall bear interest at rates determined by FmHA, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, plus not to exceed one per centum, as determined by FmHA, and adjusted to the nearest one-eighth of one per centum. The rate will be announced periodically and will be the rate in effect at the time the loan is approved or at the time the loan is closed, whichever rate is lower.

§ 1990.112 Security.

(a) All insured loans for small-scale biomass energy projects will be secured in a manner which will adequately protect the interest of the Government until the loan is repaid. Security may be a combination of real estate, chattels, and other security. Such security will include assignment of revenues from the project.

(b) A lien will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, and similar property rights used or to be used, in connection with the project whether owned at the time the loan is approved or acquired with loan funds. Additional security may be required by FmHA. In unusual circumstances where it is not feasible to obtain a lien on such land rights (such as land rights obtained from Federal or local governmental agencies and from railroads), and the State Director determines that the interest of the FmHA otherwise is adequately secured, the lien requirement may be omitted as to such land rights. In those instances where such property rights have not been legally perfected, it will be the responsibility of the applicant to obtain and record such releases, consents, subordinations to such property rights from holders of outstanding liens, or other instruments, as it determines, with the advice of its attorney, are necessary for the construction, operation, and maintenance of the facility. When easements only are obtainable on sites for structures, releases, consents, or subordinations may be required by the FmHA. Provision will be made for the applicant to pay from its own funds for any excess installation costs resulting from a failure to obtain adequate land, rights-of-way, or subordination.

(1) In those cases where a lien on the leasehold interest of the borrower in a leasehold from a private party will represent the principal security for the loan, unless prior written approval from the National Office for a different arrangement is obtained, the lease must provide for:

(i) An unexpired term at least 50 percent longer than the repayment period of the loan.

(ii) The borrower's interest will not be subject to summary forfeiture or cancellation.

(iii) The right of FmHA to foreclose its security; to bid at foreclosure sales; to accept voluntary conveyance of the security in lieu of foreclosure; and should the leasehold be acquired by FmHA through foreclosure, voluntary conveyance, abandonment, or otherwise, to occupy the property, sublet it, or to sell it for cash or credit.

(iv) The right of the borrower to sell or otherwise transfer the leasehold.

(v) Sufficient advance notice (at least 60 days) to FmHA of the lessor's intentions to cancel, terminate, or foreclose upon the lease, so as to permit FmHA to take appropriate action.

(c) Where the project is located on a farm and whether or not the project products will be used on the farm, a lien need not be taken on the entire farm when it is not needed to secure the loan. When the security is so located that a legal right-of-way to the property is not available, an easement or agreement will be obtained providing for right of ingress and egress.

(d) The borrower will provide evidence of title to security property satisfactory to FmHA. Whenever real estate other than easements, right-of-way, or similar interest will be taken as security, the applicant should furnish the FmHA with a copy of its deed or purchase contract and any mortgage or other lien on the property offered as security. If water stock is being offered as security for the loan, the applicant should furnish the stock certificate. The other title evidence furnished will be one of the following:

(1) An opinion of title prepared by the applicant's attorney. This opinion may be on Forms FmHA 427-9, "Preliminary Title Opinion," and FmHA 447-10, "Final Title Opinion." The opinion will be based upon an examination of the public records or a current abstract of

title, or a combination thereof, in accordance with the practice in the community. If based on an abstract of title, the abstract and abstractor's certificates are limited in any way, they must be supplemented by the attorney's own examination of records or other competent evidence of title. The opinion of title will set forth the ownership and condition of the title to the land, the manner in which title was acquired, and will list all unreleased mortgages, judgments, unpaid taxes, liens or other encumbrances pending suits, reservations, exceptions, leases, easements, and any other outstanding interest. The title search must cover such period as the examining attorney determines necessary to issue his opinion as to whether the title is good and marketable according to title examination standards prevailing in the area, except that title examination need not go back beyond Farm Ownership, Rural Housing, or individual Soil and Water (not Water Facilities) security instruments. If the examining attorney finds an FmHA security instrument in the chain of title and is not certain that it is one of the types mentioned in the preceding sentence, the attorney may consult the State Director.

(2) A policy of title insurance obtained from a title insurance company approved by FmHA.

(3) Chattel security will be obtained and kept effective as provided in FmHA Regulations 1941–B and 1962–A.

(e) For public bodies, security will be taken in accordance with § 1942.17(g).

(f) When processing a loan utilizing joint financing, FmHA will obtain at least a parity position with other lenders.

§ 1990.113 Loan closing.

(a) Small-scale biomass energy project insured loans will be closed in accordance with the following:

(1) State Directors may, on an individual loan basis, authorize loans to be closed without OGC closing instructions prepared for that specific loan when:

(i) Such loans are secured only by a first lien on real estate and an assignment of revenue, or by a first lien on chattels and an assignment of revenue.

(ii) The applicant is providing, where real estate is to serve as security, an acceptable mortgagee title insurance policy issued by a company approved in accordance with Part 1807 of this Chapter (FmHA Instruction 427.1) or an opinion of title and final title opinion prepared by the applicant's attorney using Forms FmHA 427–9 and FmHA 427–10.

(iii) Evidence of organization such as articles of incorporation or other evidence meets FmHA requirements.

(iv) For an existing corporation, the applicant is in good standing as evidenced by a "Certificate of Good Standing," or similar statement from appropriate State officials or there is other acceptable evidence of good standing.

(v) The applicant's operating rules and regulations such as bylaws or other forms of rules and regulations or partnership agreements meet FmHA requirements.

(vi) The loan will be closed with the assistance of the entity's attorney.

(vii) Instructions issued by the State Office pertaining to loan closing have been found acceptable by the Regional Attorney and approved by the National Office.

(viii) There is nothing significantly unusual about the loan which would indicate that it should be reviewed by OGC.

(2) Loans which cannot be closed in accordance with paragraph (a)(1) of this section will be closed on the basis of instructions issued by OGC. State Directors will, when requesting closing instructions from OGC, also request advice as to whether OGC feels it necessary to return evidence of closing for its review and final opinion.

§ 1990.114 Default.

When the borrower fails to make payment of principal or interest in accordance with the terms of the note or other instrument evidencing the small-scale biomass energy project insured loan or otherwise fails to perform its obligations under the loan agreement, the State Director shall take such action to enforce the rights and protect the interests of the Government as may be appropriate and available under the loan agreement and security instruments, including foreclosure. Foreclosure shall be initiated only after consultation with OGC.

§ 1990.115 Loan servicing and liquidation.

The State Director will service and liquidate, if necessary, the loans in accordance with such provisions of Part 1955, Part 1962, Subpart F of Part 1861 (FmHA Instruction 451.5), and Subpart A of Part 1827 (FmHA Instruction 465.1) of this Chapter as the State Director determines to be appropriate for the type of borrower concerned.

(a) Small-scale biomass energy project insured loans will be serviced in a manner to accomplish the loan objectives and protect the Government's financial interest. To accomplish these purposes, the security will be serviced in accordance with the security instruments and related agreements, including any authorized modifications, provided the borrower has reasonable prospects of accomplishing the loan objectives, properly maintains and accounts for the security, and otherwise meets the loan obligation, including loan repayment, in a satisfactory manner. When the above conditions are not satisfied, or it is determined that the loans must be liquidated for other reasons, and sufficient legal grounds for liquidation exist, prompt action will be taken to liquidate the security to protect the Government's financial interest.

(b) Each borrower is responsible for repaying principal and interest on a timely basis pursuant to the loan documents, paying real estate taxes, providing adequate property insurance, maintaining, protecting, and accounting to the FmHA for all security, and complying with other loan requirements.

(c) The State Director, subject to other delegation, is responsible for informing each borrower of responsibilities in connection with the loan, seeing that the security is being properly maintained and accounted for, and for servicing the security in accordance with this Subpart.

When a borrower fails to maintain, protect, and account for the security as required by the loan documents, or makes unauthorized disposition or use of any security, prompt action will be instituted to protect the FmHA's interest. The State Director will obtain any legal advice he or she needs from the Office of the General Counsel (OGC). In cases that have been referred to the OGC for legal action, no further action will be taken by FmHA personnel without prior clearance with the OGC. If the case has been referred to the U.S. Attorney, clearance with the U.S. Attorney will be obtained through the OGC.

(d) Where the State Director determines that liquidation of an insured loan under this Subpart is necessary because of one or more defaults or third party actions that the borrower cannot or will not cure or correct within a reasonable period of time, the State Director will proceed to liquidate the issued loan in accordance with Subpart A of Part 1872 of this Chapter (FmHA Instruction 465.1) except without County Committee involvement.

Subpart C—Biomass Energy Project Loan Guarantees

§ 1990.201 Eligibility.

In addition to the eligibility requirements stated in Subpart A applicable generally to all financial

assistance under this Part, applications for biomass energy project loan guarantees must meet the requirements in this Subpart.

(a) *Lender Unwilling Without Guarantee.* A loan may not be guaranteed under this Subpart unless FmHA is satisfied that the lender is not willing, without the guarantee, to extend credit to the applicant at reasonable rates and terms, taking into consideration prevailing rates and terms for loans for similar purposes and periods of time, to finance the construction of the biomass energy project for which the loan is sought.

(b) *Lender Risk.* The Act requires assurance that the lender bear a reasonable degree of risk in the financing of the biomass energy project, which shall be in accordance with the Lender's Agreement, Form FmHA 449-35.

§ 1990.202 Loan purposes.

A loan which may be guaranteed under this Subpart C shall be used only for the construction of a biomass energy project:

(a) Which will have an annual production capacity of less than 15 million gallons of anhydrous ethanol (or the energy equivalent of other forms of biomass energy) and which will use feedstocks other than aquatic plants or municipal wastes; or

(b) Which will have an annual production capacity of 15 million or more gallons of anhydrous ethanol (or the energy equivalent of other forms of biomass energy) and

(1) Which will use wood or wood wastes or residues, or

(2) Which is owned and operated by a cooperative and will use feedstocks other than aquatic plants or municipal wastes.

§ 1990.203 Loan guarantee amount limitations and equity requirements.

(a) A guaranteed loan cannot exceed 90 percent of the total estimated construction cost of the project, and the amount of the guarantee cannot exceed 90 percent of the principal and interest of the loan. No interest will be included in any loan except as provided in section 1990.9(e)(6). The maximum loss covered by the Form FmHA 449-34, "Loan Note Guarantee," can never exceed the lesser of: (1) 90 percent of the principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and 90 percent of principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization; or (2) 90 percent of the principal advanced to or assumed by the borrower under said note(s) or assumption agreement(s) and any interest due. Lenders and applicant will propose the percentage of guarantee. The lender and applicant will be informed in writing on Form FmHA 449-14 by FmHA of any percentage of guarantee less than proposed by the lender and applicant, and the reasons therefor.

(b) *Applicant equity requirement.* A minimum of 20 percent tangible balance sheet equity will be required at the time the Loan Note Guarantee is issued for guaranteed loans. As a minimum, FmHA will require the applicant to contribute one-half of the equity requirement in the form of either cash or tangible earning assets injected into the business and reflected on the balance sheet. In those instances where there is appraisal surplus supported by an appraisal report, even though it may not be consistent with generally accepted accounting principles, FmHA may allow such appraisal surplus in the computation of equity provided it is based on land and/or buildings and machinery and equipment provided such appraisal surplus does not constitute more than one-half of the equity contribution. However, further consideration toward the equity contribution may be given by FmHA when there has been a rapid writedown of the earning assets, and the writedown is not consistent with the useful life of the asset. FmHA may consider subordinate debt as equity provided such debt does not constitute more than one-half of the equity contribution required by FmHA and principal payments are deferred during the life of the FmHA loan or until such time as the lender with FmHA concurrence determines to release such restriction on principal payments to the subordinated debt holders. Subordinate debt arising from deferred or accrued salaries and/or wages will not be considered by FmHA as equity contribution.

§ 1990.204 Subsequent loan guarantees.

If the total estimated costs of construction of a biomass energy project guaranteed under this Subpart will exceed the total estimated construction costs of construction concurred in by FmHA, an additional loan, up to 60 percent of the difference between the construction costs then estimated and the construction costs initially estimated, upon application, may be guaranteed against loss as provided in this Subpart.

§ 1990.205 Receiving and processing applications.

(a) *Methods of solicitation of applications.* (1) Small-scale biomass energy projects. Applications for loan guarantees for small-scale biomass energy projects will be received and processed on a continuous solicitation basis as defined in section 1990.3(a)(13).

(2) *Intermediate-scale biomass energy projects.* Applications for intermediate-scale biomass energy projects will be received and processed initially on a continuous solicitation basis in accordance with paragraph (c)(2) of this section. Upon announcement in the Federal Register, simultaneous solicitation may be used in accordance with paragraph (c)(1) of this section.

(3) *Large scale biomass energy projects.* Applications for loan guarantees for biomass energy projects with an annual production capacity of 15 million or more gallons of anhydrous ethanol (or the energy equivalent of other forms of biomass energy) which will use wood or wood wastes or residue or which is owned and operated by a cooperative and uses feedstocks other than aquatic plants or municipal wastes (large-scale biomass energy project) will be received on a continuous solicitation basis as defined in section 1990.3(a)(13).

(b) *Preliminary discussion and application assistance.* (1) Applicants prior to submission of applications (whether for continuous or simultaneous solicitation) should conduct preliminary discussions with FmHA regarding eligibility, priorities, requirements and conditions, and compliance with this Subpart. For simultaneous solicitations, such preliminary discussions shall be in accordance with provisions of any notice of solicitation which will be published in the Federal Register.

(2) FmHA may provide assistance in the form of data, information, studies or other material in accordance with provisions of the notice of solicitation which may be published in the Federal Register.

(c) *Applications.* (1) Applications for loan guarantees of biomass energy projects in response to a simultaneous solicitation shall be in such form and contain such supporting information as the notice of solicitation, as published in the Federal Register, requires.

(2) The continuous solicitation procedure for intermediate scale biomass energy projects is effective immediately and the FmHA hereby solicits submission of applications. Applications may be submitted to any office of the FmHA during regular business hours. The following are specific dates on which applications will

be officially received by FmHA, for purposes of implementing the statutory requirement that a decision be made on each individual application within 120 days of its receipt. The first such date is November 17, 1980. The second such date is December 17, 1980. Subsequent dates will be February 16, 1981, April 16, 1981, and the 16th day of alternate months thereafter, (provided that if the 16th day of any such month falls on Saturday or Sunday, the date will be the following Monday). The number of successive two-month intervals for receipt of applications will be subject to the availability of funding authority and in no event will commitments be made after September 30, 1984. The State Director will date stamp the application with the relevant official receipt date regardless of when submitted, and official evaluation will not begin until that date. Applicants are encouraged to participate in discussions and conferences with the FmHA prior to the submission of an application. The official application receipt dates are intended to allow time prior to such dates for discussion and conferences between FmHA and applicants to occur. If an applicant fails to meet a particular official receipt date, he or she may submit at any subsequent time and need not await the next official receipt date although the 120 days for a decision on the application will not begin to run until the next official receipt date. Applications may be submitted personally or by mail; if an application is submitted by mail, it must be received in an FmHA office prior to the close of business on the relevant official receipt date in order for the 120 days for a decision to begin to run on that date. FmHA will evaluate such applications on a comparative basis to the extent necessary to achieve the purposes of the Act, including effectively to implement the priorities of the Act and these regulations.

(3) Applications for loan guarantees for biomass energy project submitted on a continuous solicitation shall consist of at least the following:

(i) Form FmHA 1990-1, "Application for Biomass Energy Loan Guarantee Assistance," and attachments.

(ii) Form FmHA 449-2 "Statement of Collateral."

(iii) Form FmHA 449-10 "Applicant's Environmental Impact Evaluation."

(iv) Architectural or engineering plans, if applicable.

(v) Independent appraisal reports of all property that will serve as collateral or fulfill the equity requirements.

(vi) For existing businesses, a pro forma balance sheet at start-up and for at least 3 additional projected years indicating the necessary start-up capital, operating capital and short-term credit based on financial statements for the last 3 years, or more (if available); and projected cash flow and earning statements for at least 3 years supported by a list of assumptions showing the basis for the projections.

(vii) For new buisnesses, a pro forma balance sheet at start-up and for the next 3 years, projected cash flow (monthly first year, quarterly for 2 additional years) and projected earnings statements for 3 years supported by a list of assumptions showing the basis for the projections.

(viii) Any credit reports obtained by FmHA.

(ix) Form FmHA 400-1, "Equal Opportunity Agreement," if construction costing more than $10,000 is involved.

(x) Copies of building permits, if applicable, and any necessary certifications and recommendations of appropriate regulatory or other agency having jurisdiction over the project including any pollution control agency.

(xi) Acknowledgement of receipt of permit application to Bureau of Alcohol, Tobacco and Firearms, Department of Treasury.

(xii) Feasibility studies of technical and economic aspects of the project in form and substance conforming to Appendix A.

(xiii) Personal and corporate financial statements of guarantors for the project if determined necessary by FmHA to assure adequate security.

(xiv) Proposed loan agreement. (See paragraph VIII of Form FmHA 449-35). Proposed loan agreements between the borrower and Lender will be required. Such agreements must include the following:

(A) Requirements for accounting and record keeping.

(B) Provisions for periodic financial reporting.

(C) Provisions for an annual audited financial statement from the borrower prepared by an independent certified public accountant or by an independent public accountant licensed and certified on or before December 31, 1970, by a regulatory authority of a State or other political subdivision of the United States.

(D) Other requirements may include, but are not limited to:

(*1*) Prohibitions against assuming liabilities or obligations of others.

(*2*) Restrictions on dividend payments.

(*3*) Limitation on purchase or sale of equipment and/or fixed assets.

(*4*) Limitation on compensation of officers and/or owners.

(*5*) Minimum working capital requirements.

(*6*) Minimum debt to net worth ratio.

(*7*) Restrictions concerning consolidation, mergers or other circumstances.

(*8*) Limitations on selling the business without concurrence of the lender and FmHA.

(*9*) Repayment and amortization of the loan.

(*10*) List of collateral for the loan.

(*11*) List of persons and/or corporations guaranteeing the loan.

(xv) Documented evidence of compliance with requirements set forth in FmHA Instruction § 1990.23.

(xvi) Record of any pending or final regulatory or legal (civil or criminal) action against the applicant, principal owners, officers and directors.

(xvii) A current (within 90 days of filing) balance sheet and latest profit and loss statement, and financial statements of existing businesses for the last 3 years, including, in the case of farmers, information on crop and livestock production.

(xvi) Any additional information required by FmHA.

(d) *FmHA evaluation and approval of application.* (1) If and when a simultaneous solicitation procedure is used, FmHA will evaluate applications for loan guarantees of biomass energy projects received in accordance with the standards of paragraph (d)(2) of this section and the provisions of the notice of solicitation, as published in the Federal Register.

(2) FmHA will evaluate applications for loan guarantees of biomass energy projects received on a continuous solicitation basis and make a determination whether the borrower is eligible, the proposed loan is for an eligible purpose, the project is feasible, and there is reasonable assurance of repayment ability, sufficient collateral, and sufficient equity. Priority will be given, in the evaluation of projects otherwise eligible for loan guarantee assistance, to projects which utilize primary fuels other than petroleum or natural gas. National Office concurrence is required for projects using petroleum of natural gas as the primary fuel source and for projects involving non-standard technologies. If FmHA determines it is unable to guarantee the loan, the lender will be informed in writing by Form FmHA 449-13, "Denial Letter," within 120 days after receipt of the application. Such notification will include the reasons for denial.

(3) If FmHA determines it is able to guarantee the loan conditionally, it will provide the lender and the applicant with Form FmHA 449-14, listing all requirements for such guarantees. The Conditional Commitment for Loan

Guarantee evidences approval of the application and will be issued within 120 days after receipt of the application (which in the case of a simultaneous solicitation will be not earlier than the date fixed in the simultaneous solicitation notice for receipt of applications, and in the case of continuous solicitations of intermediate scale projects will be not earlier than the official receipt date of the applicable two-month period).

(4) All small-scale projects will be reviewed by the State Biomass Energy Loan Review Committee. Upon affirmative recommendation of such Committee, the State Director may indicate his or her approval by executing the Form FmHA 449-14. National Office concurrence is required if the project will use natural gas or oil as the primary fuel source or involves non-standard technology. The State Director will forward to the National Office the relevant material from the docket as required by the National Office for concurrence consideration.

(5) For all intermediate and large-scale projects, the State Biomass Energy Loan Review Committee will review and evaluate the applications and set forth recommendations in a memorandum which will be forwarded with the application by the State Director to the National Office for further consideration. The National Office will independently review each such application and submit it to the National Office Biomass Energy Loan Review Committee for a decision. The National Office will advise the State Director by memorandum of the Committee's decision. If the application is approved, the Chairman of the Committee will indicate approval by signing Form FmHA 1940-1, "Request for Obligation of Funds," and forward such form together with a memorandum of conditions to the State Director. The State Director will prepare the Form FmHA 449-14, including the National Office requirements, and forward such form together with a signed Form FmHA 1940-1 to the lender and applicant. If the application is disapproved, the Committee will forward to the State Director a memorandum indicating the reasons for disapproval. The State Director will notify the applicant and the lender by issuance of Form FmHA 449-13, "Denial Letter."

(6) *Review of requirements.* (i) Immediately after reviewing the conditions and requirements in Form FmHA 449-14, and the options listed on the back of the form, the Lender and applicant should complete and sign the "Acceptance or Rejection of Conditions," and return a copy to the FmHA State Director. If certain conditions cannot be met, the Lender and borrower may proposed alternate conditions to FmHA.

(ii) If the Lender indicates in the "Acceptance or Rejection of Conditions," that it desires to obtain a Loan Note Guarantee and subsequently decides at any time after receiving a conditional commitment that it no longer wants a Loan Note Guarantee, the lender shall immediately advise the FmHA State Director.

(7) When an application is disapproved, the applicant, within 120 days after receipt of the application, will be given written notice of the reasons and the applicant may resubmit an application that is modified to address concerns raised by FmHA, or by the Department of Energy as a result of consultation pursuant to § 1990.21. Review of the modified application shall be limited to those specific concerns specified in the notice of disapproval and to any issues raised by changed circumstances.

(e) *Issuance of the Guarantee.* Procedure for issuance of Loan Note Guarantee, Lender's Agreement and Asisgnment Guarantee Agreement shall be in accordance with §§ 1980.60, 1980.61, and 1980.454(c).

§ 1990.206 Evaluation criteria.

In addition to the priority criteria and eligibility requirements stated in Subpart A (including §§ 1990.5–1990.17 and in other sections of this Subpart C (including §§ 1990.201–203), conditional commitments may be issued only if:

(a) There is reasonable assurance of repayment of the guaranteed loan from the project's income (including byproduct income) received by the borrower.

(b) The project is technically feasible and there is reasonable assurance that the applicant will initiate and complete the project in accordance with the plans and specifications and time schedules approved by FmHA.

(c) The economic and technical feasibility required by the preceding paragraphs (a) and (b) are demonstrable by reference to analyses in accordance with Appendix A.

(d) In simultaneous solicitation evaluations, criteria for preferential consideration will include the evaluation criteria specified in the notice of solicitation as published in the Federal Register.

§§ 1990.207–1990.209 [Reserved].

§ 1990.210 Maturity and repayment schedules.

(a) *Repayment Period.* Each loan guaranteed under this Subpart will be scheduled for repayment over a period not to exceed the lesser of (1) 30 years from the date of the note, (2) the expected average useful life of the project, or (3) a period agreed to by the lender and the borrower and approved by FmHA.

(b) *Repayment Schedules.* Principal and interest on the loan will be due and payable as provided in the promissory note. The Lender will structure repayments as established in the loan agreement between the Lender and borrower, as concurred in by FmHA. Ordinarily, such installments will be scheduled for payment as agreed upon by the lender and applicant but on terms that reasonably assure repayment of the loan. However, the first installment to include a repayment of principal may be scheduled for payment after the project is operable and has begun to generate income, but such installment will be due and payable within 1 year from the date of the promissory note and at least annually thereafter. Interest shall be due at least annually from the date of the note. Monthly, quarterly or semi-annual payments will be expected.

§ 1990.211 Interest rates.

Interest rates for guaranteed loans under this Subpart will be negotiated between the lender and the borrower. They will be reviewed by FmHA for acceptability and, if legally permissible, they may be either fixed or variable, but fixed and variable interest rates may not be used for the same loan.

(a) A variable interest rate must be a rate that is tied to a base rate published in a financial publication specifically agreed to by the lender and borrower. It must rise and fall with the selected base rate and changes can be made no more than quarterly. There will be no floor or ceiling on variable interest rates.

(b) Under a Memorandum of Understanding between FmHA and the Farm Credit Administration dated March 22, 1979 (FmHA Instruction 2000-R Exhibit A, which is available in any FmHA office), the interest rate on loans made by the Bank for Cooperatives, Federal Land Banks and Production Credit Associations may be a variable rate based on their administrative and borrowing costs, and may be adjusted as frequently as the Board of Directors has determined.

(c) Any change in the interest rate between the date of issuance of the Form FmHA 449-14 and before the

issuance of the Loan Note Guarantee must be approved by the State Director. Approval of such change will be shown on an amendment to Form FmHA 449-14.

(d) It is permissible to have one interest rate on the guaranteed portion of the loan and another interest rate on the unguaranteed portion of the loan, provided the Lender and borrower agree and:

(1) The rate on the unguaranteed portion does not exceed that currently being charged on loans of similar size and purpose for borrowers under similar circumstances.

(2) The rate on the guaranteed portion of the loan will not exceed the rate on the unguaranteed portion.

(e) When multi-rates are used the Lender will provide FmHA with the overall effective interest rate yield for the entire loan.

§ 1990.212 Guarantee fee and lender fees and charges.

(a) A guarantee fee of one percent of principal loan amount multiplied by the percent of guarantee will be required, and such fee will be paid one time only at the time the Loan Note Guarantee is issued. The fee will be paid to FmHA by the lender and is nonrefundable. The fee may be passed on to the borrower.

(b) Late payment charges. Late payment charges will not be covered by the Loan Note Guarantee. Such charges may not be added to the principal and interest due under any guaranteed note. Late payment charges may be made only if:

(1) Routine. They are routinely made by the lender in all types of loan transactions.

(2) Payments received. Payment has not been received within the customary time frame allowed by the lender. The term "payment received" means that the payment in cash or by check, money order, or similar medium has been received by the lender at its main office, branch office, or other designated place of payment.

§ 1990.213 Security.

(a) All loans guaranteed under this Subpart will be secured in a manner which will adequately protect the interest of FmHA until the loan is repaid.

(b) The borrower and lender will comply with § 1980.443 (a) and (c), and § 1980.444 with respect to security.

(c) Where the project is located on a farm, § 1990.112(c) shall apply.

(d) The borrower will provide evidence of title to security property satisfactory to FmHA and the lender.

§ 1990.214 Loan closing and servicing.

(a) When a date for a loan closing has been scheduled, the lender will contact FmHA for a preclosing review of all conditions and requirements. When the loan closing plans are acceptable to FmHA, the lender will notify the FmHA so that an FmHA representative may attend the loan closing.

(b) The lender shall service the loan guaranteed under this Subpart and shall exercise such care and diligence in the disbursement, servicing and collection of the loan as would be exercised by a reasonable and prudent lender dealing with a loan without a guarantee.

(c) Loans guaranteed under this Subpart will be serviced in accordance with § 1980.469.

§ 1990.215 [Reserved]

§ 1990.216 Default.

(a) When the borrower has defaulted in making required payments of principal and interest (or other obligation materially affecting the rights of the parties) on any portion of a loan guaranteed under this Subpart and such default has not been remedied within the period of grace provided in the loan agreement, FmHA will proceed in accordance with § 1980.63, following written demand of the holder for payment on the guarantee, except that the State Director will act in lieu of the County Supervisor, unless otherwise determined by FmHA.

(b) Upon payment by FmHA to the lender or holder of the guaranteed debt, FmHA will be subrogated to the rights of the recipient of the payment, and such subrogation will be expressly set forth in the Loan Note Guarantee or related agreements.

§ 1990.217 Liquidation and settlement.

(a) *Liquidation.* If either the lender or FmHA concludes that liquidation of a loan guaranteed under this Subpart is necessary because of defaults or third party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, it will notify the other party and the matter will be handled in accordance with § 1980.64.

(b) *Settlement option.* If a lender acquires title to property either through voluntary conveyance or foreclosure proceedings, FmHA may elect to permit the lender the option to calculate the final loss settlement using the net proceeds received at the time of ultimate disposition of such property. The lender must submit its written request for this option to FmHA, and FmHA must agree, prior to the lender submitting any request for estimated loss payment.

§ 1990.218 Protective advances.

Paragraph XIII of Form FmHA 449-35 shall apply to protective advances.

§ 1990.219 Transfer and assumption; termination.

(a) All transfers and assumptions will be approved in writing in advance by FmHA. Such transfers and assumptions will be to an eligible applicant, as determined by FmHA.

(b) Available transfer and assumption options to eligible applicants include the following:

(1) The total indebtedness may be transferred to another borrower on the same terms.

(2) The total indebtedness may be transferred to another borrower on different terms not to exceed those terms for which an initial loan can be made.

(3) A part of the total indebtedness may be transferred to another borrower on the same terms.

(4) A part of the total indebtedness may be transferred to another borrower on different terms.

(c) In any transfer and assumption case, the transferor, including any guarantor(s), may be released from liability by the lender with FmHA written concurrence only when the value of the collateral being transferred is at least equal to the amount of the loan or part of the loan being assumed. If the transfer is for less than the entire debt, FmHA must determine that the transferor has no reasonable debt-paying ability considering his or her assets and income at the time of transfer.

(d) Any proceeds received from the sale of secured property before a transfer and assumption will be credited on the transferor's guaranteed loan debt is inverse order of maturity before the transfer and assumption transactions is closed.

(e) When the transferee makes any cash downpayment in connection with the transfer and assumption:

(1) The Lender will employ an independent appraiser, subject to concurrence of both the transferor and transferee, to make an appraisal to determine the fair market value of all the collateral securing the loan. Such appraisal report fee and any other costs related thereto will be paid by the transferor and the transferee as they mutually agree.

(2) The market value of the secured property being acquired by the transferee, plus any additional security the transferee proposes to give to secure the debt, will be adequate to secure the balance of the total guarantee loan owed, plus any prior liens. If any cash

downpayment is made, it may be paid directly to the transferor as payment for his equity in the project provided:

(i) The Lender recommends and FmHA approves the cash downpayment be released to the transferor. The Lender and FmHA may require that an amount be retained for an established period of time in escrow as a reserve account as security for use against any future default on the loan. Any interest accruing on such an escrow account may be paid periodically to the transferor.

(ii) Any payments that are to be made by the transferee to the transferor in respect to the downpayment do not suspend the transferee's obligation to continue to meet the guaranteed loan payments as they come due under the terms of the assumption.

(iii) The transferor will agree not to take any action against the transferee in connection with such transfer in the future without first obtaining the approval of FmHA and the lender.

(iv) The Lender determines that there is repayment ability for the guaranteed debt assumed and any other indebtedness of the transferee.

(f) The Lender will make, in all cases, a complete credit analysis to determine viability of the project, subject to FmHA review and approval, including any requirements for deposits in an escrow account as security to meet its determined equity requirements for the project.

(g) The Lender will issue a statement to FmHA that the transaction can be properly transferred and the conveyance instruments will be filed, registered, or recorded, as appropriate, and legally permissible.

(h) FmHA will not guarantee any additional loans to provide equity funds for a transfer and assumption.

(i) The assumption will be made on the Lender's form of assumption agreement.

(j) The assumption agreement will contain the FmHA case number of the transferor and transferee.

(k) Loan terms cannot be changed by the Assumption Agreement unless previously approved in writing by FmHA, with the concurrence of any Holder(s) and concurrence of the transferor (including guarantors) if they have not been released from personal liability. Any new loan terms cannot exceed those authorized in this subpart. The Lender's request will be supported by:

(1) An explanation of the reasons for the proposed change in the loan terms.

(2) Certification that the lien position securing the guaranteed loan be maintained or improved, proper hazard insurance will continue in effect, and all applicable Truth in Lending requirements will be met.

(l) In the case of a transfer and assumption, it is the Lender's responsibility to see that all such transfer and assumptions will be noted on all originals of the Loan Note Guarantee(s). The Lender will provide FmHA a copy of the transfer and assumption agreement. Notice must be given by the Lender to FmHA before any borrower or guarantor is released from liability.

(m) The Holder(s), if any, need not be consulted on a transfer and assumption case unless there is a change in loan terms.

§ 1990.220 FmHA Forms Incorporated in Subpart C.

(a) Forms FmHA 449-34, "Loan Note Guarantee," FmHA 449-35, "Lender's Agreement," and FmHA 449-36, "Assignment Guarantee Agreement," are incorporated in this Subpart C, made a part hereof. These forms as modified for use in connection with loans guaranteed under this part are as set forth below. The forms as they are published in Part 1980 shall continue to be effective as published therein for loans guaranteed under Part 1980. Copies of the forms may be obtained from any FmHA office.

Type of Loan: _____

Applicable 7 C.F.R. Part 1990 Subparts A and C

Loan Note Guarantee

Borrower _____
Lender _____
Lender's Address _____
State _____
County _____
Date of Note _____
FmHA Loan Identification Number _____
Lender's IRS ID Tax No. _____
Principal Amount of Loan $ _____

The guaranteed portion of the loan is $ _____ which is _____ (____%) percent of loan principal. The principal amount of loan is evidenced by _____ note(s) (includes bonds as appropriate) described below. The guaranteed portion of each note is indicated below. This instrument is attached to note _____ in the face amount of $_____ and is number _____ of _____.

Lenders Identifying Number _____
Face Amount $ _____
Percent of Face Amount (Percent) _____
Amount Guaranteed $ _____
Total _____
$ _____
100% _____
$ _____

In consideration of the making of the subject loan by the above named Lender, the United States of America, acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.), the Emergency Livestock Credit Act of 1974 (7 U.S.C. note preceding 1961, Pub. L. 93-357 as amended), the Emergency Agricultural Credit Adjustment Act of 1978 (7 U.S.C. note preceding 1971, Pub. L. 95-334), or Title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.), Biomass Energy and Alcohol Fuels Act of 1980 (Pub. L. 96-294, Title II) does hereby agree that in accordance with and subject to the conditions and requirements herein, it will pay to:

A. Any Holder 100 percent of any loss sustained by such Holder on the guaranteed portion and on interest due (including any loan subsidy) on such portion.

B. The Lender the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including:

a. Principal and interest indebtedness as evidenced by said note(s) or by assumption agreement(s), and

b. Any loan subsidy due and owing, and

c. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including but not limited to, advances for taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral, or

2. The guaranteed principal advanced to or assumed by the Borrower under said note(s) or assumption agreement(s) and any interest due (including any loan subsidy) thereon.

If FmHA conducts the liquidation of the loan, loss occasioned to a Lender by accruing interest (including any loan subsidy) after the date FmHA accepts responsibility for liquidation will not be covered by this Loan Note Guarantee. If Lender conducts the liquidation of the loan, accruing interest (including any loan subsidy) shall be covered by this Loan Note Guarantee to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

Definition of Holder

The Holder is the person or organization other than the Lender who holds all or part of the guaranteed portion of the loan with no servicing responsibilities. When the Lender assigns a part(s) of the guaranteed loan to an assignee, the assignee becomes a Holder only when he uses Form FmHA

449-36 "Assignment Guarantee Agreement."

Definition of Lender

The Lender is the person or organization making and servicing the loan which is guaranteed under the provisions of the applicable Subpart 7 CFR of Part 1990. The Lender is also the party requesting a loan guarantee.

Conditions of Guarantee

1. *Loan Servicing.*

Lender will be responsible for servicing the entire loan, and Lender will remain mortgagee and/or secured party of record notwithstanding the fact that another party may hold a portion of the loan. When multiple notes are used to evidence a loan, Lender will structure repayments as provided in the loan agreement.

2. *Priorities.*

The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the loan will not be paid first nor given any preference or priority over the guaranteed portion.

3. *Full Faith and Credit.*

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender or any Holder has actual knowledge at the time it became such Lender or Holder or which Lender or any Holder participates in or condones. In addition, the Loan Note Guarantee will be unenforceable by Lender to the extent any loss is occasioned by the violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. As used herein, the phrase "use of loan funds for unauthorized purposes" refers to the situation in which the Lender in fact agrees with the Borrower that loan funds are to be so used and the phrase "unauthorized purpose" means any purpose not listed by the Lender in the completed application as approved by FmHA.

4. *Rights and Liabilities.*

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentation by Lender or any unenforceability of this Loan Note Guarantee by Lender. Nothing contained herein will constitute any waiver by FmHA of any rights it possesses against the Lender. Lender will be liable for and will promptly pay to FmHA any payment made by FmHA to Holder which if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make.

5. *Payments.*

Lender will receive all payments of principal, or interest, and any loan subsidy on account of the entire loan and will promptly remit to Holder(s) its pro rata share thereof determined according to its respective interest in the loan, less only Lender's servicing fee.

6. *Protective Advances.*

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Loan Note Guarantee notwithstanding the guaranteed portion of the loan is held by another.

7. *Repurchase by Lender.*

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy) less the Lender's servicing fee. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

8. *FmHA Purchase.*

If Lender does not repurchase as provided by paragraph 7 hereof, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase, less Lender's servicing fee, within thirty (30) days after written demand from Holder. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand.

The FmHA County Supervisor will promptly notify the Lender of his receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA County Supervisor with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA County Supervisor will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the County Supervisor and State Director and remit the check(s) to the Holder(s).

9. *Lender's Obligations.*

Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount including any loan subsidy then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's rights against Lender, and that FmHA will have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee.

10. *Repurchase by Lender for Servicing.*

If, in the opinion of the Lender, repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the Holder will sell the portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan

subsidy) on such portion less Lender's servicing fee.

a. The Lender will not repurchase from the Holder(s) for arbitrage purposes or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option may purchase such guaranteed portions for servicing purposes.

11. *Custody of Unguaranteed Portion.* The Lender may retain, or sell the unguaranteed portion of the loan only through participation. Participation, as used in this instrument, means the sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

12. *When Guarantee Terminates.* This Loan Note Guarantee will terminate automatically (a) upon full payment of the guaranteed loan; or (b) upon full payment of any loss obligation hereunder; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Lender holds all of the guaranteed portion and the Loan Note Guarantee(s) are returned to be cancelled by FmHA.

13. *Settlement.* The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1990 of Title 7 CFR in effect on the date of this instrument. Upon payment of any estimated or final loss to the lender, FmHA shall be subrogated to all rights of the lender against the borrower and guarantors.

14. *Loan Subsidy.*

*In addition to the interest rate of the note attached hereto, FmHA will pay a loan subsidy of ———— percent per year. Payments will be made annually.

15. *Notices.* All notices and actions will be initiated through the FmHA County Supervisor for ———— (County) ———— (State) with mailing address at the date of this instrument:

United States of America

Farmers Home Administration

Date ————

By: ————

Title ————

Assumption Agreement by ———— dated ———— 19—

Assumption Agreement by ———— dated ———— 19—

*If not applicable delete paragraph prior to execution of this instrument.

USDA–FmHA
Form FmHA 449–35
(Rev. 10–6–80)

FORM APPROVED OMB No. 40–R3873

FmHA Loan Ident. No. ————

Position 5

Lender's Agreement

Type of Loan: ————

Applicable 7 C.F.R. Part 1990 Subparts A and C

———— (Lender) of ———— has made a loan(s) to ———— (Borrower) ———— in the principal amount of $ ———— as evidenced by ———— note(s) (include Bond as appropriate) described as follows: ————

The United States of America, acting through Farmers Home Administration (FmHA) has entered into a "Loan Note Guarantee" (Form FmHA 449–34) or has issued a "Conditional Commitment for Guarantee" (Form FmHA 449–14) to enter into a Loan Note Guarantee with the Lender applicable to such loan to participate in a percentage of any loss on the loan not to exceed ———— % of the amount of the principal advance and any interest (including any loan subsidy) thereon. The terms of the Loan Note Guarantee are controlling. In order to facilitate the marketability of the guaranteed portion of the loan and as a condition for obtaining a guarantee of the loan(s), the Lender enters into this agreement.

The parties agree:

I. The maximum loss covered under the Loan Note Guarantee will not exceed ———— percent of the principal and accrued interest including any loan subsidy on the above indebtedness.

II. *Full Faith and Credit.* The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones.

The Loan Note Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by violation of usury laws, use of loan funds for unauthorized purposes, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. As used herein, the phase "use of loan funds for unauthorized purposes" refers to the situation in which the Lender in fact agrees with the borrower that loan funds are to be so used and the phrase "unauthorized purpose" means any purpose not listed by the Lender in the completed application as approved by FmHA.

III. *Lender's Sale or Assignment of Guaranteed Loan.*

A. The Lender may retain all of the guaranteed loan. The Lender is not permitted to sell or participate any amount of the guaranteed or unguaranteed portion(s) of the loan(s) to the applicant or borrower or members of their immediate families, its officers, directors, stockholders, other owners, or any parent, subsidiary or affiliate. If the Lender desires to market all or part of the guaranteed portion of the loan, the Lender may proceed under the following options:

1. *Assignment.* Assign all or part of the guaranteed portion of the loan to one or more Holders by using Form FmHA 449–36, "Assignment Guarantee Agreement." Holder(s), upon written notice to Lender and FmHA, may reassign the unpaid guaranteed portion of the loan sold thereunder. Upon such notification the assignee shall succeed to all rights and obligations of the Holder(s) thereunder. If this option is selected, the Lender may not at a later date cause to be issued any additional notes.

No further monies or other benefits may be paid out under this program unless this agreement is completed and filed as required by exising law and regulations (7 CFR, Part 1980–A).

This form sets forth the overall agreements between the lender and FmHA concerning the guaranteed loan.

Number of copies required: Original and 1 copy.

Time required to complete: 1 Hour.

2. *Multi-Note System.* When this option is selected by the Lender, upon disposition the Holder will receive one of the Borrower's executed notes and Form FmHA 449–34, "Loan Note Guarantee" attached to the Borrower's note. However, all rights under the security instruments (including personal and/or corporate guarantees) will remain with the Lender and in all cases inure to its and the Government's benefit notwithstanding any contrary provisions of state law.

a. *At Loan Closing:* Provide for no more than 10 notes, unless the Borrower and FmHA agree otherwise, for the guaranteed portion and one note for the unguaranteed portion. When this option is selected, FmHA will provide the Lender with a

Form FmHA 449–34, for each of the notes.

b. *After Loan Closing:*

(1) Upon written approval by FmHA, the Lender may cause to be issued a series of new notes, not to exceed the total provided in 2a above, as replacement for previously issued guaranteed note(s) provided:

(a) The borrower agrees and executes the new notes.

(b) The interest rate does not exceed the interest rate in effect when the loan was closed.

(c) The maturity of the loan is not changed.

(d) FmHA will not bear any expenses that may be incurred in reference to such re-issue of notes.

(e) There is adequate collateral securing the note(s).

(f) No intervening liens have arisen or have been perfected and the secured lien priority remains the same.

(2) FmHA will issue the appropriate Loan Note Guarantees to be attached to each of the notes then extant in exchange for the original Loan Note Guarantee which will be cancelled by FmHA.

3. *Participations.*

a. The Lender may obtain participation in its loan under its normal operating procedures. Participation means a sale of an interest in the loan wherein the Lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

b. The Lender is required to hold in its own portfolio or retain a minimum of 10% for Farmer Program loans and 5% for Business and Industry Program loans of the total guaranteed loan(s) amount. The amount required to be retained must be of the unguaranteed portion of the loan and cannot be participated to another. The Lender may sell the remaining amount of the unguaranteed portion of the loan, except for Farmer Program loans, only through participation. However, the Lender will always retain the responsibility for loan servicing and liquidation.

B. When a guaranteed portion of a loan is sold by the Lender to a Holder(s), the Holder(s) shall thereupon succeed to all rights of Lender under the Loan Note Guarantee to the extent of the portion of the loan purchased. Lender will remain bound to all the obligations under the Loan Note Guarantee, and this agreement, and the FmHA program regulations found in the applicable Subpart of Title 7 CFR Part 1990, and to future FmHA program regulations not inconsistent with the express provisions hereof.

C. The Holder(s) upon written notice to the Lender may resell the unpaid guaranteed portion of the loan sold under provision III A.

IV. The Lender agrees loan funds will be used for the purposes authorized in the applicable Subpart of Title 7 CFR Part 1990 and in accordance with the terms of Form FmHA 449–14.

V. The Lender certifies that it is a citizen of the United States of America, or, if an organization, that the ownership of at least 51 percent of any outstanding interests of the Lender is owned by citizens of the United States. Further, such Lender certifies that any guarantees received shall be only on loans made by it, operating for itself and not on behalf of foreign citizens or organizations.

VI. The Lender certifies that none of its officers or directors, stockholders or other owners has a substantial financial interest in the borrower. The Lender certifies that neither the borrower nor its officers or directors, stockholders or other owners has a substantial financial interest in the Lender.

VII. The Lender certifies that it has no knowledge of any material adverse change, financial or otherwise, in the Borrower, his business, or any parent, subsidiaries, or affiliates since it requested a Loan Note Guarantee.

VIII. Lender certifies that a loan agreement and/or loan instruments concurred in by FmHA has been or will be signed with the Borrower.

IX. Lender certifies it has paid the required guarantee fee.

X. *Servicing.*

A. The Lender will service the entire loan and will remain mortgagee and/or secured party of record, notwithstanding the fact that another may hold a portion of the loan. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan. Lender may charge Holder a servicing fee. The unguaranteed portion of a loan will not be paid first nor given any preference or priority over the guaranteed portion of the loan.

B. Disposition of the guaranteed portion of a loan may be made prior to full disbursement, completion of construction and acquisitions only with the prior written approval of FmHA. Subsequent to full disbursement, completion of construction, and acquisition, the guaranteed portion of the loan may be disposed of as provided herein.

It is the Lender's responsibility to see that all construction is properly planned before any work proceeds; that any required permits, licenses or authorizations are obtained from the appropriate regulatory agencies; that the borrower has obtained contracts through acceptable procurement procedures; that periodic inspections during construction are made and that FmHA's concurrence on the overall development schedule is obtained.

C. Lender's servicing responsibilities include, but are not limited to:

1. Obtaining compliance with the covenants and provisions in the note, loan agreement, security instruments, and any supplemental agreements. None of the aforesaid instruments will be altered without FmHA's prior written concurrence.

2. Receiving all payments on principal and interest (including any loan subsidy) on the loan as they fall due and promptly remitting and accounting to any Holder(s) for their pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee. The loan may be reamortized or renewed only with agreement of the Lender and Holder(s) of the guaranteed portion of the loan and only with FmHA concurrence.

3. Inspecting the collateral as often as necessary to properly service the loan.

4. Assuring that adequate insurance is maintained. This includes hazard insurance obtained and maintained with a loss payable clause in favor of the Lender as the mortgagee or secured party.

5. Assuring that: taxes , assessment or ground rents against or affecting collateral are paid; the loan and collateral are protected in foreclosure, bankruptcy, receivership, insolvency, condemnation, or other litigation; insurance loss payments, condemnation awards, or similar proceeds are applied on debts in accordance with lien priorities on which the guarantee was based, or to rebuilding or otherwise acquiring needed replacement collateral with the written approval of FmHA; proceeds from the sale or other disposition of collateral are applied in accordance with the lien priorities on which the guarantee is based; except that proceeds from the disposition of collateral, such as machinery, equipment, furniture or fixtures, may be used to acquire property of similar nature in value up to $——— without written concurrence of FmHA; the Borrower complies with all laws and ordinances applicable to the loan, the collateral and or operation of the farm, business or industry.

6. Assuring that if personal or corporate guarantees are part of the collateral, current financial statements from such loan guarantors will be obtained and copies provided to FmHA at such time and frequency as required

by the loan agreement or Conditional Commitment for Guarantee. In the case of guarantees secured by collateral, assuring the security is properly maintained.

7. Obtaining the lien coverage and lien priorities specified by the Lender and agreed to by FmHA, properly recording or filing lien or notice instruments to obtain or maintain such lien priorities during the existence of the guarantee by FmHA.

8. Assuring that the borrower obtains title marketable in fact to the colleteral.

9. Assuring that the Borrower (any party liable) is not released from liability for all or any part of the loan, except in accordance with FmHA regulations.

10. Providing FmHA Finance Office with loan status reports seminannually as of June 30 and December 31 on Form FmHA 1980-41, "Guaranteed Loan Status Report."

11. Obtaining from the borrower periodic financial statements under the following schedule:

Lender is responsible for analyzing the financial statements, taking any servicing actions needed, and providing copies of statements and record of actions to the County Supervisor.

XI. *Defaults by Borrower.*

A. The Lender will notify FmHA when a Borrower is thirty (30) days past due on a repayment and is unlikely to bring its account current within sixty (60) days, or if the Borrower has not met its responsibilities of providing the required financial statments to the Lender or is otherwise in default. The Lender will notify FmHA of the status of a Borrower's default on Form FmHA 1980-44, "Guaranteed Loan Borrower Default Status." A meeting will be arranged by the Lender with the Borrower and FmHA to resolve the problem. Actions taken by the Lender with concurrence of FmHA may include but are not limited to the following or any combination thereof:

1. Deferment of principal payments (subject to rights of any Holder(s)).

2. An additional temporary loan by the Lender to bring the account current.

3. Reamortization of or rescheduling the payments on the loan (subject to rights of any Holder(s)).

4. Transfer and assumption of the loan in accordance with the applicable Subpart of Title 7 CFR Part 1990.

5. Reorganization.

6. Liquidation.

B. The Lender will negotiate in good faith in an attempt to resolve any problem and to permit the Borrower to cure a default, where reasonable.

C. The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days in payment of principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest less the Lender's servicing fee. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

D. If Lender does not repurchase as provided by paragraph C, FmHA will purchase from Holder(s) the unpaid principal balance of the guaranteed portion herein together with accrued interest (including any loan subsidy) to date of repurchase, within 30 days after written demand to FmHA from the Holder(s). Such demand will include a copy of the written demand made upon the Lender.

The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy to date of demand) and interest subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand.

The FmHA County Supervisor will promptly notify the Lender of his receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA County Supervisor with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any discrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, the FmHA County Supervisor will review the demand and submit it to the State Director for verification. After reviewing the demand, the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the County Supervisor and State Director and remit the check(s) to the Holder(s).

E. Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by the Borrower on the loan and the amount due the Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee, nor does such purchase waive any of FmHA's rights against Lender, and FmHA will have the right to set-off against Lender all rights inuring to FmHA from the Holder against FmHA's obligation to Lender under the Loan Note Guarantee. To the extent FmHA holds a portion of a loan, loan subsidy will not be paid the lender.

F. If the Lender was charging the Holder(s) a service fee, the Lender agrees that the service fee will terminate upon the date of the Holder(s) demand for purchase to FmHA.

G. Lender may also repurchase the guaranteed portion of the loan consistent with paragraph 10 of the Loan Note Guarantee.

XII. *Liquidation.* If the Lender concludes that liquidation of a guaranteed loan account is necessary because of one or more defaults or third party actions that the Borrower cannot or will not cure or eliminate within a reasonable period of time, a meeting will be arranged by the Lender with FmHA. When FmHA concurs with the Lender's conclusion or at any time concludes independently that liquidation is necessary, it will notify the Lender and the matter will be handled as follows:

The Lender will liquidate the loan unless FmHA, at its option, decides to carry out liquidation.

When the decision to liquidate is made, the Lender may proceed to purchase from Holder(s) the guaranteed portion of the loan. The Holder(s) will be paid according to the provisions in the Loan Note Guarantee or the Assignment Guarantee Agreement.

If the Lender does not purchase the guaranteed portion of the loan, FmHA will be notified immediately in writing. FmHA will then purchase the guaranteed portion of the loan from the Holder(s). If FmHA holds any of the guaranteed portion, FmHA will be paid first its pro rata share of the proceeds from liquidation of the collateral.

A. *Lender's proposed method of liquidation.* Within 30 days after the decision to liquidate is made, the Lender will advise FmHA of its proposed method of liquidation and will provide FmHA with:

1. Such proof as FmHA requires to establish the Lender's ownership of the guaranteed loan promissory note(s) and related security instruments.

2. Information lists concerning the Borrower's assets including real and personal property, fixtures, claims, contracts, inventory (including perishables), accounts receivable, personal and corporate guarantees, and other existing and contingent assets, advice as to whether or not each item is serving as collateral for the guaranteed loan.

3. A proposed method of making the maximum collection possible on the indebtedness.

4. If the outstanding principal B&I loan balance including accrued interest is less than $200,000, the Lender will obtain an estimate of the market and potential liquidated value of the collateral. On B&I loan balances in excess of $200,000, and all other loans, the Lender will obtain an independent appraisal report on all collateral securing the loan, which will reflect the current market value and potential liquidation value. The appraisal report is for the purpose of permitting the lender and FmHA to determine the appropriate liquidation actions. Any independent appraiser's fee will be shared equally by FmHA and the Lender.

B. *FmHA's response to Lender's liquidation proposal.* FmHA will inform the Lender whether it concurs in the Lender's proposed method of liquidation within 30 days after receipt of such notification from the Lender. If FmHA needs additional time to respond to the liquidation plan, it will advise the Lender of a definite time for such response. Should FmHA and the Lender not agree on the Lender's liquidation proposal, FmHA will proceed with the liquidation as follows:

1. The Lender will transfer to FmHA all its rights and interests necessary to allow FmHA to liquidate the loan. In this event, the Lender will not be paid for any loss until after the collateral is liquidated and the final loss is determined by FmHA.

2. FmHA will attempt to obtain the maximum amount of proceeds from liquidation.

3. Options available to FmHA include any one or combination of the usual commercial methods of liquidation.

C. *Acceleration.* The Lender or FmHA, if it liquidates, will proceed as expeditiously as possible when acceleration of the indebtedness is necessary including giving any notices and taking any other legal actions required by the security instruments. A copy of the acceleration notice or other acceleration document will be sent to FmHA or the Lender, as the case may be.

D. *Liquidation: Accounting and Reports.* When the Lender conducts the liquidation, it will account for funds during the period of liquidation and will provide FmHA with periodic reports on the progress of liquidation, disposition of collateral, resulting costs, and additional procedures necessary for successful completion of liquidation. The Lender will transmit to FmHA any payments received from the Borrower and/or pro-rata share of liquidation or other proceeds, etc. when FmHA is the holder of a portion of the guaranteed loan using Form FmHA 1980-43, "Lender's Guaranteed Loan Payment to FmHA." When FmHA liquidates, the Lender will be provided with similar reports on request.

E. *Determination of Loss and Payment.* In all liquidation cases, a final settlement will be made with the Lender after the collateral is liquidated. FmHA will have the right to recover losses paid under the guarantee from any party liable.

1. Form FmHA 449-30 Loan Note Guarantee "Report of Loss," will be used for calculations of all estimated and final loss determinations.,

2. When the Lender is conducting the liquidation, and owns any of the guaranteed portion of the loan, he may request a tentative loss estimate by submitting to FmHA an estimate of the loss that will occur in connection with liquidation of the loan. Such estimate will be prepared on Form FmHA 449-30, using the basic formula as provided on the report except that the appraisal value will be used in lieu of the amount received from the sale of collateral.

After the Report of Loss estimate has been approved by FmHA, and within 30 days, thereafter, FmHA will send the original Report of Loss estimate to FmHA Finance Office for issuance of a Treasury check in payment of the estimated amount due the Lender.

After liquidation has been completed, a final loss report will be submitted on Form FmHA 449-30 by the Lender to FmHA.

3. After the Lender has completed liquidation, FmHA upon receipt of the final accounting and report of loss, may audit and will determine the actual loss. If FmHA has any questions regarding the amounts set forth in the final Report of Loss, it will investigate the matter. The Lender will make its records available to and otherwise assist FmHA in making the investigation. If FmHA finds any discrepancies, it will contact the Lender and arrange for the necessary corrections to be made as soon as possible. When FmHA finds the final Report of Loss to be proper in all respects, it will be tentatively approved in the space provided on the form for that purpose.

4. When the Lender has conducted liquidation and after the final Report of Loss has been tentatively approved:

a. If the loss is greater than the estimated loss payment, FmHA will send the original of the final Report of Loss to the Finance Office for issuance of a Treasury check in payment of the additional amount owned by FmHA to the Lender.

b. If the loss is less than the estimated loss, the Lender will reimbuse FmHA for the overpayment plus interest at the note rate from date of payment.

5. If FmHA has conducted liquidation, it will provide an accounting and Report of Loss to the Lender and will pay the Lender in accordance with the Loan Note Guarantee.

6. In those instances where the Lender has made authorized protective advances, it may claim recovery for the guaranteed portion of any loss of monies advanced as protective advances and interest resulting from such protective advances as provided above, and such payment will be made by FmHA when the final Report of Loss is approved.

F. *Maximum amount of interest loss payment.* Notwithstanding any other provisions of this agreement, the amount payable by FmHA to the Lender cannot exceed the limits set forth in the Loan Note Guarantee. If FmHA conducts the liquidation, loss occasioned by accruing interest (including any loan subsidy) will be covered by the guarantee only to the date FmHA accepts this responsibility. Loss occasioned by accruing interest (including any loan subsidy) will be covered to the extent of the guarantee to the date of final settlement when the liquidation is conducted by the Lender provided it proceeds expeditiously with the liquidation plan approved by FmHA. The balance of accrued interest (including any loan subsidy) payable to

the Lender, if any, will be calculated on the final Report of Loss form.

G. *Application of FmHA loss payment.* The total amount of the loss payment remitted by FmHA will be applied by the Lender on the guaranteed loan debt. At time of final loss settlement the Lender will notify the Borrower that the loss payment has been so applied.

H. *Income from collateral.* Any net rental or other income that has been received by the Lender from the collateral will be applied on the guaranteed loan debt.

I. *Liquidation costs.* Certain liquidation costs will be allowed during the liquidation process. Such costs will be deducted from gross proceeds from the disposition of collateral. The amount allowed will be the amount agreed upon by FmHA and the Lender as being reasonable under the circumstances and should be determined prior to liquidation.

J. *Foreclosure.* The parties owning the guaranteed portion and unguaranteed portions of the loan will join to institute foreclosure action or, in lieu of foreclosure, to take a deed of conveyance to such parties. When the conveyance is received and liquidated, net proceeds will be applied to the guaranteed loan debt.

K. *Payment.* Such loss will be paid by FmHA within 60 days after the Lender has submitted the final Report of Loss form.

XIII. *Protective advances.* Protective advances must constitute an indebtedness of the borrower to the Lender and be secured by the security instrument(s). FmHA written authorization is required on all protective advances in excess of $500. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard of flood insurance premiums effecting the collateral, and other expenses necessary to preserve or protect the security.

XIV. *Additional Loans or Advances.* The Lender will not make additional expenditures or new loans without first obtaining the written approval of FmHA even though such expenditures or loans will not be guaranteed.

XV. *Future Recovery.* After a loan has been liquidated and a final loss has been paid by FmHA, any future funds which may be recovered by the lender, will be pro-rated between FmHA and the Lender. FmHA will be paid such amount recovered in proportion to the percentage it guaranteed for the loan and the lender will retain such amounts in proportion to the percentage of the unguaranteed portion of the loan.

XVI. *Transfer and Assumption Cases.* Refer to the applicable Subpart of Title 7 of CFR Part 1990.

XVII. *Other Requirements.* This agreement is subject to all the requirements of the applicable Subpart of Title 7 CFR Part 1990, and any future amendments of these regulations not inconsistent with this agreement. Interested parties may agree to abide by future FmHA regulations not inconsistent with this agreement.

XVIII. *Execution of Agreements.* If this agreement is executed prior to the execution of the Loan Note Guarantee, this agreement does not impose any obligation upon FmHA with respect to execution of such contract. FmHA in no way warrants that such a contract has been or will be executed.

XIX. *Notices.* All notices and actions will be initiated through the FmHA County Supervisor for

_____ (County)

_____ (State) with mailing address at the date of this instrument: _____

Dated this _____ day of _____ 19 ____.

Lender:
Attest: _____
By _____
Title _____
UNITED STATES OF AMERICA
Farmers Home Administration
By _____
Title _____
USDA–FmHA
Form FmHA 449–36
(Rev. 11–23–76)

Position 5

Assignment Guarantee Agreement

Type of Loan: _____
Applicable 7 CFR Part 1990 Subparts A and C
FmHA Loan Identification Number _____

_____ of _____ (Lender) has made a loan to _____ in the principal amount of $ _____ as evidenced by a note(s) dated _____. The United States of America, acting through Farmers Home Administration (FmHA) entered into a Loan Note Guarantee (Form FmHA 449–34) with the Lender applicable to such loan to guarantee the loan not to exceed _____% of the amount of the principal advanced and any interest (including any loan subsidy) due thereon as provided therein.

_____ of _____ (Holder) desires to purchase from Lender _____% of the guaranteed portion of such loan. Copies of Borrower's note(s) and the Loan Note Guarantee are attached hereto as a part hereof.

Now, therefore, the parties agree:

1. The principal amount of the loan now outstanding is $_____. Lender hereby assigns to Holder _____ % of the guaranteed portion of the loan representing $_____ of such loan now outstanding in accordance with all of the terms and conditions hereinafter set forth. The Lender and FmHA certify to the Holder that the Lender has paid and FmHA has received the Guarantee Fee in exchange for the issuance of the Loan Note Guarantee.

2. *Loan Servicing.*

The Lender will be responsible for servicing the entire loan and will remain mortgagee and/or secured party of record. The entire loan will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the loan.

The Lender will receive all payments on account of principal of, or interest (including any loan subsidy) on, the entire loan and shall promptly remit to the Holder its pro rata share thereof determined according to their respective interests in the loan, less only Lender's servicing fee.

3. *Servicing Fee.*

Holder agrees that Lender will retain a servicing fee of _____ percent per annum of the unpaid balance of the guaranteed portion of the loan assigned hereunder.

4. *Purchase by Holder.*

The guaranteed portion purchased by the Holder will always be a portion of the loan which is guaranteed. The Holder will hereby succeed to all rights of the Lender under the Loan Note Guarantee to the extent of the assigned portion of the loan. The Lender, however, will remain bound by all the obligations under the Loan Note Guarantee and the program regulations found in the applicable Subpart of 7 C.F.R. Part 1980 now in effect and future FmHA program regulations not inconsistent with the provisions hereof.

5. *Full Faith and Credit.*

The Loan Note Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which the Holder has actual knowledge at the time of this assignment, or which it participates in or condones.

6. *Rights and Liabilities.*

The guarantee and right to require purchase will be directly enforceable by Holder notwithstanding any fraud or misrepresentations by Lender or any unenforceability of the Loan Note Guarantee by Lender. Nothing contained herein shall constitute any waiver by

FmHA of any rights it possesses against the Lender, and the Lender agrees that Lender will be liable and will promptly reimburse FmHA for any payment made by FmHA to Holder which, if such Lender had held the guaranteed portion of the loan, FmHA would not be required to make.

7. *Repurchase by the Lender (Defaults).*

The Lender has the option to repurchase the unpaid guaranteed portion of the loan from the Holder(s) within 30 days of written demand by the Holder(s) when: (a) the borrower is in default not less than 60 days on principal or interest due on the loan or (b) the Lender has failed to remit to the Holder(s) its pro rata share of any payment made by the borrower or any loan subsidy within 30 days of its receipt thereof. The repurchase by the Lender will be for an amount equal to the unpaid guaranteed portion of principal and accrued interest (including any loan subsidy), less the Lender's servicing fee. Holder(s) will concurrently send a copy of demand to FmHA. The Lender will accept an assignment without recourse from the Holder(s) upon repurchase. The Lender is encouraged to repurchase the loan to facilitate the accounting for funds, resolve the problem, and to permit the borrower to cure the default, where reasonable. The Lender will notify the Holder(s) and FmHA of its decision.

8. *Purchase by FmHA.*

If Lender does not repurchase as provided by paragraph 7, FmHA will purchase from Holder the unpaid principal balance of the guaranteed portion together with accrued interest (including any loan subsidy) to date of repurchase, less Lender's sevicing fee, within 30 days after written demand from the Holder. Such demand will include a copy of the written demand made upon the Lender. The Holder(s) or its duly authorized agent will also include evidence of its right to require payment from FmHA. Such evidence will consist of either the original of the Loan Note Guarantee properly endorsed to FmHA or the original of the Assignment Guarantee Agreement properly assigned to FmHA without recourse including all rights, title, and interest in the loan. FmHA will be subrogated to all rights of Holder(s). The Holder(s) will include in its demand the amount due including unpaid principal, unpaid interest (including any loan subsidy) to date of demand and interest (including any loan subsidy) subsequently accruing from date of demand to proposed payment date. Unless otherwise agreed to by FmHA, such proposed payment will not be later than 30 days from the date of demand.

The FmHA County Supervisor will promptly notify the Lender of his receipt of the Holder(s)'s demand for payment. The Lender will promptly provide the FmHA County Supervisor with the information necessary for FmHA's determination of the appropriate amount due the Holder(s). Any descrepancy between the amount claimed by the Holder(s) and the information submitted by the Lender must be resolved before payment will be approved. FmHA will notify both parties who must resolve the conflict before payment by FmHA will be approved. Such a conflict will suspend the running of the 30 day payment requirement. Upon receipt of the appropriate information, FmHA County Supervisor will review the demand and submit it to the State Director for verification. After reviewing the demand the State Director will transmit the request to the FmHA Finance Office for issuance of the appropriate check. Upon issuance, the Finance Office will notify the County Supervisor and State Director and remit the check(s) to the Holder(s).

9. *Lender's Obligations.*

Lender consents to the purchase by FmHA and agrees to furnish on request by FmHA a current statement certified by an appropriate authorized officer of the Lender of the unpaid principal and interest then owed by Borrowers on the loan and the amount then owed to any Holder(s). Lender agrees that any purchase by FmHA does not change, alter or modify any of the Lender's obligations to FmHA arising from said loan or guarantee nor does it waive any of FmHA's right against Lender, and that FmHA shall have the right to set-off against Lender all rights inuring to FmHA as the Holder of this instrument against FmHA's obligation to Lender under the Loan Note Guarantee.

10. *Repurchase by Lender for Servicing.*

If, in the opinion of the Lender, repurchase of the assigned portion of the loan is necessary to adequately service the loan, the Holder will sell the assigned portion of the loan to the Lender for an amount equal to the unpaid principal and interest (including any loan subsidy) on such portion less Lender's servicing fee.

a. The Lender will not repurchase from the Holder(s) for arbitrage purpose or other purposes to further its own financial gain.

b. Any repurchase will only be made after the Lender obtains FmHA written approval.

c. If the Lender does not repurchase the portion from the Holder(s), FmHA at its option may purchase such guaranteed portions for servicing purposes.

11. *Foreclosure.*

The parties owning the guaranteed portions and unguaranteed portion of the loan will join to institute foreclosure action or, in liew of foreclosure, take a deed of conveyance to such parties.

12. *Reassignment.*

Holder upon written notice to Lender and FmHA may reassign the unpaid guaranteed portion of the loan sold hereunder. Upon such notification, the assignee will succeed to all rights and obligations of the Holder hereunder.

13. *Notices.*

All notices and actions will be initiated through the FmHA County Supervisor for _____
(County) _____
(State) with mailing address at the date of this instrument; _____

Dated this _____
Day of _____, 19—.
Lender:
Address:
Attest:
(Seal) _____
By _____
Title _____
Holder:
Address:
Attest:
(Seal) _____
By _____
Title _____

United States of America

Farmers Home Administration

Address _____
By _____
Title _____

(b) Form FmHA 1990–1 and Form FmHA 1990–2 are incorporated as parts of this Regulation. These forms are attached as 1990–B, Exhibit A and 1990–C, Exhibit A.

Appendix A—Planning, Performing Development, and Technical Feasibility Requirements for Biomass Energy Projects.

(a) General.

(1) Applications for financial assistance will be accompanied by reports with respect to technical, economic, financial, marketing and managerial feasibility of the project. Applicants will comply with FmHA Regulation 1980.442, "Feasibility Studies."

(2) This Appendix also describes the specific requirements for planning, technical documentation and performance of development for all projects. In addition to the requirements of this Appendix, insured loans must comply with the applicable requirements of FmHA regulation 1942.18 (g) and subsequent subsections.

(3) FmHA reviews, including construction inspections, are solely for the benefit of the FmHA and are not intended to relieve the

lender/borrower of corresponding obligations to conduct similar reviews and inspections. FmHA acceptance or concurrence in feasibility studies, preliminary engineering reports, final plans and specifications shall not be construed as a representation of the adequacy of same, reliability of cost estimates or quality of construction.

(b) *Design Policy.* All facilities shall be designed utilizing accepted engineering practice and shall conform to applicable Federal, State and local codes and requirements.

(c) *Equipment and Processes.*

(1) Equipment and processess shall be considered "proven" if they have:

(i) demonstrated successful operation in pilot facilities, or

(ii) been successfully employed in other commercial facilities where the unit operations are similar in nature to the unit operations proposed for the biomass energy production facility.

(2) Proven equipment and processes shall be employed in all facilities related to the proposed development unless an exception is granted by the State Director in accordance with paragraph (c)(3).

The applicant's engineer must certify that only proven equipment and processes will be utilized in the proposed development. FmHA may request evidence of successful operation.

The performance of packaged alcohol production units must be verified by an independent testing entity unless the manufacturer or supplier guarantees the performance of the unit for a period of one year after plant start-up, and provides a bond for an amount to adequately cover the cost of the unit and reasonable damages. The testing procedures and operating parameters must be sufficient to reasonably indicate performance under active operating conditions. A copy of the test procedures, operating parameters, test results and the qualifications of the testing entity shall be submitted to FmHA for review.

(3) Innovative equipment or processes which have demonstrated successful laboratory scale operation but have not yet been tried in pilot or commercial operations may be utilized in the facility if:

(i) Reasonable provision is made in the facility for conversion to proven equipment or processes;

(ii) The plans for the applicable facilities are reviewed and accepted by the National Office Environmental and Technology Staff. FmHA reserves the right to require the use of proven processes and equipment if the proposed processes or equipment are not suitably developed to assure reliable and successful operation of the facility; and

(iii) The borrower agrees to convert to proven equipment or processes if conversion is necessary to protect the interest of the Government in the project. A loan agreement or the mortgage may be used to evidence this commitment. A reserve account for this conversion may be required. This account will not be an eligible loan purpose.

(4) All equipment, including packaged units, must be guaranteed by the manufacturer to be free from defects in workmanship and materials for a period of one year after start up of equipment. Equipment purchased by the construction contractor or design builder for incorporation into the facility shall be further warranted by the contractor or the design builder for a period of one year after substantial completion of the contract. Applicable provisions to this effect shall be included in all equipment purchase orders or construction contracts.

(5) Contract documents shall stipulate that the project engineer or qualified individuals representing the manufacturers of principal equipment (or the designer/builder if the contractor has designed the plant) will visit the plant site at reasonable intervals for a period of one year after substantial completion of the project. Ordinarily, these visits will be made at two month intervals. Such personnel shall be experienced in the proper operation and maintenance of applicable plant components. A report shall be presented to the Owner within two weeks of each site visit advising the Owner of operation and maintenance deficiencies. One copy of each report shall be forwarded to FmHA by the Owner.

(6) Performance bonds shall remain in full force and effect through the warranty period.

(7) Used equipment or existing facilities to be incorporated into the project must be inspected by a qualified engineer of the applicant. The engineer shall prepare a report which describes the proposed facilities or equipment and the report will comment on their suitability for use in the project. The report will also identify the modifications or repairs to existing facilities or used equipment that will be necessary for their successful integration into the project. A cost estimate shall also be included comparing new equipment and facilities to the proposed existing facilities or used equipment. Consideration shall be given to the relative energy requirements of used and new facilities and their relative operation and maintenance costs.

(d) *Energy Efficiency.* Facility and equipment design shall incorporate state-of-the-art primary fuel systems, energy recovery systems and conservation measures to the maximum extent that can be demonstrated to be cost effective in accordance with the U.S. Department of Energy, "Methodology and Procedure for Live Cycle Analysis," 10 CFR Part 436. The discount rate shall be 7 percent in real terms. Investments in primary fuel systems, energy recovery systems and energy conservation measures in excess of the cost effective limits of this methodology shall be permitted whenever these measures will reduce the utilization of natural gas or petroleum fuel.

(e) *Project Environmental and Technical Review.* (1) Feasibility studies, preliminary engineering reports, and final plans and specifications must be reviewed by the FmHA.

(2) Each application shall contain a Preliminary Engineering Report as described in Attachment 1 of this Appendix. This report shall be prepared by a person who is qualified in the analysis of all features of the proposed project which might affect its technical feasibility.

(3) The need for an environmental impact statement will be determined by FmHA in accordance with Subpart G of Part 1901 of this Chapter (FmHA Instruction 1901-G). The applicant will provide any information required.

(4) Modifications of final plans and specifications after review and concurrence in these documents by FmHA shall not be made without the written authorization of the engineers responsible for the design of the affected portions of the project and the concurrence of any lender and FmHA.

(f) *Technical Services.* (1) Full engineering services for design and construction inspection must be obtained for all facilities constructed under the project. Resident inspection by qualified persons shall be required unless an exception is granted by FmHA.

(2) The applicant is responsible for selecting engineering consultants with suitable experience, training and professional competence in the design and construction of the proposed facilities to assure that the completed project will operate at the prescribed levels of performance.

(3) Agreements for engineering or design/build services shall describe the proposed facilities in terms of the parameters critical to the successful operation of the project. The parameters shall include input quantities, process efficiency, rate of production and fuel consumption under normal operating conditions. The design parameters will be mutually agreed upon by the applicant, any lender, FmHA and project engineer prior to commencement of final design and may not be modified without the written concurrence of each of these parties.

(4) The agreements for engineering or design/build services must be reviewed and concurred in by any lender and FmHA. Agreements which limit the liability of the engineer for design errors and omissions will not be accepted by FmHA.

(g) *Substantial Completion.* (1) A project is substantially complete when construction has been completed in accordance with plans and specifications and operation has been sustained for an appropriate period to indicate that all defects, equipment malfunctions and material failures have been satisfactorily corrected. Testing procedures for individual plant components and materials shall be described in the plans and specifications.

(2) FmHA must concur in the determination of substantial completion of projects. The following documents shall be submitted to FmHA:

(i) A certificate from the engineer in responsible charge of the project stating that all facilities are substantially complete. Engineer(s) who design specialized equipment or processes must also certify that construction/fabrication is acceptable and in accordance with plans and specifications previously approved by them.

These certification must be based upon a plant start up procedure where the complete plant operates continuously to reach steady-state operating conditions. During this period contractors and engineers will identify and correct problems in operations, malfunctions in equipment, failure and materials and defects in workmanship. After this pre-start up, the engineers shall monitor plant

operations for a continuous period of at least 72 hours or 4 consecutive batch runs as appropriate to assure that all equipment is operating satisfactorily at rated capacity and efficiency.

(ii) Copies of test results for equipment and materials that have been incorporated into the project.

(iii) Copies of system operation and performance data obtained during plant start up.

(iv) Exceptions to subtantial completion and a list of non-substantial items which must be completed prior to release of contractors retainage.

(3) Projects which are designed by applicant or projects in which the engineer has participated in construction must be certified to be substantially complete by an independent engineer. The agreement for this engineering service must be reviewed and concurred in by any lender and approved by FmHA prior to the start of construction.

(h) *Commencement of Construction.* Construction shall not commence prior to the following:

(1) Applicants have made adequate provisions for compliance with measures established by FmHA to mitigate adverse historical and environmental impacts.

(2) FmHA concurrence in engineering, design/build, construction management or inspection services agreements.

(3) FmHA concurrence in applicable final plans, specifications and contract documents.

(4) Project engineer prepares a final cost estimate for all facilities. This estimate must indicate that the approved project can be completed with the funds available.

(5) Borrower's obtaining of applicable construction permits and approvals of Federal, State and local authorities.

(i) *Operations, Maintenance and Training.* (1) Borrower shall establish a training program for plant operation personnel prior to plant start up. This program shall be submitted to FmHA for approval prior to loan closing.

(2) The design engineers shall prepare as built drawing of all facilities. One copy shall be submitted to FmHA. This requirement shall be included in the engineering agreement or construction contract.

(3) Borrower shall prepare or contract for the preparation of an operation and maintenance manual. This manual should describe the specific operation and maintenance procedures which must be performed by the owner for the plant to operate at its rated capacity and efficiency and outline product testing, quality controls, plant safety and emergency shut down procedures.

Appendix A, Attachment 1—Technical Feasibility Documentation

(1) The Preliminary Engineering Report is based on verifiable information with sufficient detailed computations and supporting documentation to show that the proposed plant is cost-effective and energy efficient and that the plant will operate at the planned efficiency and output. The Report contains the information and data necessary for an objective appraisal of the project's technical feasibility.

(2) The Report compares the costs and effectiveness of alternative development schemes and processes and justifies the selection of the proposed project. The Report shows that the recommended plant size and location are best suited for the applicant considering needs and objectives, market constraints, availability of feedstocks and existence of other fuel production facilities in the area.

(3) The following outline will be used as a guide to determine the completeness of this Report:

Outline of Preliminary Engineering Report for Biomass-Energy Projects

I. General

A. Description of the Project

1. Needs and objectives of the owner(s)
2. Existing related on-site facilities and equipment
3. Other fuel production facilities in the area

B. General Design Criteria

1. Plant Sizing Criteria
2. Equipment Performance Criteria
3. Plant Efficiency/Performance Criteria

C. Alternatives

1. Processes
2. Equipment
3. Configuration
4. Capacities
5. Plant Location
6. Primary Fuel Source
7. Extraction of Protein

D. Comparison of Alternatives

E. Cost Effectiveness Comparison of Primary Fuel Systems

II. Selected Project

A. Description of Equipment (General)

B. Description of Process (Narrative-Diagram)

C. Potential for Future Expansion

D. Process Efficiency/Performance for Various Feedstocks

E. Permits/Licenses/Easements (Federal, State, Local, Commercial)

1. Royalties, Taxes, Fees
2. Application Procedure (General)
3. Specific Requirements (Outline)
4. Application Processing Time

F. Insurance

1. Type/amount
2. Availability
3. Limitations
4. Related Requirements

G. Applicable Design Codes/Safety Standards/Physical Security of Plant

H. Environmental Impacts (Form FmHA 449-10 and supporting or descriptive material)

III. Management

A. Experience of Owner in Operation of Similar Facilities

B. Personnel

1. Training Requirements/Proposals
2. Administrative and Operation Staff Requirement (by Category/Number)
3. Shift Work Force (by Category/Hours)

IV. Raw Materials

A. Type

1. Feedstock(s)
2. Chemicals/Enzymes

B. Sources

1. Reliability of supply
2. Transportation Considerations
3. Prices

C. Quantity

D. Quality Considerations

V. Process Fuels

A. Type

B. Source

1. Reliability of Supply
2. Transportation Considerations
3. Prices

C. Quantity

VI. Products

A. Type

B. Market Area/On Farm Use

C. Quantity

D. Prices

E. Utilization

F. Distribution

1. Transportation Facilities
2. Storage Requirements
3. Problems

G. Quality

1. Additional Processing Requirements
2. Moisture Content
3. Proof/Energy Content
4. Nutritional Value of Non fuel by-products

VII. Material Balance

A. Input/Output Flow Diagram

1. Flow Rates
2. Accumulated Products/Wastes

B. Water Supply Requirements

C. Waste Disposal/Recycling

D. Detailed Computations

VIII. Energy Consideration

A. Energy Input Overall Plant Operation (all Facilities)

1. Fuel type
2. Quantity

B. Process Heat Balance

C. Energy Content of Fuel Products

D. Energy Expended in Transportation of Raw Materials and Distribution of Primary and Secondary Plant Products

E. Plant Efficiency

F. Detailed Computation

IX. Facilities and Equipment

A. Maintenance

1. Routine Maintenance Requirements
2. Anticipate Replacement of Equipment (20 year period)
3. Availability of Replacement Parts
4. Corrosion Control

B. Operations

1. Process Parameters
a. Temperatures
b. Pressure
c. Hydraulics
d. Power Requirements
e. Detailed Computations
2. Process and Quality Control
a. Automatic Operations
b. Monitoring Requirements
c. Narrative
3. Seasonal Constraints
a. Feedstocks and other inputs
b. Process
c. Products

C. Equipment Manufacturer/Supplier (Packaged Plants/Patented Processes)

1. Previous Installations
2. Certified Performances
3. Special Guaranties

D. Plot Plan (Show relationship of all buildings, water supply, waste disposal, transportation facilities, power supply, etc.)

E. Plant Layout (Equipment and Support Facilities)

X. Construction

A. Cost Estimate

1. Equipment/Supplies (not included in construction contract)
2. Construction
3. Lands, Structures, Rights-of-Way
4. Permits
5. Legal/Accounting Fees
6. Engineering
7. Interim Construction Interest
8. Training Expense
9. Initial Operation and Maintenance Expenses
10. Operation and Maintenance Manual
11. Contingency

B. Unusual Construction Problems

C. Estimated Construction Period

D. Anticipated Useful Life of Facilities

The information herein covered by the Federal Reports Act has been approved by OMB. The Clearance Number is 40R5033.

Exhibit A-1.—Application for Biomass Energy Loan Guarantee Assistance, Form FmHA 1990-1

General Information: This application is to provide information needed for the analysis and loan guarantee determination process for Biomass Energy assistance.

Part A and Attachment A is to be completed by the proposed borrower. The original and two copies with attachments will be submitted to the proposed lenders.

Part B is to be completed by the lender. Upon completion, the original and one copy and attachments of Part A, Attachment A and Part B will be filed with FmHA.

For complete guidance, see FmHA Regulation 1990-A and -C, 1990 Appendix A and related FmHA forms.

Part A

Instructions: Complete all items. Submit original and two copies of this application and Attachment A and all supporting documents to the lender. If additional space is required, attachment sheets are authorized. Additional information may be obtained at any FmHA office.

1. Name: _____
(Show the official name of the person, partnership, or corporation submitting the application. Do not use abbreviations, unless they are parts of the official name of the applicant. For proprietor, show name(s) followed by "doing business as" and trade name used, if any. If a partnership, attach a copy of the partnership agreement. If a franchise, provide a copy of the franchise agreement.)
Address: _____
City: _____
County: _____
State: _____
ZIP Code: _____
Telephone Number: _____

2. Project location: _____
City: _____
County: _____
State: _____

3. Provide a brief description of the project for which assistance is requested:

4. Business history: (Provide a brief summary of the applicant's business and/or occupational history):

5. Federal, State or local government financing: List assistance received, or any pending applications. (Include direct, participation, insured, or guaranteed loans and grants from any Government agency.)

6. Litigation: (List details of any pending or final disciplinary or legal—civil or criminal—action against the applicant, guarantors, partners, principal owners and directors).

7. Attorneys, accountants, and other parties: (List the names of all attorneys, accountants, engineers, consultants, appraisers, packagers, agents, and all other similar parties, whether individuals, partnerships, or associations, engaged by or on behalf of the applicant whether on a salary, retainer or fee basis and regardless of the amount of compensation, for the purpose of rendering professional or other services of any nature whatever to applicant, in connection with the preparation or presentation of this application to a lender. List all fees or other charges or compensations *paid or to be paid* for any purpose in connection with this application or disbursement of the loan whether in money or other property of any kind whatever, by or for the account of the applicant, together with a description of such services rendered or to be rendered, with justification for such purposes. Note: all fees and charges are subject to FmHA review and approval. Attach justification.

Name and address (include Zip code)	Description of services rendered or to be rendered	Total compensation agreed to be paid	Compensation already paid

Enter specific dollar amounts or hourly rates. "Unknown," "Undetermined," or other imprecise terms are not sufficient.

8. Subsidiaries and affiliates:

(a) List the name and addresses of all concerns that are subsidiaries, parent organizations, or affiliates of the applicant, including concerns in which the applicant holds a controlling (but not necessarily a majority) interest:

(b) List all other concerns that are in any way affiliated, by stock ownership, management contracts, or otherwise, with the applicant. The applicant should comment briefly regarding the trade relationship between the applicant and such subsidiaries or affiliates and if the applicant has no subsidiary or affiliate, a statement to this effect should be made. Signed and dated balance sheets, operating statements and reconcilement of net worth msut be submitted for all subsidiaries, parent organizations, and affiliates in the same manner as required of applicant.

9. Purchase and sales relations with others: Does applicant currently or in the future expect to buy from, sell to or use the services of, any concern in which an officer, director, principal owner, partner, or proprietor of the applicant has a substantial interest? ☐ Yes ☐ No If "Yes" give names of such officer, director, owner, and partners, name of such concerns and explain the nature of the transaction(s).

10. Receivership—Bankruptcy: Has applicant, any officer, partner, principal owner, director of the applicant, affiliates or any other concern with which such person has been connected ever been in receivership or adjudicated bankrupt. ☐ Yes ☐ No If "Yes" give names, dates and details.

11. Disclosure of Special Information Regarding Principals: (a) List below the names of any FmHA employees or employees of the proposed lender, who are related by blood, marriage, or adoption, or who have any present or have had any past, direct or indirect financial interest in or association

with, the proposed borrower, or any of its partners, officers, directors or principal owners including such interest in other enterprise; (b) when the proprietor, or any partner, officer, director, principal owner, or their spouse, is an employee of the U.S. Government, including members of the armed forces, detailed information shall be submitted with his application. Check box(s) if (a) or (b) is not applicable. ☐ (a) ☐ (b)

Names and addressed (include ZIP Codes)	Details of relationship or interest

12. Management: Enter names of (a) all partners, key officers, directors, or stockholders and their annual compensation, including salaries, fees, withdrawals, etc., (b) hired manager, and (c) all owners having 20 percent or more interest in the proposed borrower. Elected officials and managers on applications for loans from public bodies are excluded, and the information requested above is only for the project covering the financial assistance application. Attach in the case of any offering a personal guarantee, current financial statements not over 60 days old at time of filing and for any corporate guarantee, current financial statements not over 90 days old at time of filing and certified by an officer of the corporation.

(a) Name	(b) Position or title	(c) Annual compensation	(d) Percent ownership	(e) Outside net worth	(f) Personal guarantee offered (yes or no)	(g) Life insurance carried for benefit of applicant
		$		$		$

13. Regulatory Agencies: List all regulatory agencies (National, State, or local) from which approvals, permits, licenses or clearances are necessary for the project.

Name of regulatory agency	Approval, permit, license or clearance required	Current status of application

14. Instruction to applicant: Attach to this application the following supporting documents, which are not all inclusive of the Regulations requirements (see the Regulations for additional requirements).

(a) Forms FmHA 449-4, "Statements of Personal History," if requested by FmHA.

(b) Financial data for new or existing businesses as required in accordance with FmHA Regulation.

(c) Aging of accounts receivable and payable. (Use 30, 60, 90 days with individual account explanation of items over 90 days old.)

(d) Provide supporting documentation for your projections, including economic factors, markets, management, etc.

(e) Final plans and specifications must be submitted to the lender and to FmHA for approval prior to the commencement of construction. Architectural or engineering plans, if applicable, need to be attached.

(f) If construction is involved, provide applicable equal opportunity and nondiscrimination forms.

(g) Form FmHA 499-10, "Applicants Environmental Impact Evaluation."

(h) Evidence as to whether the project is located in a flood plain or mudslide hazard area.

(i) Provide a written statement of effect project would have on Historic Places, if any.

(j) If loan guarantee is in excess of $100,000, provide certification and notices as required for the Clean Air Act and Water Pollution Control Act.

(k) Document utilities availability with letter of commitment from utilities, energy, water, sewer, fire and police protection.

(l) For all persons listed under MANAGEMENT, item 13, provide a brief description of education, technical training, employment and business experience (resumes may be used).

(m) Provide a detailed debt schedule correlated to the latest balance sheet reflecting the names of creditors, loan purposes, original loan amounts and loan balances, dates of loans, interest rates, maturity dates, monthly or annual payments, payments status and collateral that secures such loans. FmHA Form 449-29 may be used.

(n) Engineering agreement.

(o) Preliminary engineering report.

15. Policy and regulations concerning representatives and their fees:

(a) An applicant for a loan may obtain the assistance of any attorney, engineer, appraiser, or other representative to aid it in the preparation of its application, but, such representation is not mandatory. In the event a loan is approved, the services of an attorney may be necessary to assist in the preparation of closing documents, title examinations, etc.

(b) There are no "authorized representatives" of FmHA, other than our regular salaried employees. Payment of any fee or gratuity to FmHA employees is illegal and may subject the parties involved to prosecution.

(c) FmHA will not approve placement or finder's fees for the use or attempted use of influence in obtaining or trying to obtain a loan.

(d) Fees will be approved as provided in the regulations.

(e) It is the responsibility of the applicant to set forth in Section 8 of this application the names of all persons or firms engaged by or on behalf of the applicant. Applicants are also required to advise FmHA in writing of the names and fees of any representatives engaged by the applicant subsequent to the filing of the application. Failure to so notify FmHA may be considered "misrepresentation" and may void FmHA's guarantee if lender had knowledge of this omission.

(f) Any applicant having any question concerning the payment of fees, or the reasonableness of fees, should communicate with FmHA before the application is filed for a loan guarantee.

16. Agreement of nonemployment of FmHA personnel: In consideration of FmHA guaranteeing any part of the loan applied for in this application, the applicant hereby agrees with FmHA that applicant will not, for a period of two years after date of guarantee of any part of the loan, employ or tender any office or employment to, or retain for professional services, any person who, on the date of such disbursement, or within one year prior to said date, (a) shall have served as an employee of FmHA and engaged in activities which FmHA shall have determined, or may determine, involved discretion with respect to the granting of assistance under the Biomass Energy and Alcohol Fuels Act of 1980 and other Acts administered by FmHA from time to time.

17. *Certification—The applicant hereby certifies that:*

(a) The Applicant has read FmHA Policy and Regulations concerning representatives and their fees and has not paid or incurred any obligation to pay, directly or indirectly, any fee or other compensation for obtaining the loan hereby applied for, other than for services and expenses set out in pursuant to paragraph 16 above.

(b) The applicant has not paid or incurred any obligation to pay to any Government employee or special Government employee any fee, gratuity or anything of value for obtaining the assistance hereby applied for. If such fee, gratuity, etc. is or has been solicited by any such employee the applicant agrees to report such information to the Office of Inspector General, USDA, Washington, D.C. 20250.

(c) Information contained above and in Attachment A and exhibits hereto is true and complete to the best knowledge and belief of the applicant and is submitted for the purpose of requesting FmHA to guarantee a loan by a lender to the applicant.

(d) The applicant hereby covenants, promises and agrees to provide the lender and FmHA timely periodic financial

statements including the annual audit financial statements required in FmHA Regulation, and failure to provide such reports will be considered as a default under the loan guarantee.

(e) The applicant agrees that if financial assistance is rendered by FmHA that it is subject to all the applicable Subparts of Title 7 CFR 1990, and any future amendments of the Regulations not in inconsistent with this application.

Notice: In accordance with 5 U.S.C. 552a, the Privacy Act of 1974, any individual should be provided a copy of Form FmHA 410-9, "Statement Required by the Privacy Act," at the time this application is completed.

Warning: Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."

Misrepresentation of material facts may also be the basis for denial of financial assistance by the Farmers Home Administration.

Applicant Name:* _____

_____

_____

[Corporate Seal]

By _____

Title _____

Attest: _____

Date Signed: _____, 19—.

(Title) _____

(Title) _____

Applicant's Contact Person:

Name _____

Address _____

Telephone _____

Part B

Instruction: Lender completes items 18 through 28 and submits the original and one copy of this application and Attachment A and all supporting documents to FmHA.

18. Request for Guarantee:

(For use only by lender)

Lender tax identification:-

No. _____

We propose to make and agree to service a loan to the applicant named on page 1 of this Application. We have verified the information set forth in Part A and Attachment A. We request an FmHA loan Guarantee subject to the provision of the applicable FmHA Regulations Part 1990 A and C and Appendix A.

19. Terms and Conditions of Loans: Percent of Guarantee Requested ——%.

(1) Type	Amount	Term (years)	Interest [1] (percent)	Monthly payments
Real estate				$
Machinery and equipment				
Other (specify in attachment)				
Total				

[1] If a variable rate, follow by a "v" and identify base rate used and what interest differential is added to base rate. If multi-rates are used provide overall effective interest rate for the entire loan: ——%.

NOTE.—Total can not exceed 90% of total construction cost of project.

20. Collateral and lien position: (Describe collateral, to be required and obtained as security whether now owned or to be acquired. List net book value, any existing liens against such collateral.)

21. Planned disbursements: (plans for disbursing the loan.)

22. Personal and/or corporate guarantees recommended:

23. Insurance: Insurance to be required by the borrower.

24. Loan agreement: Attach proposed lender and borrower loan agreement.

25. Lender's experience with FmHA:

(a) Have you made any loans guaranteed by FmHA? ☐ Yes ☐ No

If yes, check program area:

☐ Farmer Programs ☐ Rural Housing

☐ Business and Industry ☐ Biomass Energy.

(b) If applicant has or had a loan(s) with you, has such loan(s) appeared in regulatory examination report?

☐ Yes ☐ No If yes, explain.

26. Verify and Comment on Applicant's Debts: (Attach schedule).

27. Plans for constituting the loan:

(a) Will retain entire loan ☐ Yes ☐ No

(b) Will utilized secondary market for guaranteed portion (indicated by check).

Assignment——— Multi-note———

(c) Participation of unguaranteed portion

☐ Yes ☐ No

Note.—Lenders are required to hold 5% of loan amount out of the unguaranteed portion of the loan. The borrower must have the right to pre-pay their loan(s). Prepayment penalties are permitted, if reasonable and provided FmHA approves them.

28. Certifications: The Lender hereby certifies that it is not willing to extend credit to the applicant at reasonable rates and terms, taking into consideration prevailing rates and terms for loans for similar purposes and periods of time, and to finance the construction of the biomass energy project for which the loan is sought, without a guarantee.

Opinion: In our opinion, the loan appears feasible and all FmHA requirements will be met.

Warning: Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or make any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

Misrepresentation of material facts may also be the basis for FmHA not issuing a Loan Note Guarantee or voiding any Loan Note Guarantee that may be issued.

Lender:

Contact Person _____

Telephone Number _____

Date———, 19—

Name and Address of Lender (Include ZIP) —

_____

_____

By: (Authorized Officer) _____

Title _____

*(Individual, general partner, trade name, or corporation name).

Attachment A—Biomass Energy Project Technical Information

The regulations for this program require that any project eligible for assistance be technically and economically feasible and that reasonable assurance be provided that the assistance can be repaid from the project's income, including income from by-products. The basic data describing this project and establishing its technical and economic feasibility are provided by this Attachment and by applicable documentation required under item 15 of Part A and the Regulations.

Instruction: This Attachment provides the basic technical description of the project. It is to be completed by *all* applicants. The original and two copies with any supporting attachments should be submitted to the proposed lender, in the case of loan guarantee applications, or to FmHA in the case of insured loan applications.

1. Type of Project: (Check as appropriate; more than one item may be applicable)

—— Small Scale/On Farm

—— Small Scale/Off Farm

(Small scale is defined as not more than 1 million gallons annual anhydrous ethanol capacity or its equivalent in other biomass energy forms)

—— Intermediate Scale/On Farm

—— Intermediate Scale/Urban

(Intermediate scale is defined as 1 million to less than 15 million gallons annual anhydrous ethanol capacity or its biomass energy equivalent)

—— Intermediate Scale/Rural Off Farm

—— Large Scale Project

(Large scale is defined as more than 15 million or more gallons annual anhydrous

ethanol capacity or its biomass energy equivalent, which is owned and operated by a cooperative or which uses wood or wood residues as feedstocks)

2. Principal Product:
—— Anhydrous Ethanol
—— Non-anhydrous Ethanol
—— Methanol
—— Methane
—— Wood Pellets (or other processed wood energy form)
—— Other (specify):

3. Secondary Product(s):
—— Wet Stillage
—— Dried Distillers Grains
—— Carbon Dioxide
—— Other (specify)

4. Annual Capacity of Project:
—— Gallons annual ethanol production, anhydrous basis

(*Note:* Other biomass energy forms should be converted to anhydrous ethanol, which is established to have 84,400 BTU per gallon. Applicant should indicate here basis for his capacity specification: i.e., three shift operation 330 days per year or other)

5. Feedstock(s) to be Used: (Use "1" for principal feedstock and "2", "3", etc., for secondary feedstocks in order of planned importance)
—— Corn
—— Milo
—— Wheat
—— Other Grain (specify)
—— Mixed grains
—— Sugar-beets
—— Saw dust
—— Manure
—— Potatoes
—— Molasses
—— Whey
—— Bagasse
—— Wood/Forest residues
—— Crop residues
—— Other (specify)

6. Technology to be Employed: (Give trade name if technology is identified with specific firm or inventor. If continuous fermentation or if project has any other unique technical features, so indicate. Otherwise, describe as "conventional".) ————

Name of prime design engineer:

7. Primary Fuel to be Used:
—— Coal
—— Natural gas
—— Fuel Oil (petroleum)
—— Propane
—— Crop residues
—— Methane
—— Solar energy
—— Wood or forest products and residues
—— Co-generated steam
—— Other (specify):

(*Note:* In the event that more than one primary fuel source is to be used, other than general purpose electricity, indicate in each applicable blank the approximate percentage of total primary fuel requirements to be supplied from that energy source)

8. Planned Disposition of Principal Products: (Marketing) (Rank 1, 2, 3, as appropriate in order of relative importance)
—— On farm use
—— On farm use plus sale (indicates planned percentages: e.g., 50/50)
—— Sale to gasohol blender/distributor
—— Sale to gasohol refinery
—— Sale to U.S. Government, State Government, Local Government (check and underline as appropriate)
—— Retail sale
—— Other (specify: e.g., non-farm in-plant use)

9. Project Milestones:
Planned date to initiate construction (if applicable): ————
Planned date to complete construction: ————
Planned start-up date: ————

10. Proposed Sources and Uses of Funds:

Construction	Guaranteed or insured loan funds	Other funds
Real Estate	$————	$————
Machinery and Equipment*	————	————
Installation	————	————
Engineers Fees	————	————
Other Fees	————	————
Construction Interest	————	————
Other Construction (Specify):		
(a)————	————	————
(b)————	————	————
(c)————	————	————
Total Construction	(a) ————	(b) ————
Other Uses of Funds:		
Working Capital	x	————
Other (specify):		
(a) ————	x	————
(b) ————	x	————
(c) ————	x	————
Total Non-construction Costs:	x	(c) ————
Total Project Cost: (= (a) + (b) + (c) above)	————	————

*If used equipment or plant is involved, attach an engineer's appraisal of value in use.

11. Other Funding:
Indicate the provisions that have been made for working capital. (Attach commitment and identify source of funding.)

12. Comment on Water Supply Availability:
Approximately how much will be required:
Per gallon (or other unit) of production: ————
Per year (assuming full capacity operations) ————
Availability: ————

13. Comment on Transportation Availability:
For assembly of feedstocks: ————
For shipping of principal product(s): ————
For shipping of by-products: ————

14. Comment on Planned Storage Facilities:
Feedstocks: ————
Principal Product(s): ————
By-Products: ————

15. Explain Market Commitments for Sale of Product (if applicable): (Provide supporting documents)

16. Planned Disposition of Products and By-Products (Annual Basis)
(a) *Primary Product:* ————
Planned Annual Output: ———— (gals/tons)
Disposition:
Internal Use: ———— %
Sale: ———— %
(b) By-Product (I): ————
Planned Annual Production: ———— (gals/tons)
Disposition:
Internal Use: ———— %
Sale: ———— %
Waste: ———— %
(c) By-Product (II): ————
Planned Annual Production: ———— (gals/tons)
Disposition:
Internal Use: ———— %
Sale: ———— %
Waste: ———— %

17. Credit for Internal Consumption of Biomass Energy Produced: (If it is planned that some or all of the biomass energy to be produced will be used on farm or in-plant to displace purchase fuels, a credit may be taken against the cost of production based on the projected purchase price of the fuel displaced. Indicate the amount and method of calculation here. A credit may also be taken for on farm use of by-products such as wet stillage. Again, provide amount and method of calculation.)

18. Estimated new *Direct* Full-Time Employment the Project Will Employ at Planned Level of Operations: (assume 40-hour workweek):

Misrepresentation of material facts in this application may be the basis for denial of financial assistance by the Farmers Home Administration.

Corporate Seal
Attest: ————

(Title)
Applicant Name*

By ————
Title ————
Date Signed ————

Exhibit A-2—Application for FmHA Biomass Energy Insured Loan Assistance, Form FmHA 1990-2

General Information: All applicants for FmHA insured loan assistance for biomass energy projects will complete this form and submit it (original and two copies), together with attachments to FmHA.

This application package consists of two documents:

Part A: Background, legal and feasibility information essential to the processing of the application.

Attachment A: Technical information required both for evaluation of the application and overall FmHA program management.

For complete guidance, see FmHA Regulation 1990-A and B, 1990 Appendix A and related FmHA Forms.

Part A

If additional space is required to answer any of the following questions, attachment sheets are authorized. Additional information may be obtained at any FmHA office.

Name: ————

(Show the official name of the person, partnership, or corporation submitting the application. Do not use abbreviations unless

they are parts of the official name of the applicant. For proprietor, show name(s) followed by "doing business as" and trade name used, if any. If a partnership, attach a copy of the partnership agreement. If a franchise, provide a copy of the franchise agreement.)

Address: _____
City: _____
County: _____
State: _____
Zip Code: _____
Telephone: _____

2. Project location:
City: _____
County: _____
State: _____

3. Provide a brief description of the project for which assistance is requested:

4. Business history: (provide a brief summary of the applicant's business and/or occupational history):

5. Federal, State, or local government financing: (list assistance received or any pending applications. Include direct, participation, insured, or guaranteed loans and grants from any Government agency.)

6. Litigation: (list details of any pending or final disciplinary or legal—civil or criminal—action against the applicant, guarantors, partners, principal owners and directors).

7. Attorneys, accountants, and other parties: list the names of all attorneys, accountants, engineers, consultants, appraisers, packagers, agents, and all other similar parties whether individuals, partnerships, or associations, engaged by or on behalf of the applicant, whether on a salary, retainer or fee basis and regardless of the amount of compensation, for the purpose of rendering professional or other services of any nature whatever to applicant in connection with the preparation or presentation of this application. List all fees or other charges or compensations *paid or to be paid* for any purpose in connection with this application or disbursement of the loan whether in money or other property of any kind whatever, by or for the account of the applicant, together with a description of such services rendered or to be rendered, with justification for such purposes. Note: all fees and charges are subject to FmHA review and approval. Attach justification.

Name and address (include Zip code)	Description of services rendered or to be rendered	Total compensation agreed to be paid	Compensation already paid

Enter specific dollar amounts of hourly rates. "Unknown," "Undetermined," or other imprecise terms are insufficient.

8. Subsidiaries and affiliates:

(a) List the names and addresses of all concerns that are subsidiaries, parent organizations, or affiliates of the applicant, including concerns in which the applicant holds a controlling (but not necessarily a majority) interest:

(b) List all other concerns that are in any way affiliated, by stock ownership, management contracts, or otherwise, with the applicant. The applicant should comment briefly regarding the relationship between the applicant and such subsidiaries or affiliates and if the applicant has no subsidiary or affiliate, a statement to this effect should be made. Signed and dated balance sheets, operating statements and reconciliations of net worth must be submitted for all subsidiaries, parent organizations, and affiliates in the same manner as is required of the applicant.

9. Purchase and sales relation with others: Does applicant currently or in the future expect to buy from, sell to or use the services of any concern in which an officer, director, principal owner, partner, or proprietor of the applicant has a substantial interest? ☐ Yes ☐ No If "Yes" give names of such officer, director, owner, and partners, names of such concerns and explain the nature of the transaction(s).

10. Receivership-bankruptcy: Has applicant, any officer, partner, principal owner, director of the applicant, affiliate or any other concern with which such person has been connected ever been in receivership or adjudicated bankrupt? ☐ Yes ☐ No If "Yes" give names, dates and details.

11. Disclosure of special information regarding principals:

(a) List below the names of any FmHA employees who are related by blood, marriage, or adoption, or who have any present or have had any past direct or indirect financial interest in or association with the proposed borrower or any of its partners, officers, directors or principal owners, including such interest in other enterprises;

(b) when the proprietor, or any partner, officer, director, principal owner, or their spouse(s) is an employee of the U.S. Government, including members of the armed forces, detailed information shall be submitted with this application. Check box(s) if (a) or (b) is not applicable: ☐ (a) ☐ (b)

Names and addresses (include Zip code)	Details of relationship or interest

12. Management: Enter the names of (a) all partners, key officers, directors or stockholders and their annual compensation, including salaries, fees, withdrawals, etc., (b) hired manager, and (c) all owners having 20 percent or more interest in the proposed borrower. Elected officials and managers on applications for loans from public bodies are excluded, and the information requested above is only for the project covered by the financial assistance application. Attach in the case of any offering of personal guarantee current financial statements not over 60 days old at the time of filing; and for any corporate guarantee, current financial statements not over 90 days old at the time of filing and certified by an officer of the corporation.

(a) Name	(b) Position or title	(c) Annual compensation	(d) Percent ownership	(e) Outside net worth	(f) Personal guarantee offered (Yes or No)	(g) Life insurance carried for benefit of applicant

13. Regulatory Agencies: List all regulatory agencies (National, State and Local) from which any approvals, permits, licenses or clearances are necessary for the project.

Name of regulatory agency	Approval, permit, license or clearance required	Current status of application

14. Instruction To Applicant: Attach to this application the following supporting documents, which are not all inclusive of the Regulations requirements (see the Regulations for additional requirements):

(a) Form FmHA 449–4, "Statements of Personal History," if requested by FmHA.

(b) Financial data for new or existing businesses as required in accordance with FmHA regulation.

(c) Aging of accounts receivable and payable. (Use 30, 60, 90 days with individual account explanation of items over 90 days old).

(d) Provide supporting documentation for project projections, including economic factors, markets, management, etc.

(e) Final plans and specifications must be submitted to FmHA for approval prior to the commencement of construction. Architectural or engineering plans, if applicable, need to be attached.

(f) If construction is involved, provide applicable equal opportunity and non-discrimination forms.

(g) Form FmHA 449–10, "Applicant's Environmental Impact Evaluation."

(h) Evidence as to whether the project is located in a flood plain or mudslide hazard area.

(i) Provide a statement of the effect the project would have on Historic Places, if any.

(j) If loan is in excess of $100,000, provide certification and notices for the Clean Air Act and the Federal Water Pollution Control Act.

(k) Document utilities availability with letter of commitment from utilities, energy, water, sewer, fire and police protection.

(l) For all persons listed under MANAGEMENT, item 13, provide brief description of education, technical training, employment and business experience (résumé may be used).

(m) Provide a detailed debt schedule correlated to the latest balance sheet reflecting the name of creditors, loan purpose, original loan amount and loan balance, date of loan, interest rate, maturity date, monthly or annual payments, payment status and collateral that secures such loans. (Form FmHA 449-29 may be used.)

(n) Engineering agreement.

(o) Preliminary engineering report (See FmHA Regulation 1990.300).

(p) For on-farm projects, FmHA Form 410-1, "Application for FmHA Services."

15. Policy and Regulations Concerning Representatives and Their Fees:

(a) An applicant for a loan may obtain the assistance of any attorney, engineer, appraiser, or other representative to aid it in the preparation of its application, but such representation is not mandatory. In the event a loan is approved, the services of an attorney may be necessary to assist in the preparation of closing documents, title examinations, etc.

(b) There are no "authorized representatives" of FmHA, other than our regular salaried employees. Payment of any fee or gratuity to FmHA employees is illegal and may subject the parties involved to prosecution.

(c) FmHA will not approve placement or finder's fees for the use of attempted use of influence in obtaining or trying to obtain a loan.

(d) Fees and charges are subject to review and approval as provided in the Regulations.

(e) It is the responsibility of the applicant to set forth in Section 8 of this application the names of all persons or firms engaged by or on behalf of the applicant. Applicants are also required to advise FmHA in writing of the names and fees of any representatives engaged by the applicant subsequent to the filing of the application. Failure to so notify FmHA may be considered "misrepresentation" and may void FmHA's guarantee if lender had knowledge of this omission.

(f) Any applicant having any question concerning the payment of fees, or the reasonableness of fees, should communicate with FmHA before the application is filed for a loan.

16. Agreement of Nonemployment of FmHA Personnel: In consideration of FmHA guaranteeing any part of the loan applied for in this application, the applicant hereby agrees with FmHA that applicant will not, for a perioid of two years after date of guarantee of any part of the loan, employ or tender any office or employment to, or retain for professional services, any person who, on the date of such disbursement, or within one year prior to said date, (a) shall have served as an employee of FmHA and (b) as such, shall have occupied a position or engaged in activities which FmHA shall have determined, or may determine, involved discretion with respect to the granting of assistance under the Biomass Energy and Alcohol Fuels Act of 1980 and other Acts administered by FmHA.

17. *Certification—The applicant hereby certifies that:*

(a) The Applicant has read FmHA Policy and Regulations concerning representatives and their fees and has not paid or incurred any obligation to pay, directly or indirectly, any fee or other compensation for obtaining the loan herby applied for, other than for services and expenses set out in paragraph 16 above.

(b) The applicant has not paid or incurred any obligation to pay to any Government employee or special Government employee any fee, gratuity or anything of value for obtaining the assistance hereby applied for. If such fee, gratuity, etc. is or has been solicited by any such employee the applicant agrees to report such information to the Office of Inspector General, USDA, Washington, D.C. 20250.

(c) Information contained above and in Attachment A and exhibits hereto is true and complete to the best knowledge and belief of the applicant and is submitted for the purpose of requesting FmHA to award a loan to the applicant.

(d) The applicant hereby covenants, promises and agrees to provide the lender and FmHA timely periodic financial statements including the annual audit financial statements required in FmHA Regulations.

(e) The applicant agrees that if financial assistance is rendered by FmHA that it is subject to all the applicable Subparts of Title 7 CFR 1990, and any future amendments of these Regulations not inconsistent with this application.

Notice: In accordance with 5 U.S.C. 552a, the Privacy Act of 1974, any individual should be provided a copy of Form FmHA 410-9, "Statement Required by the Privacy Act," at the time this application is completed.

Warning: Section 1001 of Title 18, United States Code provides: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both."

Misrepresentation of material facts may also be the basis for denial of financial assistance by the Farmers Home Administration.

*Applicant Name: _____

Corporate Seal

By _____

Title _____

Attest: _____

Date Signed: _____ 19—

(Title) _____

(Title) _____

Applicant's Contact Person:

Name _____

Address _____

Telephone _____

*(Individual, general partner, trade name, or corporation name).

Attachment A—Biomass Energy Project Technical Information

The regulations for this program require that any project eligible for assistance be technically and economically feasible and that reasonable assurance be provided that the assistance can be repaid from the project's income, including income from by-products. The basic data describing this project and establishing its technical and economic feasibility are provided by this Attachment and by applicable documentation required under item 15 of Part A and the Regulations.

Instruction: This Attachment provides the basic technical description of the project. It is to be completed by *all* applicants. The original and two copies with any supporting attachments should be submitted to the proposed lender, in the case of loan guarantee applications, or to FmHA in the case of insured loan applications.

1. Type of Project: (Check as appropriate; more than one item may be applicable)

—— Small Scale/On Farm

—— Small Scale/Off Farm

(Small scale is defined as not more than 1 million gallons annual anhydrous ethanol capacity or its equivalent in other biomass energy forms)

—— Intermediate Scale/On Farm

—— Intermediate Scale/Urban

(Intermediate scale is defined as 1 million to less than 15 million gallons annual anhydrous ethanol capacity or its biomass energy equivalent)

—— Intermediate Scale/Rural Off Farm

—— Large Scale Project

(Large scale is defined as more than 15 million or more gallons annual anhydrous ethanol capacity or its biomass energy equivalent, which is owned and operated by a cooperative or which uses wood or wood residues as feedstocks)

2. Principal Product:

—— Anhydrous Ethanol

—— Non-anhydrous Ethanol

—— Methanol

—— Methane

—— Wood Pellets (or other processed wood energy form)

—— Other (specify):

3. Secondary Product(s):

——Wet Stillage

——Dried Distillers Grains

——Carbon Dioxide

——Other (specify)

4. Annual Capacity of Project:

——Gallons annual ethanol production, anhydrous basis

(*Note:* Other biomass energy forms should be converted to anhydrous ethanol, which is established to have 84,400 BTU per gallon. Applicant should indicate here basis for his capacity specification: i.e., three shift operation 330 days per year or other)

5. Feedstock(s) to be used: (Use "1" for principal feedstock and "2", "3", etc., for secondary feedstocks in order of planned importance)
——Corn
——Milo
——Wheat
——Other Grain (specify)
——Mixed grains
——Sugar beets
——Saw dust
——Manure
——Potatoes
——Molasses
——Whey
——Bagasse
——Wood/Forest residues
——Crop Residues
——Other (specify)

6. Technology to be Employed: (Give trade name if technology is identified with specific firm or inventor. If continuous fermentation or if project has any other unique technical features, so indicate. Otherwise, describe as "conventional".)——
Name of prime design engineer: ——

7. Primary Fuel to be Used:
——Coal
——Natural Gas
——Fuel Oil (petroleum)
——Propane
——Crop residues
——Methane
——Solar energy
——Wood or forest products and residues
——Co-generated steam
——Other (specify):
(*Note:* In the event that more than one primary fuel source is to be used, other than general purpose electricity, indicate in each applicable blank the approximate percentage of total primary fuel requirements to be supplied from that energy source)

8. Planned Disposition of Principal Products: (Marketing) (Rank 1, 2, 3, as appropriate in order of relative importance)
——On farm use
——On farm use plus sale (indicate planned percentages: e.g., 50/50)
——Sale to gasohol blender/distributor
——Sale to gasohol refinery
——Sale to U.S. Government, State Government, Local Government (check and underline as appropriate)
——Retail sale
——Other (Specify; e.g., non-farm in-plant use)

9. Project Milestones:
Planned date to initiate construction (if applicable): ——
Planned date to complete construction: ——
Planned start-up date: ——

10. Proposed Sources and Uses of Funds:

Construction	Guaranteed or insured loan funds	Other funds
Real estate	$——	$——
Machinery and equipment*	——	——
Installation	——	——
Engineers fees	——	——
Other fees	——	——
Construction interest	——	——
Other construction (specify):		
(a)	——	——
(b)	——	——
(c)	——	——
Total construction	——(a)	——(b)
Other uses of funds:		
Working capital	x	——
Other (specify):		
(a)	x	——
(b)	x	——
(c)	x	——
Total Non-construction Costs	x	——(c)
Total project cost: (=(a)+(b)+(c) above)	——	

*If used equipment or plant is involved, attach an engineer's appraisal of value in use.

11. Other Funding:
Indicate the provisions that have been made for working capital. (Attach commitment and identify source of funding.)

12. Comment on Water Supply Availability:
Approximately how much will be required:
Per gallon (or other unit) of production: ——
Per year (assuming full capacity operations)

Availability: ——

13. Comment on Transportation Availability:
For assembly of feedstocks: ——
For shipping of principal product(s): ——
For shipping of by-products: ——

14. Comment on Planned Storage Facilities:
Feedstocks: ——
Principal Product(s): ——
By-Products: ——

15. Explain Market Commitments for Sale of Product (if applicable): (Provide supporting documents)

16. Planned Disposition of Products and By-Products (Annual Basis)
(a) *Primary Product:* ——
Planned Annual Output: —— (gals/tons)
Disposition: ——
Internal Use: ——%
Sale: ——%
(b) By-Product (I): ——
Planned Annual Production: —— (gals/tons)
Disposition: ——
Internal Use: ——%
Sale: ——%
Waste: ——%
(c) By-Product (II): ——
Planned Annual Production: —— (gals/tons)
Disposition: ——
Internal Use: ——%
Sale: ——%
Waste: ——%

17. Credit for Internal Consumption of Biomass Energy Produced: (If it is planned that some or all of the biomass energy to be produced will be used on farm or in-plant to displace purchase fuels, a credit may be taken against the cost of production based on the projected purchase price of the fuel displaced. Indicate the amount and method of calculation here. A credit may also be taken for on farm use of by-products such as wet stillage. Again, provide amount and method of calculation.)

18. Estimated New Direct Full-Time Employment the Project Will Employ at Planned Level of Operations: (assume 40-hour workweek):

Misrepresentation of material facts in this application may be the basis for denial of financial assistance by the Farmers Home Administration.

* Applicant Name ——

Corporate Seal
By ——
Title ——
Date Signed: ——19——
Attest: ——
(Title) ——

Exhibit B—Determination of Exempt Categories

AGENCY: Department of Energy and Department of Agriculture.

ACTION: Notice.

SUMMARY: The Departments of Energy and Agriculture are identifying the potential categories of projects to which the requirement for coordination between the two Departments does not apply. This action is required by Title II of the Energy Security Act.

EFFECTIVE DATE: This notice is effective immediately.

FOR FURTHER INFORMATION CONTACT: Ted D. Tarr, Office of Alcohol Fuels, Department of Energy, Room 6A-211, 1000 Independence Avenue, S.W., Washington D.C. 20585; (202) 252-9487.

Earle Gavett, Office of Budget, Planning and Evaluation, Department of Agriculture, Room 116-A; 14th and Independence Avenue, S.W., Washington, D.C. 20250; (202) 447-2634.

SUPPLEMENTARY INFORMATION: Title II of the Energy Security Act, Pub. L. 96-294, which was enacted June 30, 1980 ("ESA"), authorizes the Department of Energy and the Department of Agriculture to provide financial assistance to biomass and alcohol fuels projects. Section 212 divides the authorities and responsibilities of the two departments.

Section 212(c)(1) requires that the Secretary of Agriculture and the Secretary of Energy, after evaluation of an application and before awarding financial assistance based upon the application, shall provide the other Secretary with a copy of the application and appropriate supporting material, for a review period of not less than 15 days. Section 212(c)(2) further provides that if the reviewing Secretary provides a written notice specifying any issues subject to such Secretaries review prior to the end of the 15 days, then the Secretary concerned shall defer final decision on the application for an additional 30 days for both Secretary to resolve the issues. At the end of such 30-day period, the Secretary concerned may make a final decision on the application.

Section 212(c)(3) specifies the type of review to be conductd by each Secretary. The Secretary of Agriculture shall review projects for the purpose of considering the national, regional and local agriculutural policy impacts of a project on agricultural supply, production and use. The Secretary of Energy shall review projects for the purpose of considering national energy policy impacts and the technical feasibility of the project.

Section 212(c)(4) requires that within 90 days of enactment of the ESA, the Secretaries of Energy and Agriculture shall initially determine categories of projects to which the review and comment procedures shall not apply. This notice established those categories for which review by the other Secretary is not required.

The Secretary of Energy and the Secretary of Agriculture have jointly identified the categories of projects exempted from the requirements for review and comment by such Secretary before the other can award any financial assistance within his area of responsibility as determined by the Act. The exempted categories are:

1. All small-scale plants (i.e., plants having annual production capacity of not more than 1 million gallons of ethanol or its BTU energy equivalent of other forms of biomass energy);

2. All intermediate-scale projects (i.e., plants having annual production capacity of 1 to 15 million gallons of ethanol or its BTU energy equivalent of other forms of biomass energy) using standard conversion technology as described in the DOE-SERI/SP report 451-518, *Fuel From Farms—A Guide to Small Scale Ethanol Production*, February 1980, and the USDA report, *Small-Scale Fuel Alcohol Production*, March 1980.

There are no exempted categories above the 15 million gallons per year size plant. § 212(a)(2)(c) requires concurrence by both agencies before either can fund a plant of this size which uses wood or woodwaste as a feedstock or which is owned by a cooperative and used feedstocks other than aquatic plants. However, both the Department of Agriculture and the Department of Energy have agreed to the need for expeditious review and processing of application; and, upon the request of either Department, the reviewing Department shall endeavor to complete its review in a shorter period of time than the 15 days allowed under the ESA.

The Departments have agreed to provide to each other certain technical data on each project, to be specified in a memorandum of understanding, that will permit the Department of Energy to consider national energy policy impacts of all projects and permit the Department of Agriculture to consider the national, regional and local agricultural impacts of all projects on agricultural supply, production and use. Analysis of such data may provide the basis for modification of this initial determination of exempt categories of projects.

Dated: October 18, 1980.

———,

Secretary of Agriculture.

———,

Secretary of Energy.

[FR Doc. 80-34059 Filed 10-29-80; 10:39 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/FSQS		DOT/FAA	USDA/FSQS
DOT/FHWA	USDA/REA		DOT/FHWA	USDA/REA
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/NHTSA	LABOR		DOT/NHTSA	LABOR
DOT/RSPA	HHS/FDA		DOT/RSPA	HHS/FDA
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. Comments on this program are still invited.
Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

NOTE: As of September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.

REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

Rules Going Into Effect Today

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

68640 10-16-80 / Ceiling rate of interest on 14-to-90-day time deposits of under $100,000

FEDERAL EMERGENCY MANAGEMENT AGENCY

64584 9-30-80 / Disaster assistance; public assistance (Subpart E) amendment

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration—

64568 9-30-80 / Sterile Chloramphenicol Sodium Succinate, and Chloroamphenicol Injection; Deletion of histamine test

Public Health Service—

60431 9-12-80 / Emergency medical services training program grants

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing October 24, 1980

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WHEN: December 5 and 19, January 16 and 30; at 9 a.m. (identical sessions).

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call King Banks, Workshop Coordinator, 202-523-5235.