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federal register

Monday
August 5, 1985

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Administrative Practice and Procedure
Drug Enforcement Office
Federal Trade Commission

Air Pollution Control
Environmental Protection Agency

Aviation Safety
Federal Aviation Administration

Banks, Banking
Farm Credit Administration

Bridges
Coast Guard

Commodity Futures
Commodity Futures Trading Commission

Endangered and Threatened Species
Fish and Wildlife Service

Fisheries
National Oceanic and Atmospheric Administration

Marine Safety
Coast Guard

Marketing Agreements
Agricultural Marketing Service

Marketing Quotas
Agricultural Stabilization and Conservation Service

Milk Marketing Orders
Agricultural Marketing Service

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Railroads
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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 week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota and Marketing Regulations for the 1983 Through 1985 Crops of Peanuts (Amendment 1)

AGENCY: Agricultual Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: An interim rule which was published at 49 FR 44889 with respect to the 1984 and 1985 peanut crops is adopted as a final rule without change. The interim rule revised the definition of "Peanuts" in 7 CFR 729.213(w) of the poundage quota and marketing regulations for peanuts to establish a uniform deduction for excess moisture for all marketing areas. As a result of that revision, the amount of moisture in excess of 7 percent is deducted from the gross scale weight of all peanuts when determining the quantity of peanuts which are marketed.

EFFECTIVE DATE: August 5, 1985.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Program Specialist, (ASCS), (202) 382-0154.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified "not major". It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State and local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this rule applies are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. In addition, this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, or land use and appearance. Accordingly, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

An interim rule was publish in the **Federal Register** on November 13, 1984 (49 FR 44889), which amended the peanut poundage quota and marketing regulations found at 7 CFR Part 729 with respect to the definition of "peanuts" for the 1984 and 1985 peanut crops. The interim rule revised the definition of "peanuts" which is set forth in § 729.213(w) to provide for a uniform moisture level of 7 percent for peanuts marketed in all locations. As a result of this revision, the amount of moisture which is in excess of 7 percent is deducted from the gross scale weight of farmers stock peanuts when determining the quantity of peanuts which are marketed.

Comments were requested on the provisions of the interim rule for a period which ended on January 14, 1985. There was one comment received from a State growers' organization which supported the interim rule and recommended its adoption as a final rule. After reviewing the comment received, it has been determined that the provisions of the interim rule shall be adopted as a final rule without modification.

List of Subjects, in 7 CFR Part 729

Poundage quotas, penalties, reporting and recordkeeping requirements.

Final Rule

PART 729—[AMENDED]

Accordingly, the interim rule published at 49 FR 44889 is hereby adopted as a final rule without change.

Signed at Washington, D.C., on July 29, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-18476 Filed 8-2-85; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 928

Papayas Grown in Hawaii; Change in Interest Charges

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule increases the interest rate charged on delinquent assessments from one percent per month to one and one-half percent per month. This action is designed to bring the interest rate more in line with current comparable rates.

EFFECTIVE DATE: September 4, 1985.

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

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order No. 928 (7 CFR Part 928), regulating the handling of papayas grown in Hawaii. The order is effective under the Agricultural Marketing

Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendations and information submitted by the Papaya Administrative Committee and upon other available information. Notice of this action was contained in a proposed rule published June 3, 1985, in the **Federal Register** (50 FR 23312). No comments were received during the 30 days provided.

Under § 928.41 of the papaya marketing order, if a handler does not pay program assessments within a prescribed time period, the unpaid assessments may be subject to an interest charge at rates prescribed by the committee with the approval of the Secretary. The current interest rate of one percent per month is set forth in § 928.141 of Subpart—Rules and Regulations (§§ 928.141—928.160), and that rate has been in effect since February 13, 1984. This action would increase the rate to one and one-half percent per month to reflect a rate more in line with current comparable interest rates.

List of Subjects in 7 CFR Part 928

Marketing Agreement and Orders, Hawaii, Papayas.

PART 928—[AMENDED]

1. The authority citation for 7 CFR Part 928 continues to read as follows:

Authority: Secs. 1-9, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 928.141 is revised to read as follows:

§ 928.141 Interest charges.

(a) Assessments levied pursuant to § 928.41 not paid within five days after the 25th of each month on papayas handled during the preceding month shall be subject to an interest charge of one and one-half percent per month.

(b) Notification that assessments are due not later than five days after the 25th of each month shall constitute a demand on a handler for the payment of the handler's pro rata share of expenses within the meaning of § 928.41(a).

Dated: July 30, 1985.

Thomas R. Clark,

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

[FR Doc. 85-18530 Filed 8-2-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-28-AD; Amendment 39-5115]

Airworthiness Directives; Cessna Models P210N, P210R and T210R Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), AD 85-11-07, applicable to certain Cessna Models P210N, P210R, and T210R airplanes, which codifies the corresponding emergency AD letter dated June 6, 1985, into the **Federal Register**, and incorporates a complete applicability range of serial numbers. This AD requires inspection and/or replacement of the turbocharger oil reservoir. Cracks have occurred in the oil outlet fitting of the turbocharger oil reservoir that have resulted in rapid loss of engine lubricating oil. Separation of the oil outlet fitting due to cracking has been responsible for one known accident. This action will prevent rapid loss of engine lubricating oil caused by separation of the oil outlet fitting.

DATES:

Effective date: August 9, 1985, to all persons except those to whom it has already been made effective by priority letter from the FAA dated June 6, 1985.

Compliance: As prescribed in the body of the AD.

ADDRESSES: Cessna Single Engine Service Bulletin SEB85-11, dated June 7, 1985, applicable to this AD may be obtained from Cessna Aircraft Company Customer Services, P.O. Box 1521, Wichita, Kansas 67201. A copy of the information is also contained in the, Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul O. Pendleton, Wichita Aircraft Certification Office, Federal Aviation Administration, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4427.

SUPPLEMENTARY INFORMATION: This AD, applicable to certain Cessna Models P210N, P210R and T210R airplanes, is necessary because the turbocharger oil reservior outlet fitting on the engines of these airplanes may crack and result in rapid loss of engine lubricating oil. It requires visual initial and repetitive inspections of all affected airplanes to determine if there is evidence of a crack in the airframe mounted, turbocharger oil reservoir outlet fitting or modification thereof. If cracks are found during any inspection required by the AD, the reservoir must be replaced prior to further flight. Cessna has developed Single Engine Service Bulletin SEB85-11 dated June 7, 1985, which covers the subject of this AD. This Service Bulletin defines the complete applicable serial number range for the required actions and this information has been incorporated into the AD.

The FAA determined that this is an unsafe condition that may exist in other airplanes of the same type design, thereby necessitating the AD. It was also determined that an emergency condition existed, that immediate corresponding action was required and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by this AD by priority mail letter dated June 6, 1985. The AD became effective immediately as to these individuals upon receipt of that letter and is identified as AD 85-11-07. Since the unsafe condition described therein may still exist on other Cessna Models P210N, P210R, and T210R airplanes, the AD is being published in the **Federal Register** as an amendment of Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons who did not receive the letter notification. Because a situation still exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that this regulation is an emergency regulation that is not major under section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required) A copy of it, when filed may be obtained by contacting the Rules

Docket at the location under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

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

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

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

2. By adding the following new AD:

Cessna: Applies to Models P210N, P210R (Serial numbers P21000001 through and including P21000855), and T210R (Serial numbers 21064898 through and including 21064929) airplanes, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent possible separation of the turbocharger oil reservoir outlet fitting and subsequent rapid loss of engine lubricatiing oil, accomplish the following:

(a) Prior to further flight:

(1) Remove the right side engine cowling to the extent necessary to examine the turbocharger oil reservoir.

(2) Visually inspect using a strong light the top oil outlet fitting for cracks in the vicinity of the weld securing the fitting to the upper surface of the turbocharger oil reservoir.

Note: Cracking of the turbocharger oil reservoir outlet fitting may not be evidenced by an oil leak in the vicinity of the oil reservoir installation. Therefore, inspection of the reservoir will depend upon careful cleaning in addition to the use of a strong light.

(3) If no cracks are detected in the outlet fitting of the turbocharger oil reservoir, reinspect this area at each additional 25 hours time-in-service thereafter, or in the alternative, replace the turbocharger oil reservoir as follows:

(A) For Model P210N (serial numbers P21000001 through P21000834) airplanes remove the existing reservoir and install a Cessna Part Number 2150106-32 reservoir in accordance with the installation procedures contained in Paragraphs (c)(1) through (c)(6) of this AD.

(B) For Model P210R (serial numbers P21000835 through and including P21000855), and T210R (serial numbers 21064898 through and including 21064929) airplanes remove the existing reservoir and install a Cessna Part Number 2150106-33 reservoir in accordance with the installation procedures contained in Paragraphs (c)(1) through (c)(6) of this AD.

(b) The repetitive inspections required by Paragraph (a)(3) of this AD may be discontinued when the modification in Paragraph (a)(3)(A) or Paragraph (a)(3)(B) of this AD is accomplished.

(c) If any cracks are detected in the outlet fitting in accomplishing Paragraph (a)(2) of this AD, prior to further flight, remove the existing turbocharger oil reservoir and install a Cessna Part Number 2150106-32 reservoir (for Model P210N serial numbers P21000001 through P21000834) or Part Number 2150106-33 reservoir (for Model P210R serial numbers P21000835 through and including P21000855) and Model T210R, (serial numbers 21064898 through and including 21064929) airplanes available from Cessna Aircraft Company using the following procedure:

(1) Install the check valve with the arrow pointing away from the oil reservoir outlet fitting.

(2) Use a wrench on the reservoir fitting to isolate the torque when tightening the check valve.

(3) Attach the breather vent line.

(4) Mount the rubber flexible hanger to the firewall and reservoir.

(5) Initially secure the oil inlet and outlet lines by hand. Then use a wrench on the oil reservoir inlet fitting and the check valve fitting to isolate the effects of tightening the oil scavenge hoses. Tighten the oil scavenge hoses to the turbocharger oil reservoir.

(6) Run the engine to check for oil leaks and eliminate any leaks prior to returning the airplane to service.

(d) An equivalent method of compliance may be used if approved by the Manager, Wichita Aircraft Certification Office, Federal Aviation Administration, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

Cessna Single Engine Service Bulletin SE85-11, dated June 7, 1985, covers the subject matter of this AD.

This amendment becomes effective on August 9, 1985, to all persons except those to whom it has already been made effective by priority letter from the FAA dated June 6, 1985, and is identified as AD 85-11-07.

Issued in Kansas City, Missouri, on July 25, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85-18457 Filed 8-2-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 91

[Docket No. 24339; Amdt. No. 91-189]

Two-Way Radio Communications Failure Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends two-way radio communications failure requirements for operations conducted under instrument flight rules (IFR) to clarify when a pilot must leave a clearance limit and begin descent and approach. The amendment incorporates improved air traffic control (ATC) procedures now in use and provides pilots with more specific information on the actions to take in a communications failure situation.

EFFECTIVE DATE: September 4, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Paul C. Smith, Airspace and Air Traffic Rules Branch, ATO-230, Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On November 28, 1984, the FAA proposed Notice No. 84-20 (49 FR 46749) to amend § 91.127 of Part 91 of the Federal Aviation Regulations (FAR) (14 CFR Part 91) to clarify when a pilot must leave a clearance limit and begin descent and approach. The previous rule, § 91.127, provided that a pilot may expect to receive either an "expect further clearance time (EFC)" or an "expect approach clearance time (EAC)" when ATC issues holding instructions. In the event of two-way radio communications failure, a pilot predicates certain actions on an EAC or EFC if one or the other is received from ATC. However, effective January 21, 1982, ATC discontinued the use of EAC's and adopted a procedure that provides pilots with a more accurate and real-time delay information, and thus, a basis for simpler and more precise actions when they experience two-way communications failure. This new ATC procedure retains the traditional use of EFC's while providing pilots with the additional information on delays that may be expected (e.g., "Expect further clerance one two one five anticipate additional two zero minute delay at (fix)"). This amendment brings the rule into line with ATC procedures which are based on the exclusive use of EFC's. Thus, this change clarifies and simplifies the rule by indicating the precise pilot responsibilities in terms of when to leave a clearance limit and when to begin the descent and approach. This amendment is the same as that proposed in the notice.

Discussion of Comments

The FAA received four comments in response to the NPRM published on November 28, 1984. All four comments were supportive of the proposal.

The Rule

This amendment to Part 91 of the FAR clarifies and simplifies the rule and provides pilots a more precise course of

action to follow when they experience two-way radio communications failure. The rule eliminates the use of "EAC" and retains the use of "EFC" which brings the rule into line with current ATC procedures.

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

List of Subjects in 14 CFR Part 91

Aviation safety, Air traffic control.

The Amendment

Accordingly, pursuant to the authority delegated to me, § 91.127 of Part 91 of the Federal Aviation Regulations (14 CFR Part 91) is amended as follows:

1. The authority citation for Part 91 is revised to reas as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471 through 1472, 1502, 1510, 1522, and 2121–2125; Articles 12, 29, 31, and 32(a) of the Convention of International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 21, 1983); 14 CFR 11.45; and 49 CFR 1.47.

2. By removing paragraphs § 91.127 (c)(4) and (c)(5) and revising paragraph § 91.127(c)(3) to read as follows:

§ 91.127 IFR Operations; two-way radio communications failure.

* * * * *

(c) * * *

(3) *Leave clearance limit.* (i) When the clearance limit is a fix from which an approach begins, commence descent or descent and approach as close as possible to the expect further clearance time if one has been received, or if one has not been received, as close as possible to the estimated time of arrival as calculated from the filed or amended (with ATC) estimated time en route.

(ii) If the clearance limit is not a fix from which an approach begins, leave the clearance limit at the expect further clearance time if one has been received, or if none has been received, upon arrival over the clearance limit, and proceed to a fix from which an approach begins and commence descent or descent and approach as close as possible to the estimated time of arrival as calculated from the filed or amended (with ATC) estimated time en route.

Issued in Washington, D.C., on July 26, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85-18460 Filed 8-2-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301, 1305 and 1307

Registration of Manufacturers, Distributors and Dispensers of Controlled Substances; Registration Regarding Ocean Vessels

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This action was necessitated by the closing of the U.S. Public Health Service (USPHS) hospital and clinic system and the discontinuance of form HSA-590, previously issued to certain maritime interests by those hospitals and clinics. This action deletes all references to HS-590, Authorization to Purchase Controlled Substances for Vessels, and establishes a new procedure whereby the master or first officer of certain vessels may purchase controlled substances for medical use aboard such vessels. It also provides for flexibility in determining the location at which a medical officer employed by the owner or operator of certain vessels, aircraft or other entities may obtain a registration from this agency.

EFFECTIVE DATE: September 4, 1985.

FOR FURTHER INFORMATION CONTACT: G.T. Gitchel, Chief, Diversion Operations Section, 1405, I Street, Northwest, Washington, D.C., 20537, telephone number (202) 633-1216.

SUPPLEMENTARY INFORMATION:

List of Subjects

21 CFR Part 1301

Administrative practice and procedure, Drug traffic control, Security measures.

21 CFR Part 1305

Drug traffic control, Reporting and recordkeeping requirements.

21 CFR Part 1307

Drug traffic control.

The USPHS hospital and clinic system was closed effective October 1, 1981. DEA was notified by the PHS that it had no plans to continue issuing form HSA-590 and that no other agency would issue these forms. Accordingly, the DEA initiated certain interim procedures to provide those vessels which had previously utilized form HSA-590 with a method of obtaining controlled substances. This was necessary because after the discontinuance of the form HSA-590, the only method remaining in the regulations (21 CFR 1301.28) for vessels, aircraft or other entities to purchase controlled substances was that they be acquired and dispensed under the general supervision of a medical officer who was licensed in a state as a physician, employed by the owner or operator of the vessel, aircraft or other entity, and registered under the Controlled Substances Act at the location of the principal office of the owner or operator of the vessel, aircraft or other entity.

While the above method is satisfactory in most instances, it does not provide a procedure for the purchase of controlled substances for vessels when no medical officer is employed by the owner or operator of a vessel, or in the event such medical officer is not accessible and the acquisition of controlled substances is required. With the discontinuance of form HSA-590, it is necessary to amend 21 CFR 1301.28 to delete all reference to that form and to provide a new procedure whereby vessels may acquire controlled substances under the above described circumstances.

Ocean going vessels purchase only limited quantities of controlled substances and this amendment affects only those vessels whose owners do not presently employ a registered medical officer to purchase controlled substances. This action is intended to clarify existing procedures and to assist the affected maritime interests, and their suppliers, by providing an alternative method of obtaining necessary controlled substances. Moreover, it will also assist those vessels whose owners wish to employ a registered medical officer by authorizing that a medical officer may be registered at a location other than the principal office of the owner or operator.

Accordingly, the Deputy Assistant Administrator of the DEA, Office of Diversion Control, hereby certifies that this amendment will have no significant negative impact upon small businesses

or other entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 501 et seq. A notice of proposed rulemaking for this action was published on pages 23451–23453 of the Federal Register of June 4, 1985. This notice invited comments for 30 days ending July 5, 1985. No comments were received.

Pursuant to Executive Order 12291, sections 3(c)(3) and 3(e)(2)(c) this notice of proposed rulemaking was reviewed by the Office of Management and Budget.

Therefore, pursuant to the authority vested in the Attorney General by the Controlled Substances Act, 21 U.S.C. 801, et seq., and redelegated to the Deputy Assistant Administrator of the Drug Enforcement Administration, Office of Diversion Control, Title 21 of the Code of Federal Regulations, Paris 1301, 1305 and 1307, is hereby amended as follows:

PART 1301—[AMENDED]

1. The authority citation for Part 1301 is revised to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. Section 1301.28 is amended by:

A. Revising the words "or the master of the vessel" to read "or the master or first officer of the vessel," in paragraph (a) introductory text.

B. Revising paragraph (b), (c), and (d) to read as set forth below.

C. Adding paragraph (f).

§ 1301.28 Registration regarding ocean vessels.

* * * * *

(b) A medical officer shall be:

(1) licensed in a state as a physician;

(2) Employed by the owner or operator of the vessel, aircraft or other entity; and

(3) Registered under the Act at either of the following locations:

(i) The principal office of the owner or operator of the vessel, aircraft or other entity or

(ii) At any other location provided that the name, address, registration number and expiration date as they appear on his Certificate of Registration (DEA Form 223) for this location are maintained for inspection at said principal office in a readily retrievable manner.

(c) A registered medical officer may serve as medical officer for more than one vessel, aircraft, or other entity under a single registration, unless he serves as medical officer for more than one owner or operator, in which case he shall either maintain a separate registration at the location of the principal office of each such owner or operator or utilize one or more registrations pursuant to paragraph (b)(3)(ii) of this section.

(d) If no medical officer is employed by the owner or operator of a vessel, or in the event such medical officer is not accessible and the acquisition of controlled substances is required, the master or first officer of the vessel, who shall not be registered under the Act, may purchase controlled substances from a registered manufacturer of distributor, or from an authorized pharmacy as described in paragraph (f) of this section, by following the procedure outlined below:

(1) The master or first officer of the vessel must personally appear at the vendor's place of business, present proper identification (e.g., Seaman's photographic identification card) and a written requisition for the controlled substances.

(2) The written requisition must be on the vessel's official stationery or purchase order form and must include the name and address of the vendor, the name of the controlled substance, description of the controlled substance (dosage form, strength and number or volume per container) number of containers ordered, the name of the vessel, the vessel's official number and country of registry, the owner or operator of the vessel, the port at which the vessel is located, signature of the vessel's officer who is ordering the controlled substances and the date of the requisition.

(3) The vendor may, after verifying the identification of the vessel's officer requisitioning the controlled substances, deliver the control substances to that officer. The transaction shall be documented, in triplicate, on a record of sale in a format similar to that outlined in paragraph (d)(4) of this section. The vessel's requisition shall be attached to copy 1 of the record of sale and filed with the controlled substances records of the vendor; copy 2 of the record of sale shall be furnished to the officer of the vessel and retained aboard the vessel, copy 3 of the record of sale shall be forwarded to the nearest DEA Division Office within 15 days after the end of the month in which the sale is made.

(4) The vendor's record of sale should be similar to, and must include all the information contained in, the below listed format.

Sale of Controlled Substances to Vessels

(Name of registrant) ——————
(Address of registrant) ——————
(DEA registration number) ——————

Line No.	Number of packages ordered	Size of packages	Name of product	Packages distributed	Date distributed
1					
2					
3					

Line numbers may be continued according to needs of the vendor.

Number of lines completed ——————
Name of vessel ——————
Vessel's official number ——————
Vessel's country of registry ——————
Owner or operator of the vessel ——————
Name and title of vessel's officer who presented the requisition ——————
Signature of vessel's officer who presented the requisition ——————

* * * * *

(f) Any registered pharmacy which wishes to distribute controlled substances pursuant to this section shall be authorized to do so, provided that:

(1) The registered pharmacy notifies the nearest Division Office of the Administration of its intention to so distribute controlled substances prior to the initiation of such activity. This notification shall be by registered mail and shall contain the name, address, and registration number of the pharmacy as well as the date upon which such activity will commence; and

(2) Such activity is authorized by state law; and

(3) The total number of dosage units of all controlled substances distributed by the pharmacy during any calendar year in which the pharmacy is registered to dispense does not exceed the limitations imposed upon such distribution by § 1307.11(a)(4) and (b) of this chapter.

PART 1305—[AMENDED]

3. The authority citation for Part 1305 is revised to read as follows:

Authority: 21 U.S.C. 821, 828, 871(b).

4. Section 1305.03 is amended by revising paragraph (e) to read as follows:

§ 1305.03 Distributions requiring order forms.

* * * * *

(e) The purchase of such sustances by the master or first officer of a vessel pursuant to § 1301.28 of this chapter: Provided, that copies of the record of sale are generated, distributed and preserved by the vendor according to that section.

* * * * *

PART 1307—[AMENDED]

5. The authority citation for Part 1307 is revised to read as follows:

Authority: 21 U.S.C. 821, 822(d), 871(b).

6. In § 1307.11, paragraphs (a)(4) and (b) are revised to read as follows:

§ 1307.11 Distribution by dispenser to another practitioner.

(a) * * *

(4) The total number of dosage units of all controlled substances distributed by the practitioner pursuant to this section and § 1301.28 of this chapter during each calendar year in which the practitioner is registered to dispense does not exceed 5 percent of the total number of dosage units of all controlled substances distributed and dispensed by the practitioner during the same calendar year.

(b) If, during any calendar year in which the practitioner is registered to dispense, the practitioner has reason to believe that the total number of dosage units of all controlled substances which will be distributed by him pursuant to this section and § 1301.28 of this chapter will exceed 5 percent of the total number of dosage units of all controlled substances distributed and dispensed by him during that calendar year, the practitioner shall obtain a registration to distribute controlled substances.

Dated: July 18, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 85-18496 Filed 8-2-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 85-29]

Special Local Regulations; Busch World Championship Grand Prix Races

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Miles 14.8 to 15.4, Meramec River. "Busch World Championship Grand Prix Races", an approved marine event, will be held on August 10 and 11, 1985, at George G. Winter Park and Lake, Fenton, Missouri. These special local regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective from 8:00 a.m. on August 10, and terminate at 6:00 p.m. on August 11, 1985.

FOR FURTHER INFORMATION CONTACT: LCDR. B. J. Willis, Chief, Boating Technical Branch Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103, (314) 425-5971.

SUPPLEMENTARY INFORMATION: These special local regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR Part 100.35, for the purpose of promoting the safety of life and property on the Meramec River between miles 14.8 and 15.4 during "Busch World Championship Grand Prix Races", August 10 and 11, 1985. This event will consist of high speed boat races which could pose hazards to navigation in the area. Therefore, these special local regulations are deemed necessary for the promotion of safety of life and property in the area during this event. A notice of proposed rule making has not been published for these regulations and they are being made effective prior to the date of publication. Following normal rule making procedures would have been impracticable. The necessity of special regulations was not evident until July 22, 1985,and there was insufficient time in which to publish proposed rules in advance of the event, or to provide for a delayed effective date. These regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. This conclusion follows from the fact that the duration of the regulated area is short. In addition, these regulations are considered to be nonsignificant in accordance with guidelines set forth in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), it is also certified that these rules will not have a significant economic impact on a substantial number of small entities. This rule is necessary to ensure the protection of life and property in the area during the event.

Drafting Information

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

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary section 100.35-0229 to read as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233; 49 U.S.C. 108; 33 CFR 100.35; 49 CFR 1.46(b).

2. Section 100.35-0229 is revised to read as follows:

§ 100.35-0229 Meramec River, miles 14.8 through 15.4.

(a) *Regulated Area.* The area between Mile 14.8 and 15.4 Meramec River is designated the regatta area, and may be closed to commercial and recreational navigation or mooring between the hours of 8:00 a.m. August 10 and 6:00 p.m. August 11, 1985. All times listed are local time. These times represent a guideline for possible intermittent river closures not to exceed FOUR (4) hours in duration. Mariners will be afforded enough time between such closure periods to transit the area in a timely manner.

(b) *Special Local Regulations.* The Coast Guard will maintain a patrol consisting of regular and auxiliary Coast Guard vessels in the regatta area. This patrol will be under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8

MHZ) by the call sign "Coast Guard Patrol Commander". Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

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

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

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

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

(g) This § 100.35-0229 will be effective from 8:00 a.m. August 10, and terminate at 6:00 p.m. on August 11, 1985 (local time).

Dated: July 24, 1985.

R.J. Collins,

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

[FR Doc. 85-18495 Filed 8-2-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CCGD13 85-02]

Drawbridge Operation Regulations; Columbia River, Automated Railroad Bridge Between Celilo, OR, and Wishram, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Burlington Northern Railroad Company, the Coast Guard is adding regulations governing the Burlington Northern railroad drawbridge across the Columbia River, mile 201.2, between Celilo, Oregon, and Wishram, Washington, to accommodate automated operation of the drawspan. This change is being made because the Burlington Northern Railroad Company can realize substantial savings in costs by operating the bridge automatically. This action will relieve the bridge owner of the burden of having a person constantly available to open or close the draw and will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on September 4, 1985.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: On March 7, 1985, the Coast Guard published proposed rules (50 FR 9289) concerning this amendment.

The Commander, Thirteenth Coast Guard District, also published the proposal as a Public Notice dated March 19, 1985. In each notice interested persons were given until April 22, 1985 to submit comments.

Drafting Information

The drafters of these regulations are: John E. Mikesell, project officer, and Lieutenant Commander Judith M. Hammond, project attorney.

Discussion of Comments

Four responses were received to the **Federal Register** and Coast Guard Public Notice. One respondent, a Federal agency, offered no objection to the proposal. Two respondents, did object to the proposal. A private party commented that automation would not work with the existing electrical circuitry; this objection was determined to be meritless. A local port authority objected because of the concerns over reliability of an automated drawspan and the additional burden placed on waterway users. These objections were likewise deemed unfounded, based on the experience of a similar automated drawspan between Pasco and Burbank, Washington. The fourth respondent, a towboat operator, felt that Burlington Northern should give prior announcement of bridge closures by marine radio. This was considered and rejected because adequate advance information on closures can be obtained by vessel operators, without relying on routine broadcasts by the bridge operator, from Burlington Northern via radiotelephone or telephone. Minor editorial changes were made in the final rule by the drafters to improve the overall clarity of the rule.

Economic Assessment and Certification

These regulations are considered to be nonmajor under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Other than the Burlington Northern Railroad Company and navigation interests, there are no known businesses, including small entities, that would be affected by the proposed change. There are only minimal impacts on navigation and Burlington Northern would benefit from the change because it would be relieved of the burden of providing a salaried, full-time operator for bridge openings and closures. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority. 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05-1(g)(3).

2. Section 117.869(c) is added to read as follows:

§ 117.869 Columbia River.

* * * * *

(c) The draw of the Burlington Northern railroad bridge, mile 201.2, between Celilo, Oregon, and Wishram, Washington, is automated and is normally maintained in the fully open-to-navigation position.

(1) *Lights.* All lights required for automated operation shall be visible to marine traffic for a distance of at least 2 miles and shall be displayed at all times, day and night.

(i) When the draw is fully open, a steady green light shall be displayed at the center of the drawspan on both upstream and downstream sides.

(ii) When the draw is not fully open, a steady red light shall be displayed at the center of the drawspan on both upstream and downstream sides.

(iii) When the draw is about to close, flashing yellow lights in the form of a down-pointing arrow shall be displayed at the center of the drawspan on both upstream and downstream sides.

(2) *Operation.* When a train approaches the bridge, the yellow lights shall start flashing. After an 8-minute delay, the green lights shall change to red, the drawspan shall lower and lock, and the yellow lights shall be extinguished. Red lights shall continue to be displayed until the train has crossed and the drawspan is again in the fully open position. At that time, the red lights shall change to green.

(3) Vessels equipped with radiotelephones may contact Burlington Northern to obtain information on the status of the bridge. Bridge status information also may be obtained by calling the commercial telephone number posted at the drawspan of the bridge.

Dated: July 24, 1985.

H.W. Parker,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 85-18494 Filed 8-2-85; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD8-82-10]

Safety Zone; Calcasieu Channel and Industrial Canal, Calcasieu River, Lake Charles, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final regulation on a safety zone for LNG ships transiting the Calcasieu River and Industrial Canal, Lake Charles, LA, that appeared in the Federal Register of Thursday, September 23, 1982 (47 FR 41957).

EFFECTIVE DATE: August 5, 1985.

FOR FURTHER INFORMATION CONTACT: LTJG K. D. Christopher, project officer, Commander, Eighth Coast Guard District (mps), 500 Camp Street, New Orleans, LA 70130, Tel: (504) 589-6901.

PART 165—[AMENDED]

33 CFR 165.805 is corrected as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. In FR Doc. 82-26238, published at 47 FR 41957 in the issue for September 23, 1982, § 165.805(a) is corrected to read as follows:

§ 165.805 Calcasieu Channel and Industrial Canal, Calcasieu River, Lake Charles, LA.

(a) The waters within the following boundaries are a safety zone: The area extending 150 feet out into the Industrial Canal, Calcasieu River, Lake Charles, LA, along the shoreline of the Trunkline LNG Company's waterfront property, from position 30°06'31.9"N., 93°17'37"W. to the end of the turning basin and to include an area 50 feet out from LNG ships while moored to the Trunkline LNG facility.

* * * * *

Dated: July 22, 1985.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 85-18499 Filed 8-2-85; 8:45 am]

BILLING CODE 4901-14-M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

34 CFR Part 201

Financial Assistance to State Educational Agencies To Meet Special Educational Needs of Migratory Children

Correction

In FR Doc. 85-10377, beginning on page 18406, in the issue of Tuesday, April 30, 1985, make the following correction:

On page 18413, in § 201.30(b), second column, fifth line, "of" should read "or".

BILLING CODE 1505-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

Abandonment Regulations; Technical Amendments

AGENCY: Interstate Commerce Commission.

ACTION: Technical amendments to final rules.

SUMMARY: This notice makes technical amendments to § 1152.32, which was amended at 49 FR 54239, December 1, 1983 in final rules that were adopted to govern applications to abandon or discontinue service over rail lines and offers of financial assistance, to reflect prior court decisions and case law. Cross references that appear in § 1152.32(n)(3) are being amended to reflect changes made in those final rules.

EFFECTIVE DATE: August 5, 1985.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION:

List of Subjects in 49 CFR Part 1152

Railroads.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1152—[AMENDED]

1. The authority citation for 49 CFR Part 1152 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10903-10905; 5 U.S.C. 559; 45 U.S.C. 904 and 915, unless otherwise noted.

§ 1152.32 [Amended]

2. Paragraphs (n)(3)(i), (iii), (iv), and (v) of § 1152.32 are amended by revising the cross references that read "(n)(2)(i)," "(n)(2)(ii)," "(n)(2)(iv)," "(n)(2)(v)," and "(n)(2)(vi)," to read "(n)(2)."

James H. Bayne,

Secretary.

[FR Doc. 85-18483 Filed 8-2-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status and Critical Habitat Designation for the Owens Tui Chub

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status and designates critical habitat for the Owens tui chub (*Gila bicolor snyderi*). This action is being taken because the Owens tui chub has declined in recent years and has been extirpated from much of its range. It historically inhabited streams, rivers, springs, and irrigation ditches in the Owens Basin, Mono and Inyo Counties, California. Viable populations are now known from only two locations in Mono County, the headwater springs of Hot Creek and approximately 8 miles of the Owens River below Long Valley Dam. Habitat destruction, predation by exotic fish species, and hybridization with a closely related chub species further threaten the Owens tui chub.

Endangered species determination and designation of critical habitat affords the Owens tui chub the full protection provided by the Endangered Species Act of 1973, as amended.

DATE: The effective date of this rule is September 4, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The Owens tui chub (*Gila bicolor snyderi*) is a moderate to large subspecies of *Gila bicolor*, with males reaching up to four inches in length and females slightly over five inches. The fish is an olive color above and whitish below, with lateral blue and gold reflections (Miller, 1973). The side of the head, particularly along the margin of the preopercle, displays a noticable gold color. Based on past collections, the fish occupied a wide variety of habitats ranging from small springs that harbored only a few hundred individuals to the Owens River that provided habitat for tens or hundreds of thousands.

The Owens tui chub has been known to the scientific community since the late 1800's. Fish collections made around the turn of the century indicated the presence of tui chubs in the Owens River (Snyder, 1917) and Owens Lake (Gilbert, 1893). The collections of Carl Hubbs made during the 1930's (reported by Miller, 1973), provided the first major survey of aquatic habitats in the Owens Basin. Owens tui chubs were collected by Hubbs and co-workers in the following areas: irrigation canals south of Bishop, Owens River, headsprings of Fish Slough, drainage ditches south of Big Pine, North Fork of Bishop Creek, Bishop Creek, Hot Creek, headwater springs of Hot Creek, Whiskey Creek, Owens Lake, ponds at Lone Pine, Morton's Slough, and various ditches emanating from the Owens River. By the time the Owens tui chub was described in 1973 as a new subspecies endemic to the Owens Basin of Inyo and Mono Counties, California (Miller, 1973), the status of the fish was deteriorating rapidly.

Habitat alteration, predation and competition by exotic fishes, and hybridization with introduced Lahontan tui chubs (*Gila bicolor obesa*) have eliminated genetically pure Owens tui chubs from all but two localities. Owens tui chubs are now known only from approximately 8 miles of the Owens River below Long Valley Dam and from two adjacent headwater spring areas of Hot Creek. The population in the Owens River is greatly reduced in numbers, largely because of predation by brown trout (*Salmo trutta*). The population in the headwater springs of Hot Creek is small and is also threatened by the presence of exotic fishes. These habitats represent less than one percent of the original range of the Owens tui chub.

Both sites are within the Inyo National Forest boundary, but owned by the City of Los Angeles. A fish hatchery located at Hot Creek is managed by the State on a portion of the city owned land. The Owens tui chub has been reintroduced into Fish Slough, Mono County, but the success of this recovery effort is doubtful as no specimens have subsequently been secured from the slough. The California Department of Fish and Game (CDFG), Bureau of Land Management (BLM), and U.S. Fish and Wildlife Service (Service) plan to continue attempts at reintroducing the Owens tui chub at this historical site. Tui chubs of uncertain taxonomic identity have been recorded from Silver Lake (not historical habitat) in the Inyo National Forest. Specimens are being analyzed by R. R. Miller at the Museum of Zoology, University of Michigan to determine if they are *Gila bicolor snyderi*.

The status of the Owens tui chub, the most precarious of any fish in the Death Valley region (Pister, 1980), prompted the State of California to classify this fish as "endangered" (CDFG, 1980). The Owens tui chub was included in the Service's December 30, 1982, Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (47 FR 58454). In this review, the Owens tui chub was placed in category 1, indicating that the Service had substantial information on hand to support a proposed rule to list the fish as endangered or threatened. On April 12, 1983, the Service was petitioned by the Desert Fishes Council to list the Owens tui chub. After evaluation of this petition, the Service found that the petitioned action was warranted. A notice of this finding was published in the **Federal Register** on June 14, 1983 (48 FR 27273). In response to information in the Service's files and the petition, a rule proposing endangered status and critical habitat for the Owens tui chub was published on March 23, 1984 (49 FR 10959).

Summary of Comments and Recommendations

In the March 23, 1984, proposed rule (49 FR 10959) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, inviting general public comment, were published in the *Los Angeles Times, Desert Dispatch* and *Inyo Register* on April 29, April 20, and April 20, 1984, respectively. Eleven comments were received and are discussed below.

Of the 11 comments received, 3 were non-substantive and 8 commented on the proposed rule or gave additional information. Statements of support were received from the Mono County, California, International Union for Conservation of Nature and Natural Resources, Defenders of Wildlife, California Department of Fish and Game, Desert Fishes Council, and chairman of the Wildlife and Fisheries Biology Department at the University of California, Davis. In addition to indicating support for the proposal, the Department of Fish and Game recommended expansion of the proposed critical habitat for the Hot Creek population to include all the groundwater aquifer that feeds the springs. Concern was expressed that the area might be subject to geothermal energy development in the future and that such development might adversely affect the aquatic habitat required for the fish. The Service believes that protection of the critical habitat as proposed on March 23, 1984, is sufficient for the conservation of the tui chub. Section 7 of the Endangered Species Act of 1973, as amended, requires Federal agencies to consult with the Service on any action that may destroy or adversely modify critical habitat. Therefore, the critical habitat of a species would receive protection from actions that could affect such habitat whether or not those actions occurred within the designated critical habitat.

In addition to the above supporting comments, a comment was received from the Department of Water and Power, City of Los Angeles, supporting the listing but questioning whether the habitat of the fish needed specific protection due to the fact that the two known populations are on lands in public ownership. While the Service agrees that public ownership of

important habitat areas typically results in protection of those areas, formal designation of critical habitat provides a description of those locations where the species is found and thereby may aid in the development of management plans. Furthermore, Section 4(a)(3) of the Endangered Species Act requires the Secretary to determine critical habitat to the maximum extent prudent and determinable concurrently with a determination of endangered or threatened status for a species. Protection afforded by critical habitat designation applies only to Federal agencies actions.

The final substantive comment was received from the Forest Supervisor of the Inyo National Forest. No opinion regarding the proposed rule was expressed, but information was provided about the possible occurrence of the Owens tui chub in Silver Lake. Specimens taken from this area, which is outside the fishes historical range, are being studied.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Owens tui chub (*Gila bicolor snyderi*) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Part 424; see 49 FR 38900, October 1, 1984) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Owens tui chub (*Gila bicolor snyderi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Ichthyological surveys conducted during the 1930's and 1940's found Owens tui chubs common in a wide range of aquatic habitats in the Owens Basin. Since that time, most suitable habitats have been modified, streams have been diverted, and rivers have been impounded. Presently, viable populations are known in only two locations, representing less than one percent of the fish's historical range. Demand for water resources of the Owens Basin is high. Water is extensively used for local agricultural and municipal purposes. The single largest consumer of Owens Basin water is the City of Los Angeles. Through a system of diversion structures and aqueducts, the city conducts water to the Los Angeles Basin. Adverse modifications of aquatic habitats to meet the various demands for water have reduced available suitable habitat for the Owens tui chub.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no evidence to suggest that the Owens tui chub has declined as a result of overutilization.

C. *Disease or predation.* Introduction of exotic fishes, resulting in predation and competition, is the major threat facing the remaining populations of the Owens tui chub. Pister (1981) reported that 18 exotic fishes have been introduced into the Owens River, a river that historically supported four native fishes. Predation by brown trout (*Salmo trutta*) is responsible for reduced numbers of Owens tui chub in the Owens River.

D. *The inadequacy of existing regulatory mechanisms.* The State of California has listed the Owens tui chub as "endangered" and has a provision in its endangered species law to protect this species from taking. However, the State has no authority to protect habitat for the Owens tui chub, nor does it provide for Federal assistance with recovery actions.

E. *Other natural or manmade factors affecting its continued existence.* Lahontan tui chubs (*Gila bicolor obesa*) have been introduced as bait fish into many waters of the Owens Basin. Subsequently, they have hybridized extensively with the native and closely related Owens tui chub. Hybridization was first recognized as a problem in 1973 at Crowley Lake, where fishermen appear to have illegally introduced the Lahontan tui chub while fishing (Miller, 1973). Since that time, hybridization with the Lahontan tui chub has been demonstrated to be a major problem throughout the range of the Owens tui chub. Genetically pure Owens tui chubs are now restricted to two known localities.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Owens tui chub (*Gila bicolor snyderi*) as endangered. Due to the contraction of the species' range to less than one percent of its historical size and the threats present at the two localities where it is now found, endangered status is being determined. The designation of critical habitat is discussed below.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the Owens tui chub to include the following two areas of Mono County, California: (1) Owens River and 50 feet on each side of the river from Long Valley Dam downstream for a distance of 8 stream miles; and (2) A portion of Hot Creek and outflows, and those areas of land within 50 feet of all sides of the springs, their outflows, and the portion of Hot Creek. This area includes about 0.25 miles of stream and springs, and about 5 acres of fronting land. Known constitutent elements include high quality, cool water with adequate cover in the form of rocks, undercut banks, or aquatic vegetation, and a sufficient insect food base.

The areas proposed as critical habitat for the Owens tui chub satisfy all known criteria for the ecological, behavioral, and physiological requirements of the species. This fish successfully reproduces in the headwater springs of Hot Creek, where the population is apparently viable, although reduced in size from predation by exotic fishes. The population in the Owens River has decreased since the introduction of exotic fishes; however it continues to be a small but viable population. Both areas would provide excellent habitat for the Owens tui chub if exotic fishes were eliminated or greatly reduced. Lands adjacent to the streams and springs are included for the protection of the riparian habitat that is important to the maintenance of aquatic ecosystems. The areas designated as critical habitat include the entire range of the subspecies as known at this time.

Section 4(b)(8) requries, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those

activities (public or private) which may adversely modify such habitat or may be affected by such designation. Activities that may adversely modify the critical habitat for the Owens tui chub are identified as follows: (1) Introduction of exotic aquatic organisms; (2) Activities that decrease available water or cause a significant change in the physical or chemical properties (e.g., temperature, pH or dissolved gases) of the water; (3) Removal of natural riparian and/or submergent vegetation, except what might be required to maintain an open-water habitat for the Owens tui chub; (4) Pollution of aquatic habitats or adjacent terrestrial habitats; (5) channelization or diversion of water flows; and (6) Overgrazing of adjacent riparian areas.

The City of Los Angeles owns the entire proposed critical habitat. Activities within the critical habitat include sportfishing along the Owens River and operation of a trout hatchery by the State of California in the Hot Creek area. These activities do not involve Federal funds or permits and are not expected to affect or be affected by the critical habitat designation. The land surrounding the critical habitat is located within the Inyo National Forest. The adjacent land is administered by the Forest Service under the Mammoth-Mono Unit Plan (M-MUP). Forest Service management of the surrounding areas under the M-MUP is apparently compatible with the critical habitat designation. This critical habitat area around Hot Creek is part of a Known Geothermal Resource Area (KGRA). The Bureau of Land Management (BLM) has issued some geothermal leases in the area. These leases have stipulations that provide for protection of resources. No Plans of Operations have been submitted to BLM for exploration or development and no active exploration has occurred. BLM management of geothermal leasing is apparently compatible with the critical habitat designation. There is also a small privately-operated geothermal heating plant located on a privately-owned inholding of the Inyo National Forest in the vicinity of the critical habitat. No Federal funds or permits are involved in the operation of the heating plant, and its operation is not expected to affect or be affected by the critical habitat designation.

No activities are presently known that may affect or be affected by the designation of critical habitat. However, any Federal agency that believes its actions may affect the Owens tui chub, or may adversely modify its critical habitat is required to enter into consultation with the Service.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. To obtain this information, the Service contacted Federal and State agencies and other interested parties that might have activities involving Federal funds or permits within the area affected by the critical habitat designation. The Service has evaluated the critical habitat designation after considering all available information and concludes that no adjustments to the area proposed as critical habitat are warranted.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. There are no known ongoing Federal activities that will be affected by this proposal. If active geothermal development should occur in the future on Forest Service lands in the vicinity of the critical habitat, consultation with the Service will be necessary to ensure the protection of the Owens tui chub and its critical habitat.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The critical habitat designation as defined in the proposed rule did not bring forth economic or other impacts to warrant consideration of revising the critical habitat designation due to such impacts. The critical habitat is located at two sites in Mono County, California. The lands are within the Inyo National Forest boundary on lands owned by the City of

Los Angeles and used as a watershed. The City of Los Angeles has informed the Service that protection of this watershed is of concern and no future developments that would adversely affect the critical habitat are anticipated. The State of California has informed the Service that management of the small fish hatchery on Hot Creek is compatible with the designation of critical habitat. No significant economic or other impacts are expected as a result of the critical habitat designation. This conclusion is based on current BLM and Forest Service management of the KGRA area surrounding the critical habitat, no anticipated impact from the privately-owned geothermal heating plant, no known involvement of Federal funds or permits for the city-owned land included in the critical habitat, and the unquantifiable benefits that may result from the critical habitat designation for the Owens tui chub. No direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this designation. These determinations are based on a Determination of Effects that is available at the Services Regional Division of Endangered Species (See "Addresses" section, above).

Literature Cited

California Department of Fish and Game. 1980. At the crossroads 1980, a report on California's endangered and rare fish and wildlife. 147 pp.

Gilbert, C.H. 1893. Report on the fishes of the Death Valley expedition collected in southern California and Nevada in 1891, with description of new species. No. Amer. Fauna No. 7.

Miller, R.R. 1973. Two new fishes, *Gila bicolor snyderi* and *Catostomus fumeiventris*, from the Owens River Basin, California. Occ. Pap. Mus. Zool. Univ. Michigan 667:1–19.

Pister, E.P. 1980. Death Valley system committee report. Proc. Desert Fishes Council 12:8–13.

Pister, E.P. 1981. The conservation of desert fishes. Pp. 411–445 in. Fishes in North American Deserts. R.J. Naiman and D.L. Soltz (eds.). John Wiley and Sons, New York.

Snyder, J.O. 1917. An account of some fishes from Owens River, California. Proc. U.S. Nat. Mus. 54:201–205.

Author

The primary author of this final rule is Dr. Jack E. Williams, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/484–4935 or FTS 468–4935).

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

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

2. Amend § 17.11(h) by adding the following, in alphabetical order under "FISHES", to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	*	*	*	*	
Chub, Owens tui	*Gila bicolor snyderi*	U.S.A. (CA)	Entire	E	192	17.95(e)	NA
*	*	*	*	*	*	*	

3. Amend Section 17.95(e) by adding critical habitat of the Owens tui chub, as follows: The position of this entry under § 17.19(e) will follow the same sequence as the species occurs in § 17.11.

§ 17.95 Critical habitat—fish and wildlife.

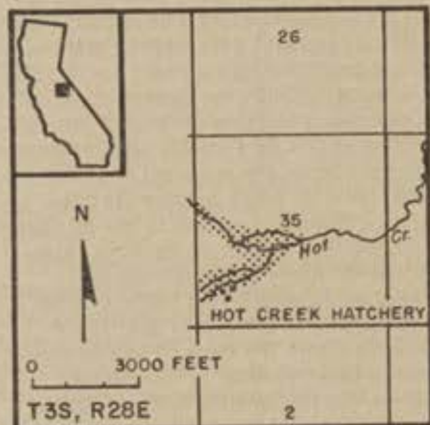
(e) * * *

* * * * *

Owens tui chub (*Gila bicolor snyderi*)

California, Mono County.

1. Hot Creek, adjacent springs and their outflows in the vicinity of Hot Creek Hatchery, and 50 feet of riparian habitat on all sides of the creek and springs in T3S, R28E, SW¼ Section 35.



2. Owens River, and 50 feet on both sides of the river, from Long Valley Dam downstream for 8 stream miles in T4S, R30E, Sections 19, 20, 21, 22, 23, 24, 25, and 36.

Known constituent elements include high quality, cool water with adequate cover in the form of rocks, undercut banks, or aquatic vegetation and a sufficient insect food base.

* * * * *

Dated: July 5, 1985.

Susan E. Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-18469 Filed 8-2-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and of Critical Habitat for the Amber Darter and the Conasauga Logperch

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines the amber darter (*Percina antesella*) and the Conasauga logperch (*Percina jenkinsi*) to be endangered species and designates their critical habitats under the Endangered Species Act of 1973, as amended. These fishes are currently known only from the upper Conasauga River basin in Georgia and Tennessee. The continued existence of these fishes could be jeopardized if water development projects now being considered for the Conasauga River basin are implemented without adequately considering the requirements of these species. Due to the limited distribution of the two fishes, any factor that degrades habitat and water quality in the short river reaches they inhabit, i.e., major land use changes, chemical spills, and significant increases in argricultural and urban runoff, could jeopardize the survival of these species. The trispot darter (*Ehteostoma trisella*), which also occurs in the Consauga River area, was included in the proposal but is not included in this final rule. Additional biological information concerning the occurrence of this species is being collected and evaluated. The final decision on listing the trispot darter with critical habitat will be delayed for further evaluation as provided for in Section 4(b)(6) of the Act.

EFFECTIVE DATE: The effective date of this rule is September 4, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Station, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Richard G. Biggins, Endangered Species Field Station, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

A study of the amber darter (*Percina antesella*), trispot darter (*Etheostoma trisella*), and Conasauga logperch (*Percina jenkinsi*), funded by the Service, was completed in October 1983 (Freeman, 1983). That survey involved extensive sampling and a review of historical fish collection records for the upper Coosa River basin in Alabama, Georgia, and Tennessee. The study concluded that these three fish species (except for a possible small population of the amber darter in the Etowah River in Cherokee County, Georgia) were restricted to the upper Conasauga River basin (a tributary of the Coosa River) in Georgia and Tennessee.

The trispot darter was now from two populations (Freeman, 1983) when the species was proposed for endangered species status in the July 13, 1984, **Federal Register** (49 FR 28572). Since that proposed rule was published, two additional trispot darter populations have been located by the Georgia Department of Natural Resources. One of the newly discovered populations is in Holly Creek, a tributary of the Conasauga River in Murray County, Georgia. The other population is located in the Coosawattee River, a Conasauga River tributary in Gordan County, Georgia. Based on present data, the species qualifies for threatened status. However, biologists familiar with this darter believe that this new information indicates additional populations may be found.

Section 4(b)(6) of the Act provides that the Service must make a determination on whether a species is an endangered species or a threatened species within 1 year of the date it is proposed. However, if the Service finds that there is substantial disagreement regarding the sufficiency or accuracy of available data relevant to the determination, the Act allows a delay in the determination for up to 6 months past the 1-year deadline. The Service believes the new information on the trispot darter's distribution has created substantial disagreement regarding the sufficiency of available data on which to make a determination of the trispot darter's status. The Service therefore has extended the deadline for the determination of the trispot darter's status by 6 months from July 13, 1985, to January 13, 1986. During this time extension, the Service proposes to fund an additional survey to assist in making the final determination on the trispot darter's status.

The amber darter, described by Williams and Etnier (1977), is presently known from approximately 33.5 miles of the Conasauga River (from between the Tennessee Highway 74 crossing and the U.S. 411 bridge in Polk County, Tennessee, downstream to the Tibbs Bridge crossing, Murray County Road 109 (Tibbs Bridge Road), Murray County, Georgia) in Polk and Bradley Counties, Tennessee, and Murray and Whitfield Counties, Georgia (Freeman, 1983). One amber darter was taken in 1980 from a site on the Etowah River in Cherokee County, Georgia (Etnier *et al.*, 1981). Freeman (1983) surveyed that site and other sites on the Etowah River in 1982 and 1983, but he was unable to again collect the species. If a population of the amber darter does exist in the Etowah River, it is believed to be very small. The only other collection record for the amber darter was from Shoal Creek, a tributary to the Etowah River in Cherokee County, Georgia. Shoal Creek was surveyed by Freeman (1983) on several occasions, but no amber darters were found. It is believed this population was destroyed in the 1950's when Allatoona Reservoir inundated the lower portion of Shoal Creek.

The amber darter is a short, slender-bodied fish generally less than 2½ inches in length. The upper body is golden brown with dark saddle-like markings, and its belly is yellow-to-cream color. The throats of breeding males are blue in color. The species was observed by Freeman (1983) to inhabit gentle riffle areas over sand and gravel substrate. He also noted that as the summer season progressed and aquatic vegetation developed in the riffles, the amber darter used this vegetated habitat for feeding (primarily on snails and insects) and for cover. The species has not been observed in slack current areas over silty substrate with detritus or mud bottoms. The habitat preference for gentle riffles may explain why the species has not been found above the U.S. Highway 411 bridge in Polk County, Tennessee, where the Conasauga River's gradient increases. The extent of the species' downstream range is possibly limited by the increase in silt.

The Conasauga logperch (*Percina jenkinsi*), formerly referred to by the Service as the reticulate logperch (*Percina* sp.), has recently been described by Dr. Bruce Thompson (1985). This species is apparently restricted to about 11 miles of the upper Conasauga River in Tennessee and Georgia. Specifically, it has been observed in the Conasauga River from approximately ¼ mile above the junction of Minnewauga Creek, Polk County, Tennessee, downstream through Bradley County, Tennessee, to the Georgia State Highway 2 Bridge, Murray

County, Georgia. Freeman (1983), in his fish survey and review of historical collections, reported that the fish has never been found outside this short river reach.

The Conasauga logperch is a larger darter, sometimes exceeding 6 inches in length, and is characterized by having many "tiger-like" vertical dark stripes over a yellow background (Starnes and Etnier, 1980). The fish spawns in the spring in the fast riffles over gravel substrate. It has been observed to feed on aquatic invertebrates by flipping over stones with its "pig-like" snout.

The Tennessee Wildlife Resource Agency the Tennessee Heritage Program of the Tennessee Department of Conservation list both darters as threatened (Starnes and Etnier, 1980). In a publication entitled *Tennessee Rare Wildlife Volume I: The Vertebrates*, they stated, relative to the amber darter's habitat, that "The combination of gently flowing runs and silt-free substrate is rare in these times of widespread siltation due to poor watershed management or impoundments. The Conasauga River in Tennessee remains clear in all but the heaviest floods, indicating its uniqueness and importance in preserving the amber darter. . . ." J. S. Ramsey in a 1973 unpublished report on extinct and rare freshwater fishes in Georgia, classified the amber darter as a "rare—1 species," which he defined, in part, as a species not known to survive in reservoirs or channelized streams. Ramsey further categorized the darter as "vulnerable," which he defined as ". . . species whose range is limited and a species that could be rendered extinct by a single land use change."

The amber darter and Conasauga logperch apparently require unpolluted, clean water streams. The amber darter utilizes areas with moderate current over gravel and silt-free sand substrate (Williams and Etnier, 1977). The Conasauga logperch occurs in flowing pool areas and riffles over clean substrate of rubble, sand, and gravel (Starnes and Etnier, 1980). Siltation, which often results when lands are cleared for agriculture or other land uses, is a major threat to the quality of stream habitats. Siltation changes the character of streams so that gravel riffle areas become infiltrated with silt.

The upper Conasauga River flows through National Forest lands. This provides some protection for the downstream habitat sections where the fishes are found. However, the fishes are threatened from agricultural and urban runoff from the development sections of the watershed. There is also the potential threat that a toxic chemical spill could eliminate a major portion of any of these fishes' populations. Another threat could come from a water supply project being studied for the Conasauga River near Dalton, Georgia. This project, depending on type and extent, could severely impact the species if the biological requirements of these fishes are not considered in the project's development, construction, and operation.

On December 30, 1982, the Service announced in the **Federal Register** (47 FR 58454) that the amber darter, along with 146 other fish species, was being considered for possible addition to the List of Endangered and Threatened Wildlife. On November 4, 1983, the Service published a notice in the **Federal Register** (48 FR 50909) that a status review was being conducted on the amber darter and Conasauga logperch (referred to therein as the reticulate logperch) to determine if these fish species and any habitat critical to their continued existence should be protected under the Endangered Species Act of 1973, as amended. The November 4, 1983, notice solicited data on the status and location of the species and their habitat, likely impacts which could result if the species and their critical habitat were protected, current and planned activities which may adversely affect the species or their habitat, and possible impacts to Federal activities if critical habitat were designated. The following is a summary of each of the responses to the notice of status review.

The Tennessee Wildlife Resources Agency responded that it concurred with the protection of the species under the Endangered Species Act and was aware of no Federal actions that would jeopardize the continued existence of the species. It also commented that the upper Conasauga River's watershed, primarily within the Cherokee National Forest, is one of the better protected areas in Tennessee.

The Georgia Department of Natural Resources stated it had no evidence to contradict the assertions made in the Service's November 4, 1983, notice of review. It agreed that if the species were as restricted in geographic range and population size as stated in the notice of review and as reported by Freeman (1983), it would not object to the protection of these species under the Endangered Species Act.

The Office of Chief Engineer, Department of the Army, Washington, D.C., informed the Service that two of its projects, the Dalton Lake project being planned for the Conasauga River in Murray and Whitfield Counties, Georgia, and the Jacks River project on the upper Conasauga River in Polk County, Tennessee, could be impacted by listing these species and designating their critical habitats. It stated that the Jacks River project, although authorized for study by Congress in 1945, had never been funded for further planning. It further commented that (1) the Dalton Lake project was authorized for planning; (2) Dalton Lake, as presently being planned, would inundate much of the remaining known range of the fishes; and (3) the remaining habitat in the upper Conasauga may not be sufficient to support viable populations of these fishes. It concluded that the presence of the species in the study area would be considered in its environmental planning.

The Forest Service, U.S. Department of Agriculture, provided information on Forest Service fish collections (no records of these darters) within the Cohutta Wilderness. It was unaware of any direct proposed or existing impacts to the species or their habitat nor did it expect any perturbations from the National Forest administered watershed.

The Soil Conservation Service, U.S. Department of Agriculture, responded: "Designating the mentioned area of the Conasauga River as critical habitat would not impact programs of the Soil Conservation Service."

A professor with the Alabama Cooperative Fishery Research Unit, Auburn University, reported that of the 394 fish collection samples catalogued at Auburn University from the Coosa River basin, only two included the amber darter (both from the upper Conasauga River). The Conasauga logperch was not represented in the collection. He commented that the concentration of the fishes' habitat and their vulnerability to change supported at least threatened status for the species.

A professor of biology at the University of Tennessee strongly supported the protection of these species and their habitat under the Endangered Species Act. He provided information on six other species that have experienced reductions in their range but are still present in the upper Conasauga River. He stressed the importance of the Conasauga River ". . . as a reservoir for aquatic organisms that have disappeared throughout much or all of the remainder of the Mobile basin drainage. . . ."

An adjunct professor at the Tennessee Technical University supported protecting the species and designating their critical habitat. He further stated: "In view of the water development projects proposed for the upper Conasauga, I view it as urgent that these

species and their habitat be afforded protection under the Endangered Species Act."

On July 13, 1984, the Service published, in the **Federal Register** (49 FR 28572), a proposal to list the amber darter, trispot darter, and Conasauga logperch as endangered species and to designate their critical habitats. That proposal provided information on the species' biology, status, and threats, and the potential implications of listing. The proposal also solicited comments on the species and potential impacts of the proposed critical habitat designations.

Summary of Comments and Recommendations

In the July 13, 1984, proposed rule (49 FR 28572) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties were contacted (county governments, the North Georgia Area Planning Commission, the U.S. Army Corps of Engineers, and Georgia and Tennessee natural resource agencies were also contacted in person) and requested to comment. A newspaper notice summarizing the proposed rule was published in the *Cleveland Daily Banner*, Cleveland, Tennessee, on July 25, 1984, and in the *Daily Citizen News*, Dalton, Georgia, on August 3, 1984, and invited general public comment. The Service held an information meeting on the proposed rule in Dalton, Georgia, on August 23, 1984. This meeting was attended by approximately 30 people, including local government leaders, business persons, and newspaper reporters. A public hearing was requested on the proposed rule by the North Georgia Area Planning and Development Commission. In the September 28, 1984, **Federal Register** (49 FR 38320), the Service announced that a public hearing would be held October 16, 1984, and that the public comment period would be extended until October 26, 1984. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other parties were again contacted and requested to comment. A newspaper notice of the public hearing and comment period extension was published in the *Cleveland Daily Banner* on September 26, 1984, and in the *Daily Citizen News* on September 28, 1984. A total of 15 written comments were received. Nine were received prior to the public hearing, two were presented at the hearing, and four were provided after the public hearing. The comments and public hearing are discussed below:

The Corps of Engineers, Department of the Army, Washington, D.C. stated:

> The U.S. Army Corps of Engineers, South Atlantic Division reports the proposed critical habitat designation for the amber darter and the trispot darter includes the reach of the Conasauga River that would be inundated by the Dalton Lake project and proposed critical habitat for the logperch includes part of the lake area. Consequently, designation of the proposed critical habitat could very well preclude construction of the Dalton Lake project.
>
> The Jacks River site, while upstream of the proposed critical habitat, could also be affected by the listing of three species of fishes in its drainage.

The Service agrees that construction of a Conasauga River reservoir could be precluded if such a reservoir would adversely modify habitat essential to the species. The section of the Conasauga River proposed as trispot darter critical habitat could also be impacted by a reservoir project, but the Service is not considering the trispot darter in this final rule. The Service has deferred judgment on this species under provisions in section 4(b)(6) of the Act (see Background section for discussion of the trispot darter). However, with respect to a Conasauga River reservoir, the Service understands that: (1) The main purpose of a reservoir would be to provide a water supply for Dalton, Georgia, and the surrounding area; (2) other alternatives are available to meet this water supply need; (3) the U.S. Army Corps of Engineers (Corps) is presently studying a variety of alternatives to meet water supply requirements; and (4) the Corps has already rejected two plans for a Conasauga River reservoir, including the project referred to in the above comment, because of low benefit/costs ratios.

The Service therefore believes that if alternative methods are fully evaluated, the area's water needs can be met utilizing a project which is compatible with protecting critical habitat for the amber darter and Conasauga logperch. The Service is presently involved in discussions with the Corps concerning alternative projects.

The Service also agrees that a project on the Jacks River (a tributary of the Conasauga River upstream of the critical habitat) could be affected by the protection of essential habitat. However, that project, although authorized for study by Congress in 1945, has never received any funding for planning. Without a project design and economic data, the Service cannot evaluate potential impacts.

The Chief of the U.S. Forest Service, Department of Agriculture, responded:

> I foresee no impacts upon these three species originating from Forest Service activities in upstream areas. Due to the severely restricted distribution of these fishes, however, we concur with the proposal to list them as endangered species.

The Service agrees that if present management practices within the National Forest are maintained, no adverse impacts on the amber darter or Conasauga logperch should occur. The Service also concurs that the amber darter and Conasauga logperch should be listed as endangered. The Service has deferred judgment on the trispot darter's status under provision in section 4(b)(6) of the Act (see Background section).

The U.S. Nuclear Regulatory Commission informed the Service that it had no licensed facility that would be affected by critical habitat designation.

The Federal Energy Regulatory Commission stated:

> At this time there are no hydroelectric projects under license and no applications for license or preliminary permit pending before the FERC that would be located in the known habitat range of the above-identified fishes. Therefore, we conclude that proposing these fishes for listing as endangered species would have no economic or other effect on hydroelectric activities under FERC jurisdiction.

The Federal Highway Administration, U.S. Department of Transportation, responded that Federal-aid funds are used for bridge replacements in the area proposed for critical habitat. It further stated that:

> We see no reason why these projects could not be implemented with proper measures to prevent jeopardizing the continued existence of listed species or adverse modification of critical habitat. Listing of the species and designating critical habitat may result in additional coordination/consultation requirements and some increase in construction costs but should not have a significant effect on the Federal-aid highway program.

The Service agrees with this assessment. Numerous section 7 consultations have been conducted with the Federal Highway Administration and the Service has found that the Administration has been able to implement measures at its construction sites which avoid jeopardizing species and adversely modifying critical habitat.

Dalton Utilities and two individuals supporting the multi-purpose Dalton Lake project on the Conasauga River expressed the belief that the future of the area's economic growth was dependent on this reservior supplying the area's water needs. They also

requested that the Service consider the economic impact that listing could have on the area.

The Service has been in close contact with the Corps, the agency that is exploring methods of meeting the area's water supply needs, and it has informed the Service that the proposed multi-purpose Dalton Lake project is no longer being considered a viable option because of a low benefit/cost ratio. The Corps is now evaluating other alternatives for meeting the area's water requirements.

Three individuals commented in support of the listing and designation of critical habitat. The Service agrees that the amber darter and Conasauga logperch and their critical habitat should be protected under the Act. It also, however, believes that substantial disagreement regarding the sufficiency of data on the trispot darter exists, and therefore the decision on this species' status will be delayed in accordance with section 4(b)(6) of the Act (see Background section).

One individual commented that the darters proposed for listing were present in many streams in the area. A Service representative visited this individual and showed him pictures of the darters. After viewing the pictures, the individual agreed that the darters he had seen in local streams were not the fishes the Service was proposing for endangered species status.

The public hearing was held October 16, 1984, at 7:30 p.m. in the Dalton Utilities Building Auditorium, 1200 South Harris Street, Dalton, Georgia. The hearing was divided into four phases: (1) A description of the hearing objectives and procedures given by a U.S. Department of the Interior Assistant Regional Solicitor, (2) a review of the Endangered Species Act and discussion of the proposal presented by a Service biologist, (3) a public comment session when individuals were presented an opportunity to make public statements, and (4) a question and answer period when those in attendance could ask the Service representative questions relative to the proposal.

A total of 28 individuals attended the public hearing. Two comments were received, and no questions were asked during the question and answer session. The comments received at the hearing are summarized below.

The Tennessee Department of Conservation commented that it supported the proposal. The Service concurs with its statement on the amber darter and Conasauga logperch but has postponed judgment on the trispot darter under provisions in section 4(b)(6) of the Act (see Background section).

The Dalton-Whitfield Chamber of Commerce resubmitted the comments it had provided the Service during the initial 60-day comment period provided in the proposal. Its comments supported the construction of the multi-purpose dam on the Conasauga River and restated the organization's belief that the economic growth of Dalton, Whitfield County, and surrounding counties was linked to completion of the project. It added that the Chamber of Commerce had no cost comparisons of alternatives for meeting the area's water supply needs (see above for the Service response to this comment).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the amber darter (*Percina antesella*) and the Conasauga logperch (*Percina jenkinsi*) should be classified as endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (to be codified at 50 CFR Pat 424, 49 FR 389000, October 1, 1984) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the amber darter (*Percina antesella*) and the Conasauga logperch (*Percina jenkinsi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Both species are presently known from restricted ranges. The amber darter is known from approximately 33.5 miles of the upper Conasauga River, and it may also exist at very low numbers in a short reach of the Etowah River. The Conasauga logperch is known only from about 11 miles of the upper Conasauga River. With such limited ranges, both species could be jeopardized by a single catastrophic event, either natural or human related. Potential threats to these species and their habitats could also come from increased silvicultural activity, road and bridge construction, stream channel modifications, impoundments, changes in land use, and other projects in the watershed, if such activities are not planned and implemented with the survival of the species and the protection of their habitat in mind.

Both species are also potentially threatened by two U.S. Army Corps of Engineers projects—the Dalton Lake project and the Jacks River project. The Jacks River project was authorized for study by Congress in the Rivers and Harbors Act of 1945, but it has not been founded for further planning. This project, if constructed, would be located on the Jacks River which enters the Conasuaga River upstream of the area inhabited by these fishes. If this project were completed without consideration of potential impacts on the fishes and their habitat, the effect on these fishes would depend on the type and extent of the project and the resultant modifications to stream flows, water temperature, and silt loads, especially during the construction stage.

The multi-purpose Dalton Lake, on the Conasauga River (as discussed in the proposed rule), is no longer being considered by the Corps as a viable project because of a low benefit/cost ratio. However, the Corps is studying alternatives for meeting the lake's prime objective, which is water supply augmentation for the local community.

A reservoir on the Conasauga River could also affect both fish upstream of the proposed reservoir. Some game fish and non-game species common to reservoirs, such as carp (*Cyprinus carpio*), generally respond to reservoir construction by dramatically increasing their population levels. These reservoir fish at times could migrate upstream into the habitat of the two darter species. An influx of reservoir fish can be expected, through competition, predation, and changes in the habitat caused by some of the fishes' feeding behavior (carp stirring up the substrate during feeding), to reduce the chances of survival for these two darters.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no evidence that overutilization is or will be a problem for the amber darter or Conasauga logperch.

C. *Disease or predation.* There is no evidence of threats to these two fishes from disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* Tennessee State Code Annotated Section 70-8-104 and the Official Code of Georgia Annotated 27-2-12 prohibit the taking of these fishes without a State collecting permit. Federal listing provides additional protection by requiring Federal permits for taking the fishes and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species or their critical habitat.

E. *Other natural or manmade factors affecting their continued existence.* Freeman (1983) reported on the impact of a channel modification on these two

darters. An island in the Conasauga River, just downstream of Murray County Road 173 bridge, Murray County, Georgia, was removed (the reason for the removal is not known) in 1982. This site had been sampled prior to the island's removal, and both darters were observed to inhabit the area. Six to nine months after the area was modified, the amber darter and the Conasauga logperch were not seen at the site. Similar modifications in other sections of the Conasauga River could be expected to result in elimination, at least temporarily, of the amber darter and the Conasauga logperch from a river section.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on this evaluation, the preferred action is to list the amber darter (*Percina antesella*) and the Conasauga logperch (*Percina jenkinsi*) as endangered species with critical habitat. Because of the restricted range of these species, the vulnerability of these isolated populations to a single catastrophic accident, and the threats posed by a possible reservoir project, threatened status does not appear to be appropriate for these species. Reasons for the critical habitat designations are discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon the determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the amber darter to include approximately 33.5 miles of the Conasauga River in Polk and Bradley Counties, Tennessee, and Murray and Whitfield Counties, Georgia (see Regulations Promulgation section of this final rule for a precise description of critical habitat). This stream section contains high quality water with riffle areas (free of excessive silt) composed of sand, gravel, and cobble which becomes vegetated (primarily with *Podostemum*) during the summer. The species utilizes this riffle environment for cover and foraging habitat.

Critical habitat is being designated for the Conasauga logperch to include approximately 11 miles of the Conasauga River in Polk and Bradley Counties, Tennessee, and Murray County, Georgia (see Regulations Promulgation section of this final rule for precise description of critical habitat). This river section contains high quality water, pool areas with flowing water, riffles with gravel and rubble substrate for feeding, and fast riffle areas and deeper chutes with gravel and small rubble for spawning.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Activities which presently occur within the designated critical habitat include, in part, fishing, swimming, boating, scientific research, and nature study. These activities, at their present use level, do not appear to be adversely impacting the area. Other activities which do or could occur in the upper Conasauga River basin and could impact the proposed critical habitat include, in part, logging, land use changes, stream alterations, bridge and road construction, and construction of impoundments.

There are also Federal activities which do or could occur within the upper Conasauga River basin and which may be affected by protection of critical habitat. These activities include, in part, construction of impoundments (in particular, a reservoir on the Conasauga River), stream alterations, bridge and road construction, logging, and discharges of municipal and industrial wastes. These activities, along with others that alter the watershed, could, if not constructed with the protection of the species in mind, degrade the water and substrate quality of the upper Conasauga River basin by increasing siltation, water temperatures, organic pollutants, and extremes in water flow. If any of these activities may affect the critical habitat area and are the result of a Federal action, section 7(a)(2) of the Act, as amended, requires the agency to consult with the Service to ensure that actions they authorize, fund, or carry out, are not likely to destroy or adversely modify critical habitat

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. To collect this information, the Service has solicited comments from Federal and State agencies, local governments, planning entities, businesses, the scientific community, and interested parties through written requests. Public notices and news releases have been published and interviews have been conducted with local news media. Telephone conversations and individual contacts have been made with local governmental officials, Federal and State agency personnel, and business leaders. The Service has held an informal public information meeting and a public hearing in Dalton, Georgia, to inform the public and solicit comments. The material collected during this process was incorporated into an economic analysis of the impacts of designating critical habitat.

All Federal and State agencies responding, except the U.S. Army Corps of Engineers, indicated that they anticipate no economic impacts of designating critical habitat. The Corps responded that the designation of critical habitat could impact on a reservoir project that was under consideration for the Conasauga River. Several local businessmen and the Dalton, Georgia, Chamber of Commerce indicated they believe the failure to build a multi-purpose reservoir on the Conasauga River to supply the area's water needs would have an economic impact on the local community, but they provided no specific information concerning economic or other impacts. Recent conversations with the Corps have revealed that the multi-purpose reservoir option is no longer viable because of a low benefit/cost ratio. The Corps is now evaluating other options for meeting the area's water supply needs. However, they have not decided on a preferred option and have not calculated the benefit/cost ratio for any of the options.

The States of Georgia and Tennessee and Murray and Whitfield Counties, Georgia, and Bradley and Polk Counties, Tennessee, use land fronting the Conasauga River for highway and bridge rights-of-way. Local county governments and State and Federal highway agencies have been contacted. These agencies are aware of the requirements of section 7 of the Act and the potential for the proposed critical habitat designations to affect highway projects. These agencies informed the Service that no projects currently planned or underway would affect or be

affected by the proposed critical habitat designations. The U.S. Department of Transportation further stated: ". . . designating critical habitat may result in additional coordination/consultation requirements and some increase in construction costs, but should not have a significant effect on Federal-aid highway programs." A quantitative estimate of the increase in construction and management costs that might result from the proposed critical habitat designations cannot be calculated at this time due to the unknown or hypothetical nature of the consultations that may occur. Highway projects, in any case, however, are not expected to be significantly affected by the proposed critical habitat designations.

Much of the upper watershed of the Conasauga River above the proposed critical habitats is located within U.S. National Forests. The past management of this land has contributed to the present high quality of the critical habitats. The U.S. Forest Service has informed the Service that it foresees no impacts on the proposed critical habitat designations resulting from Forest Service activities.

Private lands that front the proposed critical habitats are used primarily for row crop farming, livestock grazing, and woodlot operations. These activities are not expected to affect or be affected by the proposed critical habitat designations. The U.S. Department of Agriculture's, Soil Conservation Service (SCS), which works extensively with rural landowners, has been contacted in both Tennessee and Georgia. The SCS does not anticipate any economic impact on existing or currently authorized projects from the proposed critical habitat designations. Any conservation efforts by private landowners would be voluntary.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Service is presently not aware of any planned project which may affect the amber darter and Conasauga logperch or their critical habitats. The U.S. Army Corps of Engineers (Corps) is studying alternatives for meeting the water supply needs of the Dalton, Georgia, area. The Service has been in contact with the Corps concerning the potential impacts of a Conasauga River project on the species and their habitat.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for these species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Present and planned uses of the critical habitat area and the watershed above it are compatible with the critical habitat designation. Based on the information discussed in this rule concerning public projects within and private lands fronting the proposed critical habitats, it is not expected that significant economic impacts will result from the critical habitat designations. In addition, there is no known involvement of Federal funds or permits that would affect or be affected by the critical habitat designation for the private lands that front the critical habitat areas. No direct costs, enforcement costs, information collection or recordkeeping requirements are imposed on small entities by the critical habitat designations. Further, the rule contains no information collection or recordkeeping requirements as defined by the Paperwork Reduction Act of 1980. These determinations are based on a Determination of Effects that is available at the U.S. Fish and Wildlife Service, Office of Endangered Species, 1000 N. Glebe Road, Arlington, Virginia.

Literature Cited

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Author

The primary author of this final rule is Richard G. Biggins, Endangered Species Field Station, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

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

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	*	*	*	*	
Darter, amber	*Etheostoma antesella*	U.S.A. (AL, GA, TN)	Entire	E	193	17.95(e)	NA
Logperch, Conasauga	*Percina jenkinsi*	U.S.A. (GA, TN)	do	E	193	17.95(e)	NA
*	*	*	*	*	*	*	

3. Amend Section 17.95(e) by adding critical habitat of the amber darter and Conasauga logperch as follows: The position of this entry under Section 17.95(e) follows the same sequence as the species occur in Section 17.11.

§ 17.95 Critical habitat—fish and wildlife.

(e) *Fishes.*

* * * * *

Amber Darter *(Percina antesella)*

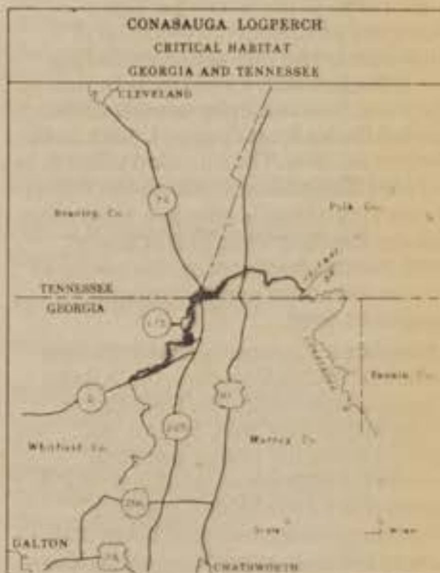
Tennessee and Georgia: Conasauga River from the U.S. Route 411 bridge in Polk County, Tennesee, downstream approximately 33.5 miles through Bradley County, Tennessee and Murray and Whitfield Counties, Georgia, to the Tibbs Bridge Road bridge (Murray County Road 109 and Whitfield County Road 100).

Constituent elements include high quality water, riffle areas (free of silt) composed of sand, gravel, and cobble, which becomes vegetated primarily with *Podostemum* during the summer.

Conasauga Logperch *(Percina jenkinsi)*

Tennessee and Georgia: Conasauga River from the confluence of Halfway Branch with the Conasauga River in Polk County, Tennessee, downstream approximately 11 miles to the Georgia State Highway 2 Bridge, Murray County, Georgia.

Constituent elements include high quality water, pool areas with flowing water and silt free riffles with gravel and rubble substrate, and fast riffle areas and deeper chutes with gravel and small rubble.



Dated: July 8, 1985.

Susan E. Reece,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-18468 Filed 8-2-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 671

[Docket No. 41154-4154]

Tanner Crab off Alaska

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

ACTION: Notice of season extension.

SUMMARY: The Director, Alaska Region, NMFS, (Regional Director), has determined that the desired harvest level of Tanner crab (*Chionoecetes opilio*) in the Northern Subdistrict of the Bering Sea District in Registration Area J has not yet been achieved and that additional fishing time is necessary to fully utilize *C. opilio* stocks. The Secretary of Commerce (Secretary) therefore issues this notice extending the fishing season for *C. opilio* in the Northern Subdistrict by vessels of the United States from August 1, 1985, until August 22, 1985. The intended effect is to achieve the optimum yield of the fishery.

DATE: This notice is effective 12:00 noon, Alaska Daylight Time (ADT) July 31, 1985. Public comments on this notice of season extension are invited until August 13, 1985.

ADDRESSES: Comments should be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802. During the 15-day comment period, the data on which this notice is based will be available for public inspection during business hours (8:00 a.m. to 4:30 p.m. weekdays) at: (1) The NMFS Kodiak Field Office, Gibson Cove, Kodiak, Alaska, and (2) the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin (Fishery Management Biologist, Kodiak Field Office, NMFS), 907-486-3298.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Commercial Tanner Crab Fishery off the Coast of Alaska (FMP), which governs this fishery in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act, provides for inseason adjustments of season and area openings and closures. Implementing rules at § 671.27(b) specify that these adjustments will be issued by the Secretary under criteria set out in that section.

Section 671.26(f)(1) establishes six districts within Registration Area J. One of these is the Bering Sea District, which is further divided into three subdistricts for purposes of managing smaller units of crab stocks. One of these is the Northern Subdistrict for which a desired harvest level of 30 million pounds for *C. opilio* is estimated on the basis of 1984 NMFS trawl surveys. Because Tanner crab fishermen have only recently moved from the Southeastern Subdistrict into the Northern Subdistrict, only 4.2 million pounds has been landed through July 7, 1985.

The ending date of the fishing season for *C. opilio* in the Northern Subdistrict specified in § 671.26(f)(2)(vi) is August 1. However, the North Pacific Fishing Vessel Owners' Association and other fishermen have requested more fishing time in which to harvest the resource. The Secretary has reviewed the status of the *C. opilio* fishery and is responding to their request.

The Secretary extends the current fishing season for *C. opilio* in the Northern Subdistrict, which is north of 58°39' N. latitude, until noon, August 22, 1985.

The State of Alaska's blue king crab fishery in the St. Matthew Island Section begins September 1, 1985, and is expected to last about six days, at which time fishermen will be required to remove their gear from the grounds within seven days following the closure under State of Alaska commerical shellfish regulations [5AAC 34.050(c)]. The Regional Director will reevaluate the results of the extened *C. opilio* season, and may reopen the season after the blue king crab fishery, if further harvest is warranted.

This extension will become effective after this notice is filed for public inspection with the Office of the Federal Register and the extension is publicized for 48 hours through procedures of the Alaska Department of Fish and Game. Public comments on this notice of extension may be submitted to the address above. If comments are received, the necessity of this extension will be reconsidered and a subsequent notice will be published in the **Federal Register**, either confirming this notice's continued effect, modifying it, or rescinding it.

Other Matters

Tanner crab stocks in the Northern Subdistrict will be subject to underharvest unless this order takes effect promptly. Such underharvest could have an unfavorable economic impact on Tanner crab fishermen and processors. The Agency, therefore, finds for good cause that advance notice and public comment on this order are contrary to the public interest, and that no delay should occur in its effective date.

This action is taken under the authority of 50 CFR Part 671 and is in compliance with Executive Order 12291.

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

List of Subjects in 50 CFR Part 671

Fisheries, Reporting and recordkeeping requirements.

Dated: July 30, 1985.

Anthony J. Calio,

Deputy Administrator, National Oceanic and Atmospheric Administration.

[FR Doc. 85-18488, Filed 7-31-85; 2:29 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 150
Monday, August 5, 1985

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1076

Milk in the Eastern South Dakota Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend portions of the Eastern South Dakota Federal milk order. The provisions relate to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the provisions was requested by a cooperative association representing most of the producers supplying the market to prevent uneconomic movements of milk. The proposed suspension would be for the months of August 1985 through February 1986.

DATE: Comments are due no later than August 12, 1985.

ADDRESS: Comments (two copies) should be filed with the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

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

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

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Eastern South Dakota marketing area is being considered for August 1985 through February 1986:

In § 1076.13, paragraphs (c)(2) and (3).

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include August 1985 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Land O'Lakes, Inc. (LOL), an association of producers that supplies most of the market's fluid milk needs and handles most of the market's reserve milk supplies, requested the suspension. The suspension would remove for August 1985 through February 1986 the limit on the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants.

The order now provides that a cooperative association may divert up to 35 percent of its total member milk received at all pool plants or diverted therefrom during the months of August through February. Similarly, the operator of a pool plant may divert up to 35 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of August through February.

The amount of milk pooled under the order by LOL in the first six months of 1985 was 8.8 percent above the same period in 1984. LOL points out that, at the same time, its deliveries to pool distributing plants decreased about 2.5 percent from a year earlier. The cooperative expects producer milk deliveries to continue to increase from 1984 levels.

LOL indicates that operation of the 35-percent diversion limit during August through February would mean that up to 65 percent of its milk would have to be delivered to pool plants. LOL estimates, moreover, that only 35 to 40 percent of its milk will be needed at distributing plants. The balance would have to be delivered to a supply plant, unloaded, reloaded and then shipped to other plants merely to qualify the milk for pooling. The additional handling and hauling costs would be incurred by LOL with no offsetting benefits to other market participants, according to LOL.

List of Subjects in 7 CFR Part 1076

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1076 continues to read as follows:

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

Signed at Washington, D.C., on August 1, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-18644 Filed 8-2-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5 and 12

[Docket No. 85-10]

Rules, Policies and Procedures for Corporate Activities Recordkeeping and Confirmation Requirements for Securities Transactions; Brokerage Activites To Be Conducted in an Operating Subsidiary

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice or proposed rulemaking relating to rules, policies and procedures for corporate activities, recordkeeping and confirmation requirements for securities transactions, and brokerage activities to be conducted in an operating subsidiary which appeared in the **Federal Register**

on April 17, 1984 (49 FR 15089). The notice is being withdrawn due to changed circumstances.

FOR FURTHER INFORMATION CONTACT: Linda A. Gottfried, Attorney, Securities & Corporate Practices Division, Office of the Comptroller of the Currency, (202) 447-1954.

SUPPLEMENTARY INFORMATION:

On April 17, 1984, the Office of the Comptroller of the Currency ("Office") sought comments on a proposed rule which set forth certain circumstances under which brokerage activities of national banks should be conducted in operating subsidiaries ("Rule Proposal").[1] Due to a change in circumstances, the Office has decided to withdraw that proposed rule for the reasons set forth below.

At the time of the Rule Proposal, national banks, their operating subsidiaries or their affiliates were offering increased securities services to their customers. Both the Office and the Board of Governors of the Federal Reserve System ("Federal Reserve Board") had separately determined that securities brokerage services were fully authorized activities for banks and their affilitates.

More recently, courts have scrutinized the permissibility of these activities, and, generally, have found such activities to be appropriate for banks or their affiliates to conduct. For example, in June 1984, the Supreme Court unanimously upheld a decision of the Federal Reserve Board that discount brokerage was "closely related" to banking[2] and did not constitute a prohibited distribution of securities as contemplated by section 20 of the Glass-Steagall Act.[3] In addition, the Court of Appeals for the District of Columbia Circuit affirmed a district court opinion holding that section 16 of the Glass-Steagall Act permits "the ownership and operation by national banks of subsidiaries engaged in the brokerage business."[4]

Nor have the securities services of national banks been restricted to purchasing securities for the account of customers. For example, banks have traditionally provided various securities services through their trust departments, such as collective investment funds, investment advice, portfolio management, and estate administration. More recently, banks have begun to provide investment advice to smaller accounts on a "retail" basis. Further, national banks have established collective investment funds for individual retirement accounts exempt from taxation under the Employee Retirement Income Security Act ("ERISA"), 26 U.S.C 408.[5]

The assortment of services which banks and their affiliates offer reflect their institutional judgments as to the desirability and profitability of the financial services to be provided. Securities services provided by banks vary, reflecting differences in their financial markets. Community-oriented banks serve predominantly a retail market and discount brokerage services may be one of several financial services provided to their customers. Other banks, including many regional and money-center banks, offer a wide range of financial services to the public through established correspondent relationships.

Banks also vary the manner in which financial services are offered to the public, taking into account their own particular corporate culture, their location, their customer base, and other considerations. Many banks have chosen to conduct such activities within the bank itself. Others have provided such services through operating subsidiaries or affiliates which in turn have registered as broker-dealers with the Securities and Exchange Commission ("SEC").

In our views, banks, like other financial institutions, generally should be given flexibility in the manner and operation of financial services to the extent permitted by law. However, the manner in which any such financial service is conducted should not determine the nature of the activity. Financial-service activities conducted by national banks in operating subsidiaries are first and foremost banking activities subject to the regulation and examination by this Office.

Congress has charged this Office with the supervison and regulation of the national banking system. The federal banking laws[6] define the permissible activities of national banks and provide the OCC with broad supervisory, enforcement and rule-making authority with which to regulate the national banking system and to address the evolution of the banking industry. Moreover, with respect to the securities activities of banks, Congress has granted this Office jurisdiction concurrent with that of the SEC to supervise and enforce various provisions of the federal securities law[7] and exempted banks and bank securities[8] from particular sections of those laws. This statutory framework ensures that banks and their activities are regulated by those most familiar with the needs and complexities of this particular industry.

In response to this mandate, this Office has developed examination procedures and has trained its examining staff to carry out all of its responsibilities. For example, with the proliferation of national bank discount brokerage services, the Office put into place examination procedures designed to detect violations of law and unsafe and unsound conditions in such operations. Furthermore, the Office published the Rule Proposal with the view that its implementation would increase the Office's efficiency in the exercise of its responsibilities, minimize regulatory burdens, and promote public confidence in the financial services system.[9]

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[1] The Rule Proposal would have been codified in 12 CFR 5.52 and 12.6. It was directed toward two basic categories of bank brokerage activities: (i) The provision of certain securities brokerage services, and (ii) the receipt of transaction-related fees for brokerage activities conducted on behalf of trust, managing agency or other accounts to which banks provide investement advice. It also would have required national banks to develop written policies and procedures to ensure compliance with its requirements.

[2] *Securities Industry Association v. Board of Governors of the Federal Reserve System*, 104 S.Ct. 3003 (1984). The Federal Reserve Board reviewed this activity aganist the governing standards of the Bank Holding Company Act, section 4(c)(8), 12 U.S.C. 1843(c)(8), in making this determination.

[3] 12 U.S.C. 377.

[4] *Securities Industry Association v. Comptroller of the Currency*, 577 F. Supp. 252 (D.D.C. 1983), *aff'd per curiam* 756 F.2d 739 (D.C. Cir. 1985).

[5] In *Investment Company Institute v. C.T. Conover*, 596 F. Supp. 1496 (D.D.C. 1984), the court upheld the Office's opinion regarding the legality of collective investment funds for individual retirement accounts. The opposite result was reached in *Investment Company Institute v. C.T. Conover*, 593 F. Supp. 846 (N.D.Cal. 1984).

[6] 12 U.S.C. 1 *et seq.*

[7] Congress has given this Office regulatory authority over national bank municipal securities dealers as well as national banks acting as clearing agencies and transfer agents. *See* sections 15B and 17A of Exchange Act, 15 U.S.C. 78o-04 and 78q-1. The Office also has authority to administer and enforce, with respect to national banks, various sections of the Exchange Act relating to periodic reports, proxy solicitation, tender offers and insider reporting requirements. *See* section 12(i), 15 U.S.C. 78(*l*)(i).

[8] Bank securities are exempt from the registration requirements of the Securities Act of 1933, 15 U.S.C. 77a *et seq.* In addition, under the Securities Exchange of 1934, 15 U.S.C. § 78a *et seq.*, Congress excluded banks from the definitions of "broker" and "dealer"; container therein. *See* 15 U.S.C. § 78c(a)(4) and (5).

[9] In response to the Rule Proposal, the Office receive twenty seven comment letters expressing, for the most part, a negative reaction to its implementation. Concerns were expressed over the Rule Proposal's impact on traditional bank trust

Continued

The actions the Office has taken reflect its goal to provide the proper regulatory climate so that the public interest is protected.

Despite this statutory framework which places regulation of banking activities in the domain of the federal banking regulators, the SEC proposed its Rule 3b-9 in November 1983,[10] revoking, under certain circumstances, the statutory exemption for banks under the broker-dealer registration provisions of the Securities Exchange Act of 1934. The apparent reason for the SEC's action was its belief that, given the recent expansion of bank securities activities, banks should be subject to the rules and regulations governing broker-dealer activities in order to protect the public interest and to assure competitive equalty through functional regulation.

In response to the SEC's proposal, this Office reiterated its agreement with the concept of functional regulation but voiced serious concerns over the impact such a rule would have on banking activities and the Office's supervisory processes as the primary regulator of national banks. Among other things, we questioned whether this rule would advance the goal of functional regulation since it would subject banks themselves to the Exchange Act's broker-dealer regulatory structure; we pointed out that no instance of abuse had been found to support the rule's implementation; and we expressed our serious doubts regarding the SEC's authority to impose such a rule in view of the congressionally created exclusion of banks from the defintion of "broker" and "dealer" in the Exchange Act.[11]

Nevertheless, despite this Office's expressed concerns as well as those of over 200 banking industry representatives, the SEC determined on July 1, 1985 to adopt its Rule 3b-9.[12] As adopted, SEC Rule 3b-9 will have a substantial impact on bank trust activities as well as other bank financial services.

By attempting to achieve its view of functional regulation of bank brokerage activity via the adoption of this rule, the SEC has unilaterally altered the complex framework for bank regulation and subjected banks to an additional, and possibly duplicative, scheme of regulation. For example, Rule 3b-9 will force banks to conduct certain trust activities in a manner subject to SEC regulation. Specifically, those trust activities where customers retain full or partial investment discretion will now be subject to SEC regulation in certain circumstances by virtue of Rule 3b-9. In the view of the Office, these activities, which are already subject to substantial banking regulation, are among the least susceptible to the SEC's stated concerns in implementing its rule. The SEC also has decided that certain self-directed individual retirement accounts ("IRA") or pooled IRA funds should be subject to its regulation, again, despite the existence of fiduciary regulation, here mandated by Congress through ERISA. Rule 3b-9 also seeks to encompass what the SEC deems to be "underwriting" activities, possibly including certain activities which are accepted commercial banking practices. Due to the broad reach of the rule, such traditional banking services a loan participations and collective investment activities may now be subject to broker-dealer registration. These and other banking services which receive the substantial scrutiny of the federal banking agencies may now be subject to SEC scrutiny as well.

Thus, by virtue of SEC Rule 3b-9, the regulatory structure surrounding bank securities activities has been substantially changed without benefit of the legislative process which originally established the framework of bank regulation. In the opinion of this Office, such substantial changes in banking regulation may only be accomplished with the appropriate Congressional mandate. Until that time, as primary protector of the public interest in the national banking system, this Office retains the authority to regulate the conduct of securities activities by national banks.

Nevertheless, in view of the fact that Rule 3b-9, as a practical matter, requires banks to conduct a wider range of securities activities in operating subsidiaries, or register as broker-dealers, its adoption has made unnecessary any further consideration at this time of whether it is appropriate to require natonal banks to conduct particular securities activities in operating subsidiaries. Accordingly, this Office has determined to withdraw its Rule Proposal at this time. Since securities activities are equally subject to the regulatory powers of this Office whether they are conducted within the bank or in an operating subsidiary, our withdrawal of this Rule Proposal will have no effect on our authority to regulate national bank securities activities. We will, of course, continue to monitor the evolution of the financial services industry and may revisit the question of the need for further regulation in this area, should subsequent conditions warrant.

Dated: July 31, 1985.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 85-18543 filed 8-2-85; 8:45 am]

BILLING CODE 4810-33-M

department activities, the increased costs associated with compliance, especially for small and medium-sized banks and the unnecessary intrusion into the exercise of bank's business judgment especially in view of the absence of abusive conduct by banks engaged in activities covered by the Rule Proposal. Some commentators also expressed the opinion that the Rule Proposal would complicate the present regulatory scheme unnecessarily, that at this point in the evolution of the financial services industry, its adoption would be premature and that the Office should await Congressional response before proceeding.

[10] *See* Securities Exchange Act Release No. 20357 (November 8, 1983) and 48 FR 51830 (November 15, 1983).

[11] Letter of C.T. Conover, Comptroller of the Currency to Mr. George A. Fitzsimmons, Secretary, Securities and Exchange Commission, February 15, 1984.

[12] 17 CFR 240.3b-9. *See* Securities Exchange Act Release No. 34-22205 (July 1, 1985). The rule has an effective date of January 1, 1986.

FARM CREDIT ADMINISTRATION

12 CFR Part 615

Funding and Fiscal Affairs

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by its Federal Farm Credit Board (Federal Board), publishes for comment a proposed amendment to its regulation concerning FCA prior approval of the acquisition and disposition of real and personal property by Farm Credit System banks and of bank board policies on electronic data processing and word processing programs. This proposed amendment will eliminate these FCA prior approval requirements.

DATES: Written comments must be received on or before September 29, 1985.

ADDRESSES: Submit any comments in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090. Copies of all communications received will be available for examination by interested parties in the Office of Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Joseph M. Beltramo, Office of Examination and Supervision, (703) 883-4441

or

Dorothy J. Acosta, Office of the General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4023

SUPPLEMENTARY INFORMATION: It is the intent of the FCA to eliminate FCA prior approval requirements to the maximum extent advisable. The proposed amendment to 12 CFR 615.5150 will remove existing FCA prior approval requirements relating to the purchase and sale of bank buildings, the selection of bank building sites, and the bank board policies on electronic data processing and word processing programs. Also, the FCA proposes to eliminate the current FCA approval requirement for bank information processing plans. Currently, FCA approval is required for such plans only when the Agency determines that the information processing operation of a bank does not meet acceptable standards of efficiency or effectiveness. The FCA believes that routine supervisory and examination activities will enable the FCA to ensure that the bank plans meet acceptable standards.

The proposed regulation also establishes guidelines for supervising bank approval of association building-related requests setting forth the criteria for the evaluation of such requests. Within such guidelines, the Federal land banks and Federal intermediate credit banks may prescribe office-facility related criteria for associations and give association boards the authority to take office facilities action without bank prior approval. Such delegation would not include, however, approval authority for the purchase, initial lease, new construction on, or sale of association building sites or buildings.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

PART 615—[AMENDED]

As stated in the preamble, it is proposed that Part 615 of Chapter VI, Title 12 of the Code of Federal Regulations, be revised as follows:

1. The authority citation for Part 615 continues to read as follows:

Authority: Secs. 5.9, 5.12, 5.18, Pub. L. 92-181, 85 Stat. 619, 620, and 621 (12 U.S.C. 2243, 2246, 2252).

2. Section 615.5150 is amended by revising paragraphs (a), (b), and (c); and by adding new paragraphs (d) and (e) as follows:

§ 615.5150 Real and personal property.

(a) Real estate and personal property may be acquired, held, or disposed of by any Farm Credit institution for the necessary and normal operations of its business. The purchase, lease, or construction of office quarters shall be limited to facilities reasonably necessary to meet the foreseeable requirements of the institution. Property shall not be acquired if it involves, or appears to involve, a bank or association in the real estate or other unrelated business.

(b) District boards, prior to approving the purchase, lease, construction, or sale of Farm Credit System bank buildings and appurtenances or the purchase, lease, or sale of a proposed bank building site, shall evaluate and document:

(1) The need, including projected building size needs, for the purchase, lease, or sale;

(2) Alternative sites or alternative building considerations;

(3) The estimated costs for the completed project and impact on the bank's financial condition;

(4) The impact of the proposed action on the operational effectiveness of the bank; and

(5) The competitiveness of bids associated with constructions or real property disposals.

(c) It shall be the responsibility of the district board to approve guidelines for all associations in the district to follow regarding the purchase, lease, construction, or sale of office space and purchase, lease, or sale of a building site. Purchase, lease, construction, or sale of association buildings and appurtenances, or the purchase, lease, or sale of a proposed association building site shall have the approval of the appropriate supervising bank, which shall keep the bank board currently advised of such actions. In the case of joint association office buildings, these actions shall be approved jointly by the supervising banks. In approving association requests, the supervising bank shall assure that association office proposals meet district requirements and plans, and that the following matters have been evaluated and documented:

(1) The need, including projected building size needs, for the purchase, lease, or sale;

(2) The adequacy or inadequacy of the size of the building to be purchased, leased, or sold;

(3) The appropriateness of the proposed site for serving borrowers of the association's chartered territory;

(4) The estimated costs for the completed project and the impact of the proposal on the financial condition of the association; and

(5) The competitiveness of bids associated with constructions or real property disposals have been considered and documented.

Within the framework of bank board guidelines, the Federal land banks and Federal intermediate credit banks may prescribe office facility-related criteria for associations and give association boards authority to take office facilities actions without bank prior approval. However, such delegations shall not include the authority to approve the purchase of, initial lease of, new construction on, or sale of association building sites or buildings. New construction as used in this paragraph does not include repairs, remodeling, and normal maintenance in connection with existing association office quarters.

(d) Each district board shall adopt policies to provide bank managements with direction in the formulation of information processing programs. These policies shall require the development of short- and long-range information processing plans for the district. In accordance with the district information processing plan, each bank and the associations it supervises may acquire equipment, software, and such personnel related to information processing only when consistent with the plan. Such association acquisitions shall be subject to approval by the supervising bank. The operation of information processing facilities must be consistent with the Farm Credit Administration's information processing standards.

(e) The term "information processing" as used in paragraph (d) of this section shall mean the entire electronic environment, including information processing personnel, equipment, software, and data. No distinction is made between terminal versus computer operation and word processing is not distinguished as a separate category.

Donald E. Wilkinson,

Governor.

[FR Doc. 85-18514 Filed 8-2-85; 8:45 am]

BILLING CODE 6705-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-CE-27-AD]

Airworthiness Directives; Empresa Brasileria De Aeronautica S.A. (Embraer) Models EMB-110P1 and EMB-110P2 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD), applicable to Embraer Models EMB-110P1 and EMB-110P2 airplanes which would require: (1) Inspections for jamming or seizure, and replacement as necessary, of certain bearings in the flight control system, (2) installation of a dual control rod assembly in the elevator trim tab system, (3) inspections for cracks in the left elevator front spar, and (4) installation of reinforcement angles in the left elevator front spar or repair, as appropriate. There have been five reported cases of failure or disconnected elevator trim tab rods and one case of cracks in the elevator spar doubler. These incidents are attributed to jamming or seizure of the rod bearings. The inspections, replacements, and reinforcement proposed herein will preclude excessive vibration in the elevator aileron and/or rudder, which could eventually result in loss of control of the airplane.

DATE: Comments must be received on or before November 21, 1985.

ADDRESSES: Embraer Service Bulletins (S/B) 110-27-068 dated May 14, 1984, S/B 110-27-060, Revision 01, dated August 29, 1984, S/B 110-55-026, Revision 02, dated December 11, 1984, and S/B 110-27-036, Revision 02, dated December 3, 1981, applicable to the AD may be obtained from Empresa Brasileira de Aeronautica S.A. (Embraer) P.O. Box 343-CEP 12.200 Sao Jose dos Campos, Sao Paulo, Brazil or the Rules Docket at the address below. Send comments on the proposal in duplicate to Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85-CE-27-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Perry, ACE-120A, Aerospace Engineer, Airframe Branch, Atlanta Aircraft Certification Office, FAA, 1075 Inner Loop Road, College Park, Georgia 30337, Telephone (404) 763-7407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Central Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-CE-27-AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Discussion

There have been four incidents of excessive vibration caused by failure or disconnection of the elevator tab rod on Embraer Models EMB-110P1 and EMB-110P2 airplanes. One other case of a disconnected tab rod resulted in a fatal accident. The failures were attributed to jamming or seizure of the rod and bearings. Also, one case of excessive free-play resulted in vibration severe enough to cause cracks on the elevator spar doubler. As a result, Empresa Brasileria de Aeronautica S.A. (Embraer) has issued Service Bulletin No. 110-27-068 which provides for inspection of elevator trim tab actuating rod ends, inspection for cracks in the left elevator front spar and the installation of a dual control rod assembly and modification of the elevator front spar. Embraer S/B 110-55-026, Revision 02, dated December 11, 1984, also pertains to the elevator front spar. Because of adverse service experience on the elevator, Embraer issued S/B 110-27-060, Revision 01, dated August 29, 1984, which provides for replacement of the bearings in the aileron and rudder control systems. The Centro Technico Aeroespacial (CTA) who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Brazil has classified these Service Bulletins and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes. On airplanes operated under Brazilian registration, this action has the same effect as an AD on airplanes certified for operation in the United States. The FAA relies upon the certification of CTA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness conformity of products of this design certificated for operation in the United States. The FAA has examined the available information related to the issuance of the Embraer Service Bulletins mentioned above and the mandatory classification of these Service Bulletins by Centro Technico Aeroespacial Airworthiness Directive (AD) dated February 7, 1985. Based on the foregoing, the FAA considers that the conditions addressed by these Service Bulletins are unsafe conditions that may exist on other products of this type design certificated for operation in the United States. Consequently, the proposed AD would require repetitive inspections for jamming of the control rod bearings, for cracks in the left elevator front spar and modification as necessary, replacement of malfunctioning bearings in the flight control system, and installation of dual rods in the elevator trim tab assembly on Embraer Models EMB-110P1 and EMB-110P2 airplanes.

The FAA has determined there are approximately 133 airplanes affected by the proposed AD. The cost of modifying, inspecting these airplanes as required by the proposed AD is estimated to be $2,190 per airplane or an estimated total cost of $291,270 to the private sector.

The cost of compliance with the proposed AD is so small that the expense of compliance will not be a significant financial impact on any small entities operating these airplanes.

Therefore, I certify that this action: (1) Is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the

criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation has been prepared for this action and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under this caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

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

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

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

2. By adding the following new AD:

Empresa Brasileria De Aeronautica S.A. (Embraer): Applies to Models EMB-110P1 and EMB-110P2 (all serial numbers) airplanes certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To preclude excessive vibration in the flight control surfaces and possible loss of control of the airplane accomplish the following:

(a) Within the next 100 hours time-in-service after the effective date of this AD, and thereafter at intervals not exceeding 250 hours time-in-service, visually inspect for jamming or seizure of all bearings installed in the aileron trim tab bellcrank, actuator eyelets and the terminals of control rods for the elevator, rudder and aileron trim tab control systems in accordance with Embraer Service Bulletins (S/B) 110-27-036, Revision 02, dated December 03, 1981.

(b) If any discrepancy is found in paragraph (a) above, prior to further flight remove and discard the affected part, and replace it with a new part of the same P/N or with a part having a new P/N, as specified in Embraer Service Bulletins No. 110-27-060, Revision 01, dated August 29, 1984, pertaining to the aileron and rudder trim tab control rod ends, and No. 110-27-068, dated May 14, 1984, pertaining to elevator trim tab dual rods.

(c) When the modifications specified in paragraph (b) of this AD have been accomplished, the repetitive inspections required by paragraph (a) of this AD are no longer required.

(d) Within the next 90 days or within 250 hours time-in-service, whichever occurs first after the effective date of this AD, install dual control rods with bearings on the elevator trim tab in accordance with the instructions contained in Embraer Service Bulletin No. 110-27-068, dated May 14, 1984.

(e) Within the next 100 hours time-in-service after the effective date of this AD and thereafter at intervals not to exceed 250 hours time-in-service, visually inspect the elevator front spar for cracks in the area of the trim tab actuator support installation holes area in accordance with Embraer Service Bulletin No. 110-55-026, Revision No. 2, dated December 11, 1984.

(1) If cracks are detected within a 15 mm radius around the actuator support attaching holes, prior to further flight make 2.4 mm diameter stop drill holes at the ends and apply a repair in the affected area, as specified in paragraphs 1 through 10 of Figure 2 of Service Bulletin No. 110-55-026, Revision No. 2, dated December 11, 1984.

(2) If cracks are detected that extend beyond a 15 mm radius around the actuator support attaching holes, prior to further flight replace the spar affected part following the instructions in T.O. 1C95A-3 "Structural Repair Manual", and replace the elevator spar angles as per paragraph 3 of Figure 2 of Service Bulletin No. 110-55-026, Revision No. 2, dated December 11, 1984.

(3) If there is no crack, repeat the repetitive inspections as specified above, and prior to the accumulation of 1000 hours time-in-service after the effective date of this AD replace the elevator spar angles in accordance with paragaph 3 of Figure 2, of Service Bulletin No. 110-55-026, Revision No. 2, dated December 11, 1984.

(f) When the modifications and/or repairs as specified in paragraph (e) of this AD as appropriate, have been accomplished, the repetitive inspections required by that paragraph of the AD are no longer required.

(g) Aircraft may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(h) The intervals between repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(i) An equivalent method of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, FAA, Central Region, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7428.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Empresa Brasileria de Aeronautica S.A. (Embraer) Post Office Box 343—CEP 12.200 Sao Jose dos Campos, Sao Paulo, Brazil, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on July 24, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85-18456 Filed 8-2-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Parts 2 and 3

Requirements for Motions in Commission Investigations and Adjudications

AGENCY: Federal Trade Commission.

ACTION: Proposed rule.

SUMMARY: These proposed amendments would affect rules governing investigations and adjudications. They would require anyone seeking to quash an investigational subpoena or civil investigative demand or disputing, seeking to compel or seeking to enforce discovery in an adjudication to make a good faith effort to resolve disputes with opposing counsel before filing a formal petition or motion. The petition or motion would have to include a statement attesting to these efforts. The Commission proposes these amendments in order to encourage counsel to resolve disputed issues before filing petitions and motions, and to prevent the filing of unnecessary petitions and motions.

DATE: Written comments must be received on or before September 4, 1985.

ADDRESS: Comments should be addressed to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580. All comments should be labeled "Pre-motion Meetings."

FOR FURTHER INFORMATION CONTACT: Lawrence DeMille-Wagman, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3800.

SUPPLEMENTARY INFORMATION: It has been the Commission's experience that on some occasions petitions to quash investigational subpoenas of civil investigative demands are filed before there has been any effort to resolve problems through negotiations with the Commission staff. Resolution of problems through negotiation could be less costly and would avoid unnecessary burden and expense.

Many courts have adopted rules addressed to similar problems in their discovery process. To supplement the Federal Rules of Civil Procedure, some federal district courts have adopted local rules to persuade parties to work things out before going to the court. Typically, such rules state that the court will not entertain the parties' motions to resolve discovery disputes unless the parties prove that they have made an unsuccessful good faith effort to negotiate a resolution to the dispute.

The Commission proposes to adopt similar rules, as set forth below. The following proposed rules would apply to the procedures for petitions to quash investigational subpoenas and civil investigative demands and to the procedures concerning discovery disputes in administrative litigation. These proposals have been modeled on local rules in the United States District Courts for the Southern District of New York and the Northern District of Ohio. They would require anyone petitioning to quash an investigational subpoena or civil investigative demand, moving to compel or quash discovery, moving to determine the sufficiency of a response to discovery, or requesting enforcement or sanctions during administrative litigation to confer with opposing counsel in a good faith effort to resolve or at least to narrow the matters in dispute. A statement would have to be filed with each such petition or motion attesting to the conference. The rules would require the statement to detail each conference and its results. A statement that merely parrots the rules' requirements would not be sufficient.

The proposed rule is directed at the substance of the problem. It addresses the "issues" in dispute, not necessarily the particular subpoena or CID as such. Thus, it is conceivable that a petitioner and Commission counsel could negotiate before an investigative subpoena was issued, and these negotiations could be the subject of the required statement. To avoid potentially fruitless duplication, separate statements would not be required at each stage of a protracted dispute in administrative adjudication, unless ordered by the ALJ.

The proposed rules do not mention reply statements but it would be permissible for opposing counsel to present its position. In some instances, all counsel might choose to submit a joint statement describing their negotiations. The statement would have to be signed by the petitioner, the party making the motion, or by counsel, thereby indicating that the statement is true to the best of the signer's knowledge, information and belief, and that it is not interposed for delay (see Rule 4.2(e)(2)).

The Commission's current rules grant administrative law judges discretion in determining the requirements for motions concerning discovery issues in administrative litigation. Although in some cases administrative law judges have required parties to confer before filing discovery motions, the Commission believes that including the requirement in the rules would assist the administrative law judges in resolving disputes and would result in more productive negotiations.

It may be that the proposed rules could not prevent some counsel, insistent upon a "day in court," from making a merely perfunctory phone call, writing a *pro forma* statement, and then filing a motion. The Commission believes, however, that by requiring counsel to make a good faith effort to negotiate, it would be giving a clear indication that such an absence of good faith effort could be grounds for rejecting the motion. That signal should discourage merely conclusory compliance.

The proposed rules would not require counsel to resolve all their differences among themselves, but the rules would require them at least to try. To the extent they succeed, the Commission and the administrative law judges could focus their attention on other unresolved problems.

List of Subjects

16 CFR Part 2

Administrative practice and procedure, Claims, Equal access to justice.

16 CFR Part 3

Administrative practice and procedure, Investigations.

1. The authority for Parts 2 and 3 continues to read as follows:

Authority: 15 U.S.C. 46(g)

In consideration of the foregoing, the Commission proposes to amend its rules of practice as follows:

PART 2—[AMENDED]

2. By redesignating paragraphs (d) (2) and (3) of § 2.7(d) as paragraphs (d) (3) and (4) and by adding a new paragraph (d)(2) as follows:

§ 2.7 Compulsory process in investigations.

* * * * *

(d) * * *

(2) *Statement.* Each petition shall be accompanied by a signed statement representing that counsel for the petitioner has conferred with counsel for the Commission in an effort in good faith to resolve by agreement the issues raised by the petition and has been unable to reach such an agreement. If some of the matters in controversy have been resolved by agreement, the statement shall specify the matters so resolved and the matters remaining unresolved. The statement shall recite the date, time, and place of each such conference between counsel, and the names of all parties participating in each such conference.

* * * * *

PART 3—[AMENDED]

3. By adding a new paragraph (f) to § 3.22:

§ 3.22 Motions.

* * * * *

(f) *Statement.* Each motion to quash filed pursuant to Rule 3.34(c) or 3.37(b), each motion to compel or to determine sufficiency pursuant to Rule 3.38(a), each motion for sanctions pursuant to Rule 3.38(b), and each motion for enforcement pursuant to Rule 3.38(c), shall be accompanied by a signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. If some of the matters in controversy have been resolved by agreement, the statement shall specify that matters so resolved and the matters remaining unresolved. The statement shall recite the date, time, and place of each such conference between counsel, and the names of all parties participating in each such conference. Unless otherwise ordered by the administrative law judge, the statement required by this rule must be filed only with the first motion concerning compliance with the discovery demand at issue.

4. In § 3.34, paragraph (c) is revised to read as follows:

§ 3.34 Subpoenas.

* * * * *

(c) *Motions to quash.* Any motion by the subject of a subpoena to limit or quash the subpoena shall be filed within the earlier of ten (10) days after service thereof or the time for compliance therewith. Such motions shall set forth all assertions of privilege or other factual and legal objections to the subpoena, including all appropriate argument, affidavits and other supporting documentation, and shall include the statement required by Rule 3.22(f).

5. In § 3.37, paragraph (b) is revised to read as follows:

§ 3.37 Access for inspection and other purposes.

* * * * *

(b) *Motions to quash.* Any motion by the subject of an order to limit or quash the order shall be filed within the earlier of ten (10) days after service thereof or the time for compliance therewith. Such

motion shall set forth all assertions of privilege or other factual and legal objections to the oder, including all appropriate argument, affidavits and other supporting documentation, and shall include the statement required by Rule 3.22(f).

By direction of the Commission, dated July 22, 1985.

Emily H. Rock,

Secretary.

[FR Doc. 85-18464 Filed 8-2-85; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Amendments to Minimum Financial and Related Requirements for Futures Commission Merchants and Introducing Brokers

AGENCY: Commodity Futures Trading Commission.

ACTION: Poposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend certain of its minimum financial requirements for futures commission merchants ("FCMs") and introducing brokers ("IBs"). The proposed rule amendments would: (1) Clarify the treatment to be accorded to securities included in current assets, whether or not such securities are subject to repurchase agreements, and also clarify the treatment of repurchase agreements; (2) require FCMs to calculate a concentration charge in computing their adjusted net capital; (3) change the treatment of debit/deficit accounts; and (4) clarify the requirements for and the treatment of a guaranteed account. The Commission believes that recent market developments indicate the need for enhanced financial requirements so that FCMs and IBs will be better able to withstand adverse market movements without harm to themselves, their customers and other market participants.

DATE: Comments must be received on or before October 4, 1985.

ADDRESS: Comments must be sent to: Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Attn: Secretariat. Reference should be made to the Minimum Financial Requirements.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Gary C. Miller, Assistant Chief Accountant, Division of Trading and Markets, at the above address. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the wake of the recent financial failure of two FCMs, the Commission directed its staff to review these cases and to recommend any necessary rule changes which would lessen the likelihood of any further financial failures.[1] The preliminary results of this review, which is continuing, have led the Commission to believe that one of the firms may have failed as a result of engaging in transactions in the essentially unregulated market in government securities with a government securities dealer which failed to fulfill its obligations. The Commission also believes that the other firm may have failed because it was carrying a heavily concentrated position in a particular commodity on behalf of certain customers, and that the firm's financial condition was unable to withstand the sudden, sharp market move which occurred in that commodity.[2]

The Commission believes that certain amendments need to be made to its financial rules so that other FCMs and IBs may better manage the financial risks of doing business in these markets. These proposed amendments include: (1) Limiting the types of depositories which can hold securities for FCMs or IBs in order for such securities to be considered good current assets; (2) limiting the depositories which can hold collateral being used to secure a loan, advance or other receivable, and securities being used to secure a reverse-repurchase agreement; (3) adding a concentration charge to an FCM's calculation of its adjusted net capital; (4) changing the treatment of debit/deficit accounts; and (5) adding a new rule with respect to guaranteed accounts carried by an FCM. A discussion of each of these proposals follows.

II. Net Capital Treatment of Securities and Receivables

The basic minimum fanancial requirements for FCMs and IBs are set forth in Commission Rule 1.17.[3] As currently in effect, these rules make no specific mention of "repurchase agreements" or "reverse-repurchase agreements." An FCM or IB must therefore treat such transactions in accordance with the provisions governing such transactions which are set forth in the net capital rule for brokers and dealers of the Securities and Exchange Commission ("SEC"), as provided for in Rule 1.17(b)(1):

> Where the applicant or registrant has an asset or liability which is defined in Securities Exchange Act Rule 15c3-1 (§ 240.15c3-1 of this title) the inclusion or exclusion of all or part of such asset or liability for the computation of adjusted net capital shall be in accordance with § 240.15c3-1 of this title, unless specifically stated otherwise in this § 1.17.

The SEC defines a repurchase agreement as an agreement to sell securities subject to a commitment to repurchase from the same person securities of the same quantity, issuer and maturity, and it defines a reverse-repurchase agreement as an agreement to purchase securities subject to a commitment to resell to the same person securities of the same quantity, issuer and maturity.[4] With respect to the net capital treatment of securities subject to repurchase and reverse-repurchase agreements, the SEC's rules provide that securities sold subject to repurchase agreements are to be treated as if owned by the broker or dealer (an FCM or IB, under the CFTC's rules) which is obligated to repurchase the securities, with an appropriate haircut applied to the market value of the securities, as would be the case with any other securities held in inventory. A reverse-repurchase transaction is to be treated as a secured receivable, inasmuch as the counterparty to the agreement has, in effect, borrowed funds from the broker or dealer (or the FCM or IB), and that loan is secured by securities which the counterparty has sold to the firm. Accordingly, the broker or dealer (or the FCM or IB) must take a percentage safety factor charge with respect to the deficiency, if any, in the market value of the securities collateralizing the receivable, based on the date to

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[1] The Commission notes that prompt action on the part of the appropriate commodity exchanges and their clearing organizations resulted in the transfer of customer accounts and the safeguarding of customer funds in one of the situations, but that this did not occur in the other situation. The Commission further notes, however, that in the latter case efforts are continuing to recover all customer funds which were placed in jeopardy.

[2] An indirect cause of the latter firm's failure also can be traced to the unregulated market in government securities, since the repercussions of the failures of firms in that market are viewed as having contributed to the commodity price spike.

[3] 17 CFR 1.17 (1984).

[4] 17 CFR 240.15c3-1(c)(2)(iv)(F)(*1*)(*i*) and (*ii*) (1984). The Commission is proposing to adopt the same definitions for purposes of Rule 1.17.

maturity of the reverse-repurchase agreement and certain other factors.[5]

The Commission's proposed rule would be consistent with the SEC's net capital treatment of securities subject to repurchase or reverse-repurchase agreements discussed above. The safety charges factor ("haircuts") currently applicable to securities subject to such agreements, and to other securities held in inventory, would remain unchanged.[6] Those rules, however, assume that the parties to such agreements and the custodians of securities will honor their commitments and that the securities involved in such agreements will be returned to the appropriate party upon maturity of the agreement or custodianship. Recent episodes involving unregulated U.S. Government securities dealers have demonstrated that such assumptions may be incorrect in certain instances.[7] The Commission is therefore proposing rule amendments which would set conditions with respect to possession and control of securities which are not subject to a repurchase agreement, by requiring control of such securities by an FCM or IB (or applicant therefor). Securities which are not represented by a tangible instrument would be deemed to be in control of the firm if transactions involving such an instrument are recorded in a book-entry system operated by a governmental agency, a primary dealer of U.S. Government securities,[8] or certain banks.[9] If securities were represented by a tangible instrument, control would require possession of such securities by the firm itself, a primary dealer of U.S. Government securities, certain banks, or a commodities or securities clearing organization. Proposed Rule 1.17(c)(2)(iv)(B)(*1*). The Commission is also proposing additional conditions if a custodian other than the FCM or IB itself holds the securities, including requirements that a custodian issue a receipt and agree to restrictions on its ability to encumber or dispose of the securities. Proposed Rule 1.17(c)(2)(iv)(B)(*2*). Although the Commission believes that many firms already adhere to these conditions as a prudent business practice, the Commission also believes that it is necessary to make these requirements explicit.

The proposed conditions related to securities sold subject to a repurchase agreement would require only that the counterparty to a repurchase agreement issue a written confirmation of the purchase of securities immediately upon such purchase. Also, securities purchased under a reverse-repurchase agreement with another FCM or IB would be excluded from current assets, but no other restrictions would be placed on who the counterparty may be. This treatment of repurchase agreements is consistent with the SEC's treatment of repurchase agreements, which is generally less stringent than the treatment related to reverse-repurchase agreements. The difference in treatment results from the fact that an FCM or IB which has sold securities subject to a repurchase agreement gives up control of those securities to the counterparty to the agreement and receives funds in return. Because the FCM or IB receives proceeds at the outset of the transaction, and because when the transaction is completed, which may be a very short period of time, the securities are to be returned to the FCM or IB, the FCM or IB (just like a securities broker-dealer) has been allowed to treat the securities sold subject to a repurchase agreement as good current assets subject only to the normal securities haircuts.[10] The Commission notes, however, that the FCM or IB may have an additional risk during the term of the agreement if the market value of the securities at any time exceeds the proceeds obtained at the initiation of the agreement, the risk being that the counterparty to the agreement may not honor its commitment to return the securities when the agreement expires. The Commission therefore specifically requests comment as to whether any additional haircut should be taken in the case of securities sold subject to a repurchase agreement where the market value of the securities sold exceeds the proceeds paid by the counterparty to the agreement, and such a difference is not covered by the normal securities haircuts.

As stated above, the SEC's treatment of a reverse-repurchase agreement, which FCMs and IBs must follow in accordance with Rule 1.17(b)(1), is to deem such a transaction to be a secured receivable. This also assumes, however, that an FCM or IB, as the lending party, is properly secured by having possession or control of the securities serving as collateral for the reverse-repurchase agreement. The Commission is therefore proposing amendments to Rule 1.17(c)(3), which governs when a loan, advance or other form of receivable will be considered secured for purposes of Rule 1.17(c)(2), which in turn governs what shall be included within an FCM's or IB's current assets.[11]

The first amendment which the Commission is proposing in Rule 1.17(c)(3) would make a distinction between a reverse-repurchase agreement and loans, advances or any other form of receivable. At present, there is no distinction made in Rule 1.17(c)(3) for a reverse-repurchase agreement. In determining whether a loan, advance or any other form of receivable (except for a reverse-repurchase agreement) can be considered secured, the conditions to be satisfied will be the same as they are at present with one exception: The collateral must be in the possession or control of the FCM or IB, and a counterparty will not be deemed a good control location. The rule currently provides that a loan, advance or other form of receivable could also be

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[5] 17 CFR 240.15c3-1(c)(2)(iv)(F)(*2*) (1984). *See also* 47 FR 3521, 3521, 3528 n.16 (January 25, 1982) and 40 FR 29795, 29797 (July 16, 1975).

[6] As discussed below, however, the Commission is requesting comment as to whether an additional haircut should apply to securities subject to a repurchase agreement.

[7] The SEC recently issued a request for comments on the oversight of the U.S. Government securities market which explores some of those problems in more detail and also describes in more detail the U.S. Government securities market. 50 FR 15904 (April 23, 1985).

[8] A primary dealer is a dealer with which the Federal Reserve Bank of New York ("FRBNY") is willing to deal directly in conducting its open market operations to implement the Federal Reserve Board's monetary policy. The FRBNY regards the primary dealers as the principal market makers in the secondary market for government securities. At present there are 36 primary dealers in Treasury securities, of which 13 are banks, 12 are broker-dealers registered with the SEC, and 11 unregistered dealers. The primary dealers are required to submit daily, monthly, and annual reports to the GFBNY showing their transactions, positions, and capital, and the FRBNY monitors the activity and financial condition of these dealers through these reports and by frequent telephone calls and on-site visits.

[9] A bank would have to meet the definition of a bank set forth in section 3(a)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6) (1982)), which provides as follows:

The term "bank" means (A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising a fiduciary power similar to those permitted to national banks under section 11(k) of the Federal Reserve Act, as amended, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this title, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.

[10] Commission Rule 1.17(c)(5)(v) and 17 CFR 240.15c3-1(c)(2)(vi) (1984). *See also* Pub. L. 98-353, which amended the Bankruptcy Act regarding repurchase agreements.

[11] Except for items specifically enumerated in paragraph (c)(2)(ii) of Rule 1.17, all unsecured receivables, advances and loans must be excluded from current assets.

considered secured if the FCM or IB has a legally enforceable, written security agreement, signed by the debtor, and has a perfected security interest in the readily marketable collateral within the meaning of the laws of the State in which the readily marketable collateral is located. The Commission believes that such a provision may allow too much leeway with respect to the location of collateral and that such a provision can be eliminated without causing disruption to the activities and practices of FCMs and IBs.[12]

The conditions which would apply to securities subject to a reverse-repurchase agreement are essentially the same as those which would apply to securities held in inventory. The securities involved would have to be in the control of the FCM or IB and in the possession of the FCM or IB, a primary U.S. Government securities dealer, certain banks, or a commodities or securities clearing organization. However, the securities involved could not be held by the counterparty to the reverse-repurchase agreement, so the same bank, for exemple, could not be both the debtor on such an agreement and the custodian of the securities. If a custodian other than the FCM or IB is in possession of the securities, it would have to issue a safekeeping receipt. In addition, the counterparty to the reverse-repurchase agreement would have to confirm its sale of the securities to the FCM or IB, and the counterparty would have no authority to make any disposition of the securities until the termination of the agreement. Proposed Rule 1.17(c)(3)(ii).[13]

The Commission is also concerned, especially in light of the recent bankruptcy of an FCM which appears to be due at least in part to the activitjes of a subsidiary, that a firm whose financial condition would affect the financial condition of an FCM or IB not engage in activities which could jeopardize its own, and the FCM's or IB's, financial condition. The Commission is therefore proposing to add an additional paragraph to Rule 1.17(f), which relates to consolidation of adjusted net capital by an FCM or IB with a subsidiary or affiliate. Basically, the new paragraph would require any consolidated subsidiary or affiliate to meet the same standards with respect to securities, repurchase agreements, reverse-repurchase agreements, and secured receivables which are being proposed for FCMs and IBs themselves, and which have been discussed above.[14]

As noted above, recent events have indicated that enhancements of the minimum financial requirements for FCMs and IBs may be necessary. The Commission believes that the proposals with respect to securities, repurchase agreements, reverse-repurchase agreements, and secured receivables would codify prudent business practices with respect to securities in inventory and collateral for receivables which many firms may already be following. The Commission further believes that its proposals in this area are consistent with Rule 1.17(c)(2)(vi), which requires the exclusion from current assets of all assets which are doubtful of collection or realization, less any reserves established therefor, as well as SEC net capital rules.[15]

III. Concentration Charge

The Commission believes that one of the most recent FCM financial failures illustrates the peril of an FCM of carrying a large amount of positions on one side of the market without any compensating positions on the other side of the market. Such a situation leaves an FCM vulnerable to a sudden, sharp price movement which can erode the equity in the accounts being carried by the FCM. This risk could be heightened if a substantial portion of the total amount of positions carried by the FCM are held by one trader or by a few traders. If these accounts go into a deficit condition and the account holders are unable or unwilling to cover their losses, the FCM's financial condition may be impaired and the FCM ultimately may experience a financial failure. The Commission's rules contemplate that an FCM will always have sufficient funds in segregation, even if an FCM has to use some of its own funds (*see, e.g.*, Commission Rules 1.22 and 1.23) to satisfy its obligations to customers. If there is a shortfall in required segregated customer funds, and an FCM has insufficient capital to cover the shortfall, customer losses may result despite existing protections.

The Commission believes that at least a part of this exposure results from the fact that the minimum adjusted net capital rule, as well as the various contract market margining systems, do not recognize that a particular additional position may result in increased marginal risk once the existing positions already being carried by the FCM are considered. The capital rule and the margining systems tend to look at each position in isolation, and do not differentiate between the addition of 1,000 long futures contracts to an existing 1,000 long position and the addition of such a position to an existing flat position. The Commission is of the view that a firm carrying a more heavily concentrated position in a particular commodity, or in a group of commodities whose prices tend to move together, may be exposed to more risk than a firm carrying more diversified positions among several commodities. The Commission is also of the view that an FCM may be exposed to greater risk if a few traders are allowed to hold disproportionately large positions relative to the total positions carried by the FCM, rather than having a broader distribution across customers. Thus, the current minimum adjusted net capital requirement, which generally measures the risk generated by the positions carried by an FCM using four percent of funds required to be segregated, appears to be inadequate under certain circumstances. Merely increasing a firm's overall minimum adjused net capital requirements by the current four percent of funds required to be segregated, or even augmenting that percentage, may not adequately reflect the increased risk to a firm of concentrated positions. The Commission is therefore proposing an additional element of an FCM's computation of its adjusted net capital which would include a charge against net capital for concentration of positions.[16]

The Commission also notes that the Bankruptcy Reform Act of 1978 includes a subchapter which, along with other matters, relates to FCM bankruptcies and prohibits a customer from reclaiming specifically identifiable property which would exceed the customer's pro rata share of the bankrupt estate. That change in the law,

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[12] The Commission's proposal would also be consistent with the SEC's rule with respect to secured indebtedness. *See* 17 CFR 240.15c3-1(c)(5) (1984).

[13] The Commission notes that these proposals relate only to a firm's own securities, repurchase agreements and reverse-repurchase agreements. A reverse-repurchase agreement entered into by an FCM involving customer funds must comply with the conditions set forth in the Commission's Division of Trading and Markets Interpretation No. 2. 1 Comm. Fut. L. Rep. (CCH) ¶ 7112 (May 9, 1979).

[14] The Commission notes that if the proposed changes to paragraphs (c)(2), (c)(3) and (f) of Rule 1.17 were adopted, they would be incorporated by reference into the minimum financial requirements for leverage transaction merchants. 17 CFR 31.9(b) (5), (6) and (10) (1984). The concentration charge discussed below, however, would not be so incorporated.

[15] As in the past regarding proposed amendments to the net capital rules, Commission staff has coordinated with the SEC's staff with respect to these proposals.

[16] Since an introducing broker by definition and by regulation is prohibited from carrying customer accounts, the concentration charge would not be applicable to an introducing broker. *See* section 2(a)(1) of the Commodity Exchange Act ("Act") (7 U.S.C. 2 (1982)) and 17 CFR 1.3(mm) and 1.57 (1984).

which envisions strict proration of all property posted as margin, regardless of type, has facilitated the treatment of U.S. Government securities essentially as, and fungible with, cash, and the Commission and its Division of Trading and Markets ("Division") have adopted rule amendments and made interpretations in keeping with that change in the law. *See, e.g.*, the amendment to Commission Rule 1.36 (48 FR 8434, March 1, 1983) (the only acknowledgement now required of a clearing organization with respect to customer-owned non-cash property deposited with it as margin by an FCM is that such property belongs to the customers of such FCM, rather than to any particular customer); Division Financial and Segregation Interpretation No. 7, 1 Comm. Fut. L. Rep. (CCH) ¶ 7117 (July 23, 1980) (an FCM can invest funds representing its residual financial interest in customer segretaged funds in permissible investments set forth in section 4d(2) of the Act); Division no-action letter dated October 1, 1980 (no enforcement action will be recommended if an FCM uses customer-owned U.S. Government securities in lieu of cash when computing segregation requirements where some customers have deficit positions); Division Interpretative Letter No. 85-4, 2 Comm. Fut. L. Rep. (CCH) ¶ 22,505 (February 27, 1985) (it no longer matters where customer funds are held, provided they are held as margin in a segregated account, so an FCM may now leave customer-owned securities on deposit with a clearing organization even if the customer has no open positions on the contract market). Although the Commission believes that these steps have made an FCM's operations more efficient and the treatment of customers more equitable, the Commission is concerned that these steps also may have reduced the excess funds on deposit relative to the total funds within the futures trading system, previously provided when customer-owned securities were held separately so that they could be returned, free of the proration affecting cash, to their owner.[17] The Commission notes that there have been no corresponding changes in its financial rules to offset this possible depletion of the funds within the system, and further notes that the recent FCM financial failures may have also resulted in part from the fact that such firms, as well as others, are operating on a lower financial base today than was the case prior to the treatment of U.S. Government securities as fungible with cash. The Commission believes that this is an additional reason for making a concentration charge part of an FCM's adjusted net capital computation.

The calculation of the concentration charge would involve several steps. At present, an FCM determines its net capital and than applies the haircuts set forth in paragraph (c)(5) of Rule 1.17 to determine its adjusted net capital.[18] Under the Commission's proposal, what now constitutes an FCM's adjusted net capital would be termed instead its "tentative" adjusted net capital. The FCM would then proceed to compute its concentration charge in accordance with proposed new paragraph (c)(6) of Rule 1.17, since adjusted net capital would mean, if the Commission' proposal were adopted, tentative adjusted net capital less the concentration charge.

The first step for an FCM in computing the concentration charge, set forth in proposed paragraph (c)(6)(i), would be to take each account which it is carrying and separately determine two amounts on a commodity-by-commodity basis: (1) the combined total open long futures contracts and total open granted put options, and (2) the combined total open short futures contracts and total open granted call options.[19] In making these determinations, the FCM would have to observe several rules. All positions carried on any board of trade, not merely every contract market, would have to be included. Thus, positions traded in, for example, London or Singapore, as well as New York and Chicago, would have to be included. The determinations would be made for *every* account carried by the FCM,[20] whether the account is classified as a customer account, a noncustomer account, an omnibus account [21] or a proprietary account. If one person has an interest of ten percent or more in ownership or equity in multiple accounts, or if one person guarantees more than one account, or guarantees an account in addition to his own account, such accounts would be considered as one account for concentration charge purposes. Any further references herein to an account should be interpreted to include such aggregations. The various positions which would be cumulated in each account would be done so based upon the amount of the underlying commodity subject to the futures or option contract. Accordingly, a futures contract on 100 ounces of gold, an option on such a futures contract, on an option an 100 onces of physical gold bullion would each be treated as 100 ounces of gold, or one contract, for purposes of the concentration computations. All different types of a commodity such as wheat, whether soft red, hard red, spring, durum or white, as well as different stock indices, would be treated separately, unless an exchange allowed spread margins for such commodities, as explained more fully below.

The proposed rule would permit cetain exclusions from the totals referred to above for certain specified types of trades. For example, if a trader had established a long August gold/short December gold futures spread, both positions would be excluded from the concentration computation. Similar exclusions would be made if a trader was long a December gold futures contract in New York and short a December gold futures contract in Chicago. The Commission is also proposing to recognize certain cross-commodity spreads involving

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[17] *See* Commission Rule 190.10(c) (17 CFR 190.10(c) (1984)) regarding a disclosure statement which must be furnished to customers who deposit non-cash margin.

[18] These haircuts include percentage deductions in the valuation of various assets, such as inventory or securities, which must be made in order to reflect the possibility of a decline in the value of such assets prior to their disposition, as well as charges for undermargined accounts and the firm's own positions.

[19] Purchased put or call options would not be included in these amounts since the full amount of each option premium must be paid at the time the option is purchased, and therefore no risk to an FCM's financial position is created. This treatment is consistent with the exclusion from the adjusted net capital requirement of four percent of the market value of purchased option customer positions, and a charge to net capital of four percent of the market value of granted option customer positions. 17 CFR 1.17(a)(1)(i)(B) and (c)(5)(iii) (1984). *See also* 47 FR 41513 (September 21, 1982).

[20] The Commission believes that a concentrated position in any particular account, no matter what type of account it is, as well as a concentrated position over all of the accounts carried by the FCM, could present an increased risk to the FCM's financial condition. The Commission also recognizes, however, that if no individual account has a large risk position in a particular commodity, the risk of concentration among all accounts carried by the FCM is less likely to have an adverse impact on the FCM's financial condition. Therefore, if an FCM is not carrying any account with a reportable position in a particular commodity following the application of the permitted exclusions of futures and options spread positions discussed below, the FCM need not make a concentration computation for that particular commodity. However, if at least one account has a reportable position, then all accounts, whether or not the other accounts have a reportable position, must be included.

[21] The originating FCM which carries individually each of the accounts that make up the omnibus account which is carried by the carrying FCM would count its customer accounts separately, and the carrying FCM would count the omnibus account as one account. This is consistent with the general treatment under the net capital rule, which requires that both the originating and carrying FCM maintain at least four percent of funds required to be segregated as a minimum adjusted net capital requirement.

commodities where an exchange allows spread margins to be used, such as for gold and silver. This would also require, however, that the value of gold and silver being carried by the FCM be combined for concentration computation purposes.

The proposed concentration rule also would allow exclusion of futures contracts spread against an in-the-money commodity option involving the same commodity, if the option expires no later than the expiration date of the futures contract.[22] In such a situation both the futures position and the option position would be excluded completely. If the option were or became out-of-the-money, however, both the futures contract and the granted option would have to be included in the concentration calculation. Also, if the option expired and the futures contract remained open, the futures contract would have to be included in the concentration calculation. (As noted above, purchased options are always excluded.) Certain option spreads would also be excluded. A granted call option held against a purchased call option of the same class but a different series [23] would be excluded if the purchased call option is more in-the-money, or less out-of-the-money, than the granted call option, and if the purchased call option expires no sooner than the granted call option. Therefore, a granted August 1985 $310 gold call spread against a purchased December 1985 $300 gold call would result in the exclusion of both option positions from the concentration calculation, if we assume that the August 1985 futures price is $330 and the December 1985 futures price is $340, because the August option would be $20 in-the-money and the December option would be $40 in-the-money. If the purchased gold call were a May 1985 300, or a December 1985 330, the granted gold call would not be excluded from the concentration calculation, because the purchased option would expire before the granted option, or the purchased option would be less in-the-money than the granted option, respectively. Similar treatment would be afforded to a granted put option held against a purchased put option of the same class but a different series if the purchased put option is more in-the-money, or less out-of-the-money, that the granted put option, and if the purchased put option expires no sooner than the granted put option.

The Commission wishes to note that the proposed exclusions of futures and options spreads would be permissive and not mandatory. The Commission believes that positions of generally lesser risk need not be included in a concentration computation. However, an FCM would be free to include such positions, especially if it believed that to do so would make the computation easier. The Commission also specifically requests comment with respect to other ways that might be useful in simplifying the concentration computation or indicating at an early stage that the computation is unlikely to result in the assessment of a charge against the FCM's net capital.

There would be exclusions for a futures contract resulting from a "changer trade" but there would be no exclusion for a futures contract purportedly constituting a hedge transaction. Even assuming such a position were a bona fide hedge, the Commission does not believe that a corresponding cash market position, whether actual or anticipatory, would necessarily mean that the trader would be willing or able to meet his obligations to the FCM. If the futures positions goes into a precipitous decline, presumably the value of the cash market position would show a generally corresponding increase. However, there may be problems in liquidating a cash market position in order to pay off a deficit in the futures account, or the trader may anticipate continuation of the trend and choose to maintain his cash market position without satisfying his obligation to the FCM. Nevertheless, the Commission specifically requests comments as to whether any adjustment should be permitted for bona fide hedge positions. Any commenter who believes that there should be such an adjustment is requested to set forth with particularity a proposed mechanism to accomplish that objective, including a procedure for the FCM to verify the hedge.

After the FCM determines the amount of long futures and granted put options, and separately the amount of short futures and granted call options, for each account for each commodity, the FCM would compare those two amounts. The greater amount would be retained for combination purposes, and the lesser amount would be disregarded for the remainder of the concentration computation. Then with respect to all accounts in a given commodity, the FCM would add together the resulting amounts of long futures and granted put options, and separately add together the resulting amounts of short futures and granted call options. These amounts could be calculated in terms of units of the underlying commodity (*e.g.*, ounces, bushels, or barrels) or in terms of the number of contracts. If the calculation is begun in terms of contracts the FCM would have to account for contracts of different sizes, such as 5,000 and 1,000 bushels, by treating the former as 1 contract and the latter as two-tenths of a contract.

To illustrate the second step, assume that an FCM is carrying ten separate accounts with gold positions of the following amounts, after making the various exclusions referred to above, in terms of the amount of gold subject to futures or commodity option contracts expressed in terms of ounces and in terms of the number of contracts, assuming each future or option involves 100 ounces of gold:

Account No.	Long futures and granted puts	Short futures and granted calls
1	25,000 oz. (250 contracts).	300 oz. (3 contracts)
2	3,000 oz. (30 contracts).	
3		16,000 oz. (160 contracts)
4	25,000 oz. (250 contracts).	800 oz. (8 contracts)
5	30,000 oz. (300 contracts).	
6	1,000 oz. (10 contracts).	200 oz. (2 contracts)
7		800 oz. (8 contracts)
8	300 oz. (3 contracts)	3,200 oz. (32 contracts)
9	27,000 oz. (270 contracts).	
10	29,000 oz. (290 contracts).	500 oz. (5 contracts)

In this simplified example, the hypothetical FCM's long futures and granted put option amount, using Step 2 of the proposed rule, would be 140,000 ounces, or 1,400 contracts, and its short futures and granted call option amount would be 20,000 ounces or 200 contracts. On the "long" side, 300 ounces or 3 contracts would be disregarded for the remainder of the calculation (Account #8), and on the "short" side, 1,800 ounces or 18 contracts would be disregarded (Accounts #1, 4, 6, and 10). These amounts, which are to be disregarded for the remainder of the concentration calculation, are in addition to the exclusions of spread positions described above.

The next step in the process would be similar to the preceding step. The FCM would compare the sums computed in accordance with the preceding step (in

[22] The commodity options involved would have to be traded on or subject to the rules of a board of trade. Accordingly, any off-exchange option, such as a "dealer" or "trade" option, could not be counted as a spread against a futures or exchange-traded option contract.

[23] The same class of options includes either a put or a call on the same underlying futures contract or physical commodity, and the same series of options contains options of the same class which also have the same strike price and expiration date. *See* Commission Rule 33.7(b)(7)(v) and (vi) (17 CFR 33.7(b)(7)(v) and (vi) (1984)).

the simplified hypothetical example, 140,000 ounces or 1,400 contracts for "long" gold and 20,000 ounces or 200 contracts for "short" gold). Again, the greater amount would be retained (140,000 ounces or 1,400 contracts in the example) and the lesser amount would be disregarded for the remainder of the calculation (20,000 ounces or 200 contracts). The FCM would also note whether the greater amount was derived from the long side or the short side (in the example, the long side). The FCM would then multiply the greater amount by the standard fluctuation factor for the particular commodity, which will be described more fully below. Continuing with the example, if the standard fluctuation factor for gold is $10 per ounce, the product of that multiplied by 140,000 ounces would be $1,400,000. (If not done so previously, contracts would have to be converted to ounces, or whatever the appropriate contract unit is, at this point.)

The next step would be to group together the products determined in accordance with the preceding step for any commodities for which a contract market allows spread margin treatment.[24] Such a grouping would have to include any commonly treated commodities. For example, if spread margin treatment were allowed for gold and silver, and separately for gold and gold coins, the FCM would be required to combine gold, silver and gold coins in its concentration computation even if there were no spread margins for silver and gold coins. The FCM would then combine the various products derived by applying the relevant standard fluctuation factor to the greater of the long side or short side amount with respect to each related commodity under the preceding step. To illustrate, assume the hypothetical FCM had the following distribution in the gold, silver and gold coins group:

Gold	$1,400,000 long.
Gold Coins	200,000 short.
Silver	600,000 long.

Adding the long-derived amounts together (gold and silver) would total $2,000,000 in the hypothetical example, and the short-derived amount (gold coins) would be $200,000.

Following this, the FCM would compare the two amounts computed in accordance with the preceding step ($2,000,000 and $200,000, in the hypothetical example), and the greater amount ($2,000,000) would constitute the preliminary concentration charge for the gold, silver and gold coins group. The amount of the actual concentration charge would be a percentage of the preliminary concentration charge, not exceeding 100 percent. The percentage to apply would be based upon the amount of the commodity or related commodity group which the largest single person controls in relation to the amount carried by the FCM. If the largest single individual controls no more than 1 percent of the interest in the group or commodity, there would be no charge. If the largest trader held more than 1 percent, the charge would be scaled up at the rate of 5 percent for each 1 percent increase in control by the largest trader or combined group of traders. Therefore, if the largest single individual or combined group controlled 20 percent or more of the related group or commodity, the FCM would be required to take the full preliminary concentration charge as its concentration charge. The Commission believes that the concentration charge should increase depending upon how much of a particular commodity or commodity group is controlled by one person. This is because if ownership is concentrated in a single or among a few large traders, there is a greater likelihood of those persons defaulting and causing damage to the FCM's financial condition.

In the hypothetical example, the preliminary concentration charge for the gold, silver and gold coins group is derived from adding together the product of applying the separate standard fluctuation factors for gold and silver. In order to determine the applicable portion of the preliminary charge to take, the FCM would determine the percentage interest in the group of the largest single individual. In the hypothetical example, the amount for gold before application of the standard fluctuation factor was 140,000 ounces or 1,400 contracts. Assuming that the total amount for silver was 3,000,000 ounces or 600 contracts (based on 5,000 ounces per contract), the total amount for gold and silver would be 2,000 contracts. Both of these amounts would be derived from the "long" side in the hypothetical example, and in all cases, the amounts used to determine the largest trader's interest would all be derived from either the "long" or the "short" side. In the hypothetical example, the largest single account for gold, Account No. 5, held 30,000 ounces or 300 contracts. Assuming that Account No. 5 also held the largest amount of silver and that such a total was 350,000 ounces or 70 contracts, the largest single individual would be trading 370 contracts out of a total of 2,000 for the gold, silver and gold coins group, or 18.50 percent. That percentage would result in the concentration charge for this commodity group being 90 percent (18 x 5) of the preliminary concentration charge, or $1,800,000 (.90 x $2,000,000).

The FCM would then compare the concentration charge of $1,800,000 for the group of gold, silver and gold coins to its tentative excess adjusted net capital. If the latter figure were $1,000,000, the FCM would have to reduce its tentative excess adjusted net capital by the $800,000 difference. This comparison would be repeated for the concentration charge applicable to each commodity or commodity group. Each comparison would be made separately against the FCM's tentative excess adjusted net capital, which we assume in this example amounts to $1,000,000. If the concentration charge for a particular commodity or commodity group were less than FCM's tentative excess adjusted net capital, it would be disregarded. If the sum of the excess amounts over all commodities or commodity groups totaled more than $1,000,000, the FCM would be required either to increase its net capital or to reduce the positions it is carrying, or it would be undercapitalized.[25] The Commission also specifically requests comment as to whether the amounts which would be disregarded at the last step of the concentration computation should be added together and somehow considered for concentration charge purposes.

IV. Standard Fluctuation Factor

As noted above, the third step in calculating the concentration charge would require the application of a standard fluctuation factor for each commodity. Proposed new Rule 1.63 would require the contract markets to compute and publish these standard fluctuation factors which are intended to reflect recent volatility in the price of the various commodities.

It would be the responsibility of each contract market which is the sole contract market for a particular

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[24] If a particular commodity was not afforded spread margin treatment with another commodity, it would have to be considered individually.

[25] If the proposed amendments to Rule 1.17 are adopted, appropriate conforming changes will be made to the Form 1-FR, the financial reporting form for FCMs and IBs, to reflect those amendments, particularly in the Statement of the Computation of the Minimum Capital Requirements. The Commission would anticipation requiring a listing of those concentration charges, by commodity or commodity group, which exceed tentative excess adjusted net capital. Gross numbers would be used and individual positions would not be reflected.

commodity to compute the standard fluctuation factor for that commodity. If there are multiple contract markets designated for the same commodity (such as in the case of gold), the contract market with the greatest combined futures and option volume considered in the aggregate the standard fluctuation factor for the particular commodity. There would be two situations where it would not be required to compute a standard fluctuation factor: (1) If no futures or option contract has been trading for at least six months, so that meaningful price data can be accumulated on new contracts, or (2) if all designated futures or option contracts involving that commodity are dormant or low volume contracts.[26]

The standard fluctuation factor would generally be computed monthly using futures settlement prices of the future next to expire for the preceding six months.[27] The contract market, beginning with the first business day of the preceding six-month period and for each succeeding business day, would calculate the difference between the futures settlement price of the future next to expire on that day and the preceding business day, and the values so obtained would be averaged to obtain a mean daily price change in terms of dollars and cents per unit of trading. To illustrate, assume the following futures settlement prices of the future next to expire, in dollars per ounce: December 31, $300; January 2, $303; January 3, $299; and January 4, $306. There would be three daily price changes, $3,- $4 and $7, which would have a mean average of $2. The contract market would continue this process for the remainder of the six-month period, and every month the oldest month would be dropped and the most recent month would be added. For the January 1986 calculation, the first comparison would be between the futures settlement price of the future next to expire on June 28, 1985 and July 1, 1985 and the last comparison would be between December 30, 1985 and December 31, 1985. The contract market would always use the futures settlement price of the future next to expire, except when that month changes. For example, if a particular commodity had quarterly delivery months of March, June, September and December, and the last trading day of the March future were March 20, on March 21 the contract market would take the difference between the settlement price of the *June* contract (not the March contract) on March 20 and the settlement price of the June contract on March 21, to determine the March 21 daily price change. After computing a mean daily price change for the six-month period, the contract market would compute three standard deviations and add that amount to the absolute value of the mean daily price change to establish the standard fluctuation factor. A cap would be established, however, so that the standard fluctuation factor for a particular commodity could not exceed twice the maximum daily price limit established by the contract market. The Commission notes that adding two standards deviations to the absolute value of the mean daily price change should encompass at least 95 percent of the expected one-day price moves, given a normal distribution of prices. The Commission believes it is appropriate to add three standard deviations to provide a cushion beyond a one-day price move in most cases, and also to account for an unusual one-day move.

The appropriate contract market would publish the standard fluctuation factors for which it is responsible on or before the close of business on the tenth business day of the month, and FCMs would have to use the standard fluctuation factor beginning with the first business day of the next month. In 1986, the standard fluctuation factor for July through December 1985 prices would have to be published by January 15, 1986 and FCMs would have to use it beginning February 3, 1986. The next factor would be based on August 1985 through January 1986 prices and would have to be published by February 14, 1986 and would have to be used by FCMs beginning March 3, 1986. The Commission computed the standard fluctuation factor for three actively-traded commodities based on prices during the last half of 1984, with the following results: gold, 12.48; S&P 500, 5.05; and Treasury bonds, 1.67.

The Commission is interested in having FCMs use the proposed concentration computation on the accounts which they are carrying and sharing those results with us. The Commission suggests that FCMs use a standard fluctuation factor of 4 percent of the settlement price of the future next to expire in making such a computation. The Commission also notes that its staff has been in contact with certain computer software firms which have indicated that software packages would be available to perform the necessary computations to determine a concentration charge. If any interested persons believe that the proposed concentration computation would not be amenable to computerization, the Commission would be interested in specific comments in that area.

V. Other Matters

A. Debit/Deficit Accounts

The Commission is also proposing to amend Rule 1.17(c)(2)(i), which sets forth the treatment of an unsecured account that either contains a ledger balance and open trades which, when combined, liquidate to a deficit, or contains a debit ledger balance only, for purposes of an FCM's net capital computation. Prior to 1978, FCMs were allowed to include unsecured deficits up to thirty days old as current assets for net capital purposes. When the Commission undertook a major overhaul of the minimum financial requirements for FCMs during 1976 through 1978, it originally proposed to shorten the time period during which unsecured deficits could be included as current assets from thirty days to five days.[28] Certain commenters on that proposal stated that the financial rules should allow customers more than five days to respond to margin calls. Other commenters, however, stated that no unsecured debit or deficit account carried by an FCM should be included in current assets. These latter commenters argued that the existence of an unsecured deficit or debit ledger balance constituted an unwarranted risk to an FCM. The Commission tended to agree with that argument and, therefore, the

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[26] The Commission has defined the term "dormant contract" to mean any commodity futures contract: (1) In which no trading has occurred in any future listed for trading for a period of six complete calendar months; or (2) which has been certified by a contract market to the Commission to be a dormant contract. The Commission has defined the term "low volume contract" to mean any commodity futures contract in which the trading volume in all futures listed for trading falls below 1,000 contracts per calendar month during at least four of any six consecutive calendar months. Commission Rules 5.2(a) and 5.3(a) (17 CFR 5.2(a) and 5.3(a) (1984)). Although at present there is no definition of a dormant option contract market, the Commission is contemplating proposed rules in this area as part of its release on the option pilot program. If and when there is a definition of a dormant option contract market, that definition would be incorporated by reference in the concentration charge provision.

[27] The Commission believes that it will simplify the computation to use only one set of numbers, and it further believes that the prices of the future next to expire are generally the prices which are most likely to reflect current market forces and volatility. The Commission is also concerned that prices for delivery in distant months may be affected by price limits and not always reflect true volatility. The Commission specifically request comment, however, as to whether there may be certain situations, such as where trading in the future next to expire is of very low volume in relation to other months or where that particular futures trades only for a short period of time, when it would be appropriate to use the next month after the nearest delivery month.

[28] 42 FR 27166, 27170, 27174 (May 26, 1977).

regulations as adopted in 1978 allowed an FCM to treat deficits or debit ledger balances as current assets only to the extent that they were subject to margin calls outstanding one business day or less.[29] The method of counting business days, however, meant that if market activity which occurred on a Monday caused an unsecured account to be in a debit or deficit status, the account holder would have until the close of business on Wednesday to alleviate the debit or deficit stuation or the FCM would have to exclude the account from current assets for net capital purposes. That method of counting business days, which is still in effect with respect to undermargined accounts, was changed in 1980 with respect to debit/deficit accounts, following the Commission's review of problems associated with silver price volatility during 1979 and 1980. At present, under the example referred to above, the account holder would have only until the close of business on Tuesday to alleviate the debit/deficit situation or the FCM would have to exclude the account from current assets for net capital purposes.[30]

The Commission is now proposing to require the exclusion from current assets of a debit/deficit account as of the close of business on the day the account reaches a debit or deficit status, which would be Monday in the example referred to above, with no one-day grace period as at present. The Commission believes that recent events have demonstrated even more forcefully the validity of the argument advanced by certain of the commenters on the Commission's May 1977 proposal on this subject that the existence of an unsecured deficit or debit ledger balance constitutes an unwarranted risk to an FCM. The Commission believes that it is appropriate to sharpen the difference in treatment between debit/deficit accounts, where equity is depleted to the point that an unsecured receivable is created which may or may not be collectable, and undermargined accounts, which have fallen below maintenance margin requirements but in which some equity remains, due to the substantially greater risk to an FCM from the former. The Commission further notes that frequently an account in a debit or deficit status will have been undermargined for quite some time. The Commission also wishes to point out that the exclusion from current assets of debit/deficit accounts is not intended as a substitute for firms attempting to collect the proper margin for all accounts.

B. Guaranteed Accounts

The Commission is also proposing a new Rule 1.64 relating to guaranteed accounts. The Commission believes that this rule would simply mandate prudent business practices and codify existing interpretations relating to such accounts. Since the issue of guaranteed accounts arose in connection with one of the recent FCM financial failures, and since aggregation of guaranteed accounts would be required under the proposed concentration charge rule, the Commission believes that it should clarify its treatment of guaranteed accounts in a rule.

Proposed Rule 1.64 would provide that an FCM could not consider an account to be guaranteed unless a written guarantee agreement governing such an account is filed with the FCM, together with an opinion of counsel stating that the guarantee agreement is sufficient to be a binding guarantee under applicable local law. The rule would also provide that if a guaranteed account becomes undermargined, the existence of a guarantee agreement, standing alone, would not be sufficient to alleviate the guaranteed account's undermargined status. Such an account's undermargined status could only be alleviated by accruals on, or a reduction of, open positions, or by the deposit of additional funds. The rule would also provide that if the FCM had prior written authorization of the guarantor, and there were sufficient excess net equity in the guarantor's account, the FCM could transfer funds from the guarantor's account to the guaranteed account. Unless and until any of those actions were taken, however, the guaranteed account would remain undermargined.

Proposed Rule 1.64 would further provide that if a guaranteed account became a debit/deficit account, the existence of a guarantee agreement would not make the account secured for purposes of Rule 1.17(c)(2)(i), which is discussed above. However, the rule would also provide that if the FCM had prior written authorization of the guarantor, and there were sufficient excess net equity in the guarantor's account, the FCM could transfer funds from the guarantor's account to the guaranteed account, as would be the case if the guaranteed account were undermargined. The Commission believes that this treatment is necessary since otherwise the guaranteed account could be treated more favorably if it were in a debit or deficit condition than if it were undermargined, even though the former condition presents greater risk to the FCM.

C. Regulatory Flexibility Act

The new rules and rule amendments proposed herein would affect principally FCMs and contract markets. The Commission has determined previously that FCMs and contract markets are not "small entities" for purposes of the Regulatory Flexibility Act ("RFA") (5 U.S.C. 601 *et seq.* (1982)), and that the requirements of the RFA do not, therefore, apply to FCMs and contract markets. 47 FR 18618 (April 30, 1982). Certain of the proposed rule amendments which pertain to the treatment of securities and receivables, however, could have an impact on the minority of IBs which are raising their own net capital and are not operating pursuant to a guarantee agreement with an FCM.[31] When the Commission first adopted rules governing IBs, it stated that it would "evaluate within the context of a particular rule proposal whether all or some introducing brokers should be considered to be small entities and, if so, to analyze the economic impact on introducing brokers of any such rule at the time." [32] The discussion in that **Federal Register** release centered on the minimum adjusted net capital requirement for an IB and related reporting requirements, and pointed out the range of alternatives provided to IBs (such as the option of entering into a guarantee agreement with an FCM) and the general reduction in burden between the proposed and final rules.[33] The Commission's evaluation of the current proposals related to the treatment of securities and receivables is that they would, if adopted, have a minimal impact on IBs. Guaranteed IBs would not be affected at all. Independent IBs would no increase in their minimum adjusted net capital requirement or in their related reporting requirements. As stated above, those proposals merely codify prudent business practices which many firms may follow already, especially those firms also registered as securities brokers or dealers.

For the reasons set forth above, and pursuant to Section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman hereby certifies, on behalf of the Commission, that the proposed new rules and rule

[29] 43 FR 39956, 39963, 39973 (September 8, 1978); *see also* 43 FR 15072, 15077, 15086 (April 10, 1978).

[30] 45 FR 79416, 79420, 79422 (December 1, 1980).

[31] There are over 800 registered IBs and approximately 70 percent are operating pursuant to a guarantee agreement with an FCM.

[32] 48 FR 35248, 35276 (August 3, 1983).

[33] 48 FR 35248, 35277–73 (August 3, 1983).

amendments set forth herein, will not, if adopted, have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.* (1982), imposes certain requirements on federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information as defined by the PRA, such as reporting or recordkeeping requirements. Office of Management and Budget ("OMG") Control Number 3038–0024 has previously been assigned to Commission Rule 1.17, and the Commission believes that the proposed amendments to Rule 1.17 will not materially change the reporting or recordkeeping burden on FCMs and IBS.

The first new rule being proposed, Rule 1.63 would require publication by contract markets of a standard fluctuation factor for particular commodities traded thereon. However, where multiple contract markets are designated for the same commodity, only the contract market with the greatest trading volume would have to publish the standard fluctuation factor, and no such publication would be required if the contracts involving a particular commodity are dormant or low volume. Therefore, although there are thirteen contract markets, currently only nine contract markets would be subject to the requirement, since four of the contract markets trade contracts which are either dormant or traded in greater volume elsewhere.[34] If a reporting requirement is imposed on fewer than ten persons, the PRA does not apply. 44 U.S.C. 3502(4)(A) (1982). The Commission nonetheless recognizes that the number of contract markets which would be subject to the rule could increase, particularly since one of the four contract markets which would not now be subject to Rule 1.63 has an application pending for a stock index not traded elsewhere. The Commission will therefore furnish information to OMB regarding this proposal. The Commission also notes that certain of the information which would be used in complying with Rule 1.63 is already required to be made available to the public under Rule 16.01(b), which has been approved under OMB Control Number 3038–0012.

The second proposed new rule, Rule 1.64, would require an FCM to maintain a written agreement in the case of an account being guaranteed by other than the account owner, and also maintain an opinion of counsel that the written agreement constitutes a binding guarantee under applicable local law. Although such procedures should already be used as prudent business practices, and the added filing requirements should not be burdensome, the Commission recognizes that the PRA does apply in this case and the appropriate documentation will be furnished to OMB regarding proposed Rule 1.64.

Interested members of the public may obtain a complete copy of the information collection proposal relating to the proposed rules contained herein by contacting Joseph Salazar at (202) 254–9735. Persons wishing to comment on the Paperwork Reduction Act implications of these proposals are asked to send a copy of their comments to Mr. Salazar at the Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, and to the OMB desk officer for the agency, Ms. Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Docket Library, Room 3201, Washington, D.C. 20503, (202) 395–7231.

List of Subjects in 17 CFR Part 1

Contracts markets, Futures commission merchants, Guaranteed accounts, Introducing brokers, Minimum financial requirements, Standard fluctuation factor.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 4f, 4g and 8a thereof, 7 U.S.C. 6c, 6f, 6g and 12a, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART I—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 is proposed to be revised to read as follows:

Authority: 7 U.S.C. 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6*l*, 6m, 6n, 6o, 7, 7a, 8, 12a, 13a, 13a–1, 13a–2, 19, 21 and 23.

2. Section 1.17 is proposed to be amended by adding paragraphs (b)(7) and (b)(8), by revising paragraphs (c)(2)(i), (c)(2)(iv)(B), (c)(3) and (c)(5) introductory text, and by adding paragraphs (c)(6) and (f)(3)(v) to read as follows:

§ 1.17 Minimum financial requirements for futures commission merchants and introducing brokers.

* * * * *

(b) * * *

(7) "Repurchase agreement" means an agreement to sell securities subject to a commitment to repurchase from the same person securities of the same quantity, issuer and maturity.

(8) "Reverse-repurchase agreement" means an agreement to purchase securities subject to a commitment to resell to the same person securities of the same quantity, issuer and maturity.

(c) * * *

(2) * * *

(i) Exclude any unsecured commodity futures or option account containing a ledger balance and open trades, the combination of which liquidates to a deficit or containing a ledger balance only;

* * * * *

(iv) * * *

(B) Securities which are considered "readily marketable" (as defined in § 240.15c3–1(c)(11) of this title) or which "adequately collateralize" indebtedness under paragraph (c)(7) of this section, provided that the securities are in the control of the applicant or registrant, or the securities are sold subject to a repurchase agreement and a written confirmation of the purchase of the securities is issued immediately upon purchase by the counterparty to the agreement. Securities which are not represented by a tangible instrument shall be deemed to be in control of the applicant or registrant if transactions involving such an instrument are recorded in a book-entry system operated by a governmental agency, a primary dealer of U.S. Govrnment securities reporting to the Board of Governors of the Federal Reserve System, or a bank, as that term is defined in section 3(a)(6) of the Securities Exchange Act of 1934, and if, immediately upon purchase of the securities, a written confirmation is issued to the applicant or registrant setting forth the quantity, issuer and maturity. Securities which are represented by a tangible instrument shall be deemed to be in control of the applicant or registrant if:

(*1*) They are in the possession of:

(*i*) The applicant or registrant; or

(*ii*) A primary dealer of U.S. Government securities reporting to the Board of Governors of the Federal Reserve System; or

[34] These contract markets include the Amex Commodities Exchange (gold), MidAmerica Commodity Exchange (corn, hogs, oats, soybeans, soybean meal, wheat, gold, silver, U.S. silver coins, live cattle, U.S. Treasury bonds, U.S. Treasury bills, sugar, platinum, copper, British pound, Swiss franc, Deutschemark, Japanese yen, and Canadian dollar), Minneapolis Grain Exchange (wheat and sunflower seeds) and the Phila[illegible]lphia Board of Trade (Eurodollars).

(*iii*) A bank, as that term is defined in section 3(a)(6) of the Securities Exchange Act of 1934; or

(*iv*) A clearing organization or a securities clearing organization; and

(*2*) A safekeeping receipt identifying the securities is issued by the custodian of the securities, if other than the applicant or registrant, to the applicant or registrant, such a custodian has no authority to encumber or to make any disposition of the securities except at the direction of the applicant or registrant, and the applicant or registrant has an unqualified right to withdraw the securities and to sell them on the open market or in any other manner it may direct.

Provided, however, That securities purchased under a reserve-repurchase agreement entered into with a futures commission merchant or an introducing broker shall be excluded from current assets.

* * * * *

(3) (i) A loan or advance or any other form of receivable (except for a reverse-repurchase agreement) shall not be considered "secured" for the purposes of paragraph (c)(2) of this section unless the following conditions exist:

(A) The receivable is secured by readily marketable collateral which is otherwise unencumbered and which can be readily converted into cash: *Provided, howevr*, That the receivable will be considered secured only to the extent of the market value of such collateral after application of the percentage deductions specified in paragraph (c)(5) of this section; and

(B) The readily marketable collateral is in the control of the applicant or registrant, in accordance with the provisions regarding the control of securities set forth in paragraph (c)(2)(iv)(B) of this section, except that the applicant or registrant will not have control if the counterparty has possession of the collateral.

(ii) A transaction subject to a reverse-repurchase agreement shall not be considered "secured" for the purposes of paragraph (c)(2) of this section unless the following conditions exist:

(A) The transactions is secured by securities which are considered "readily marketable" (as defined in § 240.15c3-1(c)(11) of this title) and which are otherwise unencumbered and which can be readily converted into cash: *Provided, however*, That there shall be a deduction from current assets equal to a percentage of the difference between the contract price for resale of the securities under a reverse-repurchase agreement and the market value of those securities (if less than the contract price), in accordance with the percentage deductions set forth in § 240.15c3-1(c)(2)(iv)(F)(*2*) of this title;

(B) The securities are in the control of the applicant or registrant, in accordance with the provisions of paragraph (c)(2)(iv)(B) of this section, except that the applicant or registrant will not be deemed to have control if the counterparty to the reverse-repurchase agreement has possession of the securities; and

(C) Immediately upon purchase by the applicant or registrant of securities subject to a reverse-repurchase agreement, a written confirmation of the sale of the securities is issued by the counterparty to the agreement.

* * * * *

(5) The term "tentative adjusted net capital" means net capital less:

* * * * *

(6) The term "adjusted net capital" means tentative adjusted net capital less a concentration charge. In order to calculate the applicable concentration charge, a futures commission merchant must determine the amount of each commodity underlying a commodity interest held in each account which it carries: *Provided, however*, That if any person has an interest of 10 percent or more in ownership or equity in, or guarantees, more than one account or guarantees an account in addtion to his own account, all such accounts shall be treated by the futures commission merchant as a single account for the purposes of determining such change: *And, provided further*, That if for a particular commodity no account carried by the futures commission merchant has a reportable position, as set forth in § 15.00 (b)(1)(i) and (b)(2) of this chapter, following the application of the exclusions permitted under paragraph (c)(6)(i)(C) of this section, that commodity need not be included in this computation. If, however, the futures commission merchant is carrying at least one account with a reportable position for a particular commodity, all accounts carried by the futures commission merchant for that commodity must be included in this computation. The concentration charge shall be computed as follows:

(i) *Step 1—Positions per account*. Each futures commission merchant, for each separate account, or for each group of accounts required to be treated as a single account, in accordance with the first proviso of paragraph (c)(6) of this section, which it carries, whether a customer, noncustomer, omnibus or proprietary account, shall determine, on a commodity-by-commodity basis·

(A) The combined total open long futures and total open granted (sold) put commodity option positions traded on or subject to the rules of any board of trade in terms of the amount of the underlying commodity; and separately

(B) The combined total open short futures and total open granted (sold) call commodity option positions traded on or subject to the rules of any board of trade in terms of the amount of the underlying commodity.

(C) In determining the amounts to be calculated in accordance with paragraphs (c)(6)(i)(A) and (B) of this section, the futures commission merchant may exclude:

(*1*) Open long futures positions which:

(*i*) Are held against open short futures positions of another delivery month of the same commodity, or are held against open short futures positions of the same commodity in another market, or are held against open short futures positions of another commodity for which a contract market allows spread margin.

(*ii*) Are held against open granted (sold) call options involving the same commodity, if the option is in-the-money and the option expires no later than the expiration date of the long futures contract;

(*iii*) Are held against open purchased put options involving the same commodity, if the option is in-the-money and the option expires no later than the expiration date of the long futures contract; or

(*iv*) Result from a "changer trade" made in accordance with the rules of a contract market which have been submitted to and not disapproved by the Commission;

(*2*) Open short futures positions which:

(*i*) Are referred to in paragraph (c)(6)(i)(C)(*1*)(*i*) of this section;

(*ii*) Are held against open granted (sold) put options involving the same commodity, if the option is in-the-money and the option expires no later than the expiration date of the short futures contract;

(*iii*) Are held against open purchased call options involving the same commodity, if the option is in-the-money and the option expires no later than the expiration date of the sort futures contract; or

(*iv*) Result from a "changer trade" made in accordance with the rules of a contract market which have been submitted to and not disapproved by the Commission;

(*3*) Open granted (sold) call option positions which:

(*i*) Are referred to in paragraph (c)(6)(i)(C)(*1*)(*ii*) of this section; or

(*ii*) Are held against open purchased call option positions, other than those referred to in paragraph (c)(6)(i)(C)(*2*)(*iii*) of this section, of the same class (as defined in § 33.7(b)(7)(v) of the chapter) but a different series (as defined in § 33.7(b)(7)(vi) of this chapter), and the open purchased call option expires no sooner than the open granted (sold) call option, and if the open granted (sold) call option is in-the-money, the open purchased call option is in-the-money by a greater amount, but if the open granted (sold) call option is out-of-the-money, the open purchased call option is either out-of-the-money by a lesser amount or is in-the-money; and

(*4*) Open granted (sold) put option positions which:

(*i*) Are referred to in paragraph (c)(6)(i)(C)(*2*)(*ii*) of this section; or

(*ii*) Are held against open purchased put option positions, other than those referred to in paragraph (c)(6)(i)(C)(*1*)(*iii*) of this section, of the same class (as defined in § 33.7(b)(7)(v) of this chapter) but a different series (as defined in § 33.7(b)(7)(vi) of this chapter), and the open purchased put option expires no sooner than the open granted (sold) put option, and if the open granted (sold) put option is in-the-money, the open purchased put option is in-the-money by a greater amount, but if the open granted (sold) put option is out-of-the-money, the open purchased put option is either out-of-the-money by a lesser amount or is in-the-money.

(ii) *Step 2—Combination of accounts.* For each commodity, the futures commission merchant shall compare the separate amounts computed for each account in accordance with Step 1 of this paragraph, and shall determine whichever amount is greater in each separate account or in each group of accounts required to be treated as a single account in accordance with the first proviso of paragraph (c)(6) of this section. After that determination is made, the lesser amount from each account shall be disregarded for the remainder of this computation. The futures commission merchant shall then:

(A) Add all of the resulting amounts which were determined in accordance with paragraph (c)(6)(i)(A) of this section ("long side amount"); and separately

(B) Add all of the resulting amounts which were determined in accordance with paragraph (c)(6)(i)(B) of this section ("short side amount").

(iii) *Step 3—Application of standard fluctuation factor.* The futures commission merchant shall compare the sums computed in accordance with Step 2 of this paragraph and shall determine whether the long side amount or the short side amount is greater for each commodity. After that determination is made, the lesser amount shall be disregarded for the remainder of this computation, except that for each commodity the futures commission merchant shall note whether the greater amount was the long side amount or the short side amount. The futures commission merchant shall then multiply each such greater amount by the appropriate standard fluctuation factor for the commodity involved which is published in accordance with § 1.63.

(iv) *Step 4—Combination of commodity groups.* The futures commission merchant shall then group together the various products computed in accordance with Step 3 of this paragraph for any commodities for which a contract market allows spread margin. This combination shall include all common commodities with spread margin, so that if commodity X and Commodity Y are afforded spread margin treatment, and Commodity X and Commodity Z are afforded spread margin treatment, Commodities X, Y and Z must be grouped together for purposes of this computation, even if Commodity Y and Commodity Z are not afforded spread margin treatment. The futures commission merchant shall then, for each commodity group:

(A) Calculate the sum of the products computed in accordance with Step 3 of this paragraph which resulted from multiplying the appropriate standard fluctuation factor for the commodity involved by the long side amount; and separately

(B) Calculate the sum of the products computed in accordance with Step 3 of this paragraph which resulted from multiplying the appropriate standard fluctuation factor for the commodity involved by the short side amount.

(v) *Step 5—Computation of concentration charge.* The futures commission merchant shall then compare the sums computed for each commodity group in accordance with Step 4 of this paragraph, and shall determine whichever amount is greater. Such an amount shall constitute a preliminary concentration charge for each commodity group. If a particular commodity is not afforded spread margin treatment with any other commodity, it will be treated individually. The futures commission merchant shall then, for each commodity which is treated individually, and for each commodity which is included in the preliminary concentration charge for each particular commodity group, take the greater of the amounts computed in accordance with Step 2 of this paragraph. That amount, or that sum in the case of a commodity group, shall be divided into the largest amount of that commodity or those commodities controlled by a single account, a single account for this purpose being determined in accordance with the first proviso of paragraph (c)(6) of this section. That fraction shall be converted to percentage terms, and the result shall determine what percentage of the preliminary concentration charge shall be taken to determine the concentration charge. For each 1 percent by which that fraction exceeds zero, the concentration charge shall equal 5 percent of the preliminary concentration charge, up to a maximum of 100 percent. The futures commission merchant shall then compare the resulting concentration charge for each commodity or commodity group to the amount by which its tentative adjusted net capital exceeds its minimum adjusted net capital requirement ("tentative excess adjusted net capital"). For each of those concentration charges which exceed tentative excess adjusted net capital, the futures commission merchant must reduce its tentative adjusted net capital by the amount of such excess to determine its adjusted net capital.

* * * * *

(f) * * *

(3) * * *

(v) Securities of a consolidated subsidiary or affiliate may be included in consolidated adjusted net capital only if the conditions set forth in paragraph (c)(2)(iv)(B) of this section are met, and a loan, advance or any other form of receivable (including a reverse repurchase agreement) of a consolidated subsidiary or affiliate may be considered secured for the purposes of paragraph (c)(2) of this section only if the conditions set forth in paragraph (c)(3) of this section are met.

* * * * *

3. A new § 1.63 is proposed to be added to read as follows:

§ 1.63 Standard fluctuation factor.

(a) Each contract market which is the sole contract market designated for a particular commodity shall compute and publish a standard fluctuation factor for that commodity in accordance with this section. In the case of a particular commodity for which multiple contract markets have been designated, the contract market with the largest volume of futures and option trading in that commodity during the preceding six months shall compute a standard fluctuation factor for that commodity in accordance with this section. If no futures or option contract has been designated and trading for a particular

commodity for at least six months, or if all designated futures or option contracts involving that commodity are dormant or low volume contracts, as defined in §§ 5.2(a) and 5.3(a) of this chapter, no standard fluctuation factor need be computed.

(b) The appropriate contract market shall compute a standard fluctuation factor for a particular commodity in the following manner:

(1) Beginning with the first business day of the preceding six months, and for each succeeding business day of that six-month period, calculate the difference between the spot month futures settlement price on that day and the preceding business day to determine a price change in dollars and cents per unit: *Provided, however,* That on the first business day for a new spot month, the comparison shall be made to the preceding day's settlement price for that month, and not the former spot month.

(2) Average the values obtained in accordance with paragraph (b)(1) of this section to obtain a mean daily price change; and

(3) From the data used in connection with paragraphs (b)(1) and (b)(2) of this section, compute three standard deviations and add that amount to the absolute value of the mean daily price change obtained in accordance with paragraph (b)(2) of this section. The resulting value shall be the standard fluctuation factor and shall be expressed in dollars and cents per unit: *Provided, however,* That the standard fluctuation factor may not exceed twice the maximum daily price limit which the contract market has established for the particular commodity.

(c) The appropriate contract market shall compute the standard fluctuation factor on a monthly basis using the data of the preceding six months, and shall publish the standard fluctuation factor not later than the close of business on the tenth business day of each month. Each futures commission merchant must use each standard fluctuation factor published in a particular month for every business day of the following month in computing its adjusted net capital in accordance with § 1.17(c)(6).

4. A new § 1.64 is proposed to be added to read as follows:

§ 1.64 Guaranteed accounts.

(a) No account carried by a futures commission merchant shall be considered guaranteed by anyone other than the beneficial owner of such an account unless a written guarantee agreement governing such an account is filed with the futures commission merchant, together with an opinion of counsel stating that the guarantee agreement is sufficient to be a binding guarantee under applicable local law.

(b) If a guaranteed account becomes undermargined, the existence of a guarantee agreement, as described in paragraph (a) of this section, cannot be considered sufficient to alleviate the guaranteed account's undermargined status. The undermargined status can only be alleviated by accruals on open positions, by a reduction of open positions, or by the deposit of additional funds, which can include, with prior written authorization of the guarantor and sufficient excess net equity in the guarantor's account, a transfer of funds from the guarantor's account to the guaranteed account.

(c) If a guaranteed account contains a ledger balance and open trades, the combination of which liquidates to a deficit, or contains a debit ledger balance only, the existence of a guarantee agreement, as described in paragraph (a) of this section, does not constitute security for such deficit or debit ledger balance for purposes of § 1.17(c)(2)(i). With prior written authorization of the guarantor and sufficient excess net equity in the guarantor's account, the futures commission merchant may transfer funds from the guarantor's account to the guaranteed account to alleviate the deficit or debit ledger balance.

Issued in Washington, DC, on July 30, 1985 by the Commission.

Jean A. Webb,

Secretary of the Commission.

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17 CFR Parts 1 and 190

Contract Markets and Clearing Associations; Default; Bankruptcy

AGENCY: Commodity Futures Trading Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is requesting comment on whether the Commission should propose rules requiring each contract market and its related clearing association to adopt regulations governing the procedures pursuant to which the open commodity contracts carried by a clearing member futures commission merchant ("FCM") which has defaulted on a margin obligation are transferred or liquidated.

DATE: Comments must be submitted by October 4, 1985.

ADDRESS: Comments should be submitted to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Kevin M. Foley, Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: On March 20, 1985, Volume Investors Corporation ("Volume"), a clearing member FCM of the Commodity Exchange, Inc. ("Comex") and other designated contract markets, failed to meet a margin call issued by the Comex Clearing Association with respect to the customer accounts carried by Volume. The default by Volume resulted primarily from the failure, in turn, of three customers, who held in the aggregate 12,000 short option positions on gold futures, to meet a margin call to Volume.

Following this default, the Comex Clearing Association, pursuant to its rules, suspended Volume from membership, took control of all open positions carried by Volume and proceeded to liquidate them. The customer positions carried by Volume on other contract markets similarly were liquidated or, in certain instances, transferred to other clearing members. After application of Volume's assets to the customer segregated account, a deficit of approximately $3.6 million remained.

The liquidation of customer accounts by the Comex Clearing Association has been the subject of severe criticism. Customers whose accounts were fully margined questioned why their positions were not transferred rather than liquidated. Moreover, the liquidation was not commenced on March 20 when the default occurred and, when begun on Thursday, March 21, was not completed until the following week. During this time, when the settlement price of gold on Comex fell from $323.80 to $316.10, customers were not aware of the status of their positions, and many who had profitable positions on March 20 found, after liquidation had been completed, that they had suffered losses. Finally, professional traders, who had entered into essentially risk-neutral combination positions, such as boxes, conversions, and reverse conversions, were advised that the different sides of these positions had been removed at different times, thus exposing them to risks not contemplated by such self-adjusting combinations.

Since March 20, the Commission has been conducting a thorough review of the events surrounding the Volume default to determine not only what happened, but what can be done to deter a similar event from occurring and to ameliorate the consequences of such an occurrence. The Commission's review in certain areas is continuing. Nonetheless, the Commission believes that the various problems perceived in the liquidation of the open positions may be substantially avoided in the future if each contract market and its related clearing association adopt rules governing the procedures pursuant to which the open positions carried by a clearing member FCM which fails to meet a margin call are transferred or liquidated. The Commission, therefore, is requesting comment on several issues prefatory to determining whether to propose rules requiring the exchanges and their related clearing organizations to adopt such regulations. In this same regard, comment is also being requested on whether the Commission should amend its rules relating to liquidation of open positions in the event of a commodity broker bankruptcy. Commission rule 190.04(d), 17 CFR 190.04(d) (1984).

The Commission has reviewed the currently applicable exchange and clearing association rules and has found that four have no rules relating to the transfer or liquidation of open positions in these circumstances.[1] The rules of the remaining exchanges and clearing associations, with the exception of the Comex Clearing Association, generally do little more than recognize their authority in this regard.[2] They establish no procedures which these organizations must follow and, as a result, the decisions on the manner of proceeding in every case are left to be made on an *ad hoc* basis.

The Commission is aware that the facts and circumstances surrounding the default of an exchange clearing member, which historically has been an infrequent event, are likely to be different in every case. Therefore, it would be inappropriate to require exchanges and their clearing associations to adopt and follow a rigid set of procedures. These organizations must have the flexibility to respond to individual factual situations. At the same time, however, the default of a clearing member, or any FCM for that matter, generally requires that decisions be made quickly, and the failure to have adequate procedures in place may delay the necessary decisions or prevent them from being made at all, to the detriment of both the customers and the market in general.

In order to assist the Commission in determining the appropriate scope of any rules relating to the procedures pursuant to which exchanges and their clearing corporations transfer or liquidate the open positions of a defaulting clearing member, the Commission is requesting comment on the following questions:

1. Should exchanges and clearing associations be required to attempt to transfer all open positions before liquidating them? The Commission's bankruptcy rules require a trustee in bankruptcy to use its best efforts to transfer promptly open customer positions rather than liquidating them. *See Commission rule 190.02*, 17 CFR 190.02 (1984).[3] However, exchanges and their clearing associations, although they generally may seek to do so, do not have such a requirement. Since transferring open positions may be less disruptive to the market than a forced liquidation and would permit hedgers to maintain their cover, it would appear that transferring open positions should alway be the preferred course of action. In this connection:

(a) Should market share of the defaulting FCM or liquidity in the relevant markets in general be a consideration?

(b) What is the best method of assuring timely computation of the equity available for transfer?

(c) If less than 100% of the margin required is available for transfer with the open positions, what provisions should be made to induce other clearing members to accept these positions?

(d) Should individual customers be afforded an opportunity to deposit additional funds in order to transfer their positions to another FCM?

(e) If a pro rata transfer is anticipated, is court supervision essential?

2. Should the reason for the default be a relevant consideration? A failure by a clearing member FCM to meet a margin call in a customer account may result either from the improper conduct of the FCM or from the failure of a customer to meet a margin call. In the event of a segregation shortfall, is there any way to transfer equity supporting customer positions other than pro rata that would be fair for all parties?

3. If liquidation of open positions is necessary, should such liquidation always be by open outcry? Commission rule 190.04(d), which governs the liquidation of open positions in the event of a commodity broker bankruptcy, requires that such positions generally be liquidated by open outcry on the floor of the exchange.[4] However, this rule is premised on the assumption that such liquidations can ocur relatively quickly. In the case of the Volume default, the liquidation of open positions was not substantially completed for five days, during which

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[1] Chicago Board of Trade and Board of Trade Clearing Corporation; Kansas City Board of Trade and Grain Clearing Company; Minneapolis Grain Exchange; and New York Mercantile Exchange.

[2] Amex Commodities Corporation and Intermarket Clearing Corporation; Chicago Mercantile Exchange; Chicago Rice and Cotton Exchange; Commodity Exchange, Inc. and Comex Clearing Corporation; Coffee, Sugar & Cocoa Exchange and CSC Clearing Corporation; MidAmerica Commodity Exchange; New York Cotton Exchange and Commodity Clearing Corporation; New York Futures Exchange and New York Futures Clearing Corporation; Philadelphia Board of Trade and Intermarket Clearing Corporation.

[3] Commission rule 190.02 (e) and (f) provides, in part: *§ 190.02 Operation of the debtor's estate subsequent to the filing date and prior to the primary liquidation date.* * * *

(e) *Transfers*—(1) *All cases.* The trustee for a commodity broker must immediately use its best efforts to effect a transfer in accordance with § 190.06 (e) and (f) no later than the close of business on the fourth business day after the order for relief of the open commodity contracts and equity held by the commodity broker for or on behalf of its customers.

(2) *Involuntary cases.* A commodity broker against which an involuntary petition in bankruptcy is filed, or the trustee if a trustee has been appointed in such case, must use its best efforts to effect a transfer in accordance with § 190.06 (e) and (f) of all open commodity contracts and equity held by the commodity broker for or on behalf of its customers and such other property as the Commission in its discretion may authorize, on or before the close of business on the fourth business day after the filing date, and immediately cease doing business. * * *

[4] Commission rule 190.04(d) provides: § 190.04 Operation of the debtor's estate-general. * * *

(d) *Liquidation*—(1) *Order of Liquidation.* (i) *Open Outcry.* Liquidation of open commodity contracts held for a house or a customer account by or on behalf of a commodity broker which is a debtor shall be accomplished in accordance with §1.38 of this chapter: *Provided.* That, to the extent reasonably possible, the trustee shall first liquidate all net positions and shall subsequently liquidate all long and short positions in the same commodity in the same delivery month on the same contract market in tandem: and *Provided further.* That any covered commodity owned by a debtor shall be liquidated, to the extent reasonably possible, at the same time as its cover. (ii) *Book entry.* Notwithstanding paragraph (1), in appropriate cases, upon application by the trustee of the affected clearing organization, the Commission may permit offsetting open commodity contracts to be liquidated, or settlement on such contracts to be made, by book entry. Such book entry shall offset such trades on the books of the commodity broker using an execution price equal to the weighted average of the liquidation prices for contracts in the same commodity for the same delivery month on the same contract market which are not matched on the books of the commodity broker, or if there are no such unmatched contracts, using the average of the opening price and the settlement price of contract in the same commodity for the same delivery month on the same contract market as of the close of business on the market day of the order for relief. * * *

time the price of gold fell from $323.80 to $316.10. The Commission, therefore, questions whether it would be fairer to the customers of the defaulting FCM who have no control over their accounts and less disruptive to the market if, to the extent possible, all positions are liquidated by book entry at a price certain. If liquidation by book entry is preferred:

(a) What is the appropriate price at which the open positions should be liquidated? If the net position alone is liquidated by open outcry? If the net position is otherwise disposed of? Are these answeres different if liquidation can be accomplished in a single trading session?

(b) Are there any alternatives to liquidating the net position by open outcry, especially in the event that the net position in still a significant part of the total open positions in that market, as was the case in the Volume default?

To the extent liquidation is by open outcry, should such liquidation determine only the pool of assets available for distribution and net equity be determined by the settlement price on a given day? If so, what could be done then about any disparity in the two figures?

4. Should any provision be made for risk-neutral positions? Many options traders enter into combination positions, such as conversions, reverse conversions and boxes which are essentially self-adjusting, risk-neutral positions. These positions, however are not identified as such to the clearing association, nor are they necessarily identified on the books of the defaulting FCM. Nonetheless, if the different positions are liquidated at different times, the customer's overall position will no longer be risk-neutral and, indeed, the customer may be exposed to substantial risk. A clearing association that takes control of the liquidates the open positions stands in the place of the defaulting FCM. Therefore, it may be appropriate that clearing associations develop procedures to liquidate such positions simultaneously. If such procedures should be developed, how can such positions be identified? Is it impracticable to develop such procedures and, if so, is there any way to prevent such customers from having losses which are disproportionate to their risk position?

5. The Commission's bankruptcy rules provide that, to the extent possible, any covered commodity owned by a customer should be liquidated at the same time as the cover. *See* Commission rule 190.04(d). If a clearing association takes control of open positions, how may this objective be achieved?

6. Revised Financial and Segregation Interpretation No. 4 will require each self-regulatory organization to have an "emergency plan" to deal with the suspension or cessation of business by a financially troubled member. To what extent should these audit programs be supported by exchange rules?

7. As a result of the provisions of the Bankruptcy Reform Act of 1978, Commission rules now treat certain customer-owned U.S. Government securities as fungible with cash. *See, e.g.*, Commission rules 1.36 and 190.01(kk), 17 CFR 1.36 and 190.01(kk) (1984). In addition, the Division of Trading and Markets has issued interpretations which reflect this position. *See, e.g.*, Financial and Segregation Interpretation No. 7, 1 Comm. Fut. L. Rep. (CCH) ¶ 7117 (July 23, 1980) and Interpretative Letter No. 85-4, 2 Comm. Fut. L. Rep. (CCH) ¶ 22,505 (February 27, 1985). Should the Commission re-evaluate this position?

8. Time is of the essence if customer positions and equity are to be protected from the erosion that can attend the lengthy administration of an insolvent estate. What procedures, rules and rule changes should be in place to ensure that the scheme of expeditious transfers and liquidations contemplated by the Bankruptcy Reform Act and the Commission's Part 190 rules can be practicable?

Issued in Washington, D.C., on July 30, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-18467 Filed 8-2-85; 8:45 am]

BILLING CODE 6351-01-M

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17 CFR Part 33

Commodity Options; Margin

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed guidelines.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to adopt a guideline pursuant to which the Commission will review and approve the rules of designated contract markets relating to the margining of option positions. The proposed guideline is intended to serve as a basis for ensuring, to the extent possible, that the margin assessed by contract markets on option positions, both long and short, is commensurate with the risk assumed.

DATE: Comments must be submitted by September 4, 1985.

ADDRESS: Comments should be submitted to the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581.

FOR FURTHER INFORMATION CONTACT: Kevin M. Foley, Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION: The comprehensive regulatory scheme governing transactions in exchange-traded commodity options is found in Part 33 of the Commission's regulations, 17 CFR Part 33 (1984).[1] In promulgating these rules, the Commission considered, but determined not to adopt, regulations relating to the payment of margin on option positions. The Commission specifically requested comment on this issue, in particular with respect to uncovered short options, when it proposed regulations governing exchange-traded commodity options in June 1981.[2] The Commission generally agreed with the commenters, however, that the exchanges should be capable of analyzing market conditions in both the option and the underlying futures markets and of setting margin levels which are high enough to ensure that option grantor will be able to meet their obligations.[3]

The Commission's plenary authority under sections 4(c) and 5a(12) of the Commodity Exchange Act ("Act"), 7 U.S.C. 6c(c) and 7a(12) (1982), includes the review of rules governing the actual levels of commodity option margin as well as the payment and collection of such margin. As the Commission has stated elsewhere:

> Section 5a(12) of the Act (7 U.S.C. 7a(12)) restricts only the Commission's authority to review and approve contract market rules relating to the setting of levels of margin for futures transactions. Indeed, the Commission is authorized under section 4c(c) to review not only exchange rules relating to the payment and collection of option margins which—together with exchange rules establishing or modifying methods and systems for the payment and collection of option margin—must be submitted to the

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[1] Certain conforming amendments are also set forth in Part 1 of the Commission's regulations, 17 CFR Part 1 (1984).

[2] 46 FR 33293 (June 29, 1981). The Commission notes that the nomenclature of "long" and "short" as applied to option trading differs from futures. A "long" option position is held by the option purchaser while a "short" option position is held by the option writer, grantor, or seller—regardless of whether the option is a call or put.

[3] *See* 46 FR 54500, 54505 (November 3, 1981).

Commission as reviewable rules under § 1.41(b), but also to review the establishment of actual levels of margin for commodity option transactions.[4]

The Commission's experience with exchange-traded options to date has not altered its belief that primary responsibility for the specific levels of option margin should remain with the relevant contract market. Recent events in the contract market in options on gold futures on the Commodity Exchange, Inc., however, have led the Commission to conclude that it should adopt a formal guideline pursuant to which exchange rules relating to the payment and collection of option margin will be reviewed and approved. The Commission has further concluded that each contract market and the commodity option market in general would be well served if the existing rules relating to the payment and collection of option margin, as well as the system for determining the level of margin, are re-evaluated, based on the standards set forth in this Commission guideline. Therefore, if this guideline is adopted, the Commission expects that it will request each exchange on which options are traded to file appropriate documentation to support its existing margin rules which describes, among other things, how the level of margin is computed.

In this connection, the Commission notes that the segregation provisions of section 4d(2) of the Act, 7 U.S.C. 6d(2) (1982), generally reflect congressional intent that a customer's funds be protected not only from the misdeeds of the futures commission merchant carrying the account of such customer, but from the misdeeds of the other customers of the futures commission merchant as well.[5] The failure to assess and collect adequate margin may result in the default of one customer, and the losses incurred thereby may directly affect the funds of all other customers, in violation of the intent, if not the specific provisions of section 4d(2). The Commission believes, therefore, that margin is an essential element of customer as well as market protection.

The Commission is aware that several exchanges have already begun a re-evaluation of their option margin rules and, in some instances, have identified and adopted rule amendments. The Commission does not believe that the proposed guideline would interfere in this process, since it sets out standards which have already been made known to the exchanges. Nonetheless, because the Commission and the exchanges have gained considerable experience with options since they began trading in 1982, the Commission believes that the relevant exchange rules should be re-evaluated at this time to ensure that they adequately respond to the market as it exists today.

Because the Commission believes that exchanges should have the necessary flexibility to draft rules which are most suitable for their particular markets, the guideline itself is brief. Indeed, with the exception of a few specific requirements, the guideline simply requires each exchange to document to the Commission that its rules relating to option margin ensure, to the extent possible, that the margin collected from a customer, including floor traders and other exchange members, is commensurate with the risk assumed by such customer. In this connection, the guideline recognizes that a "delta" margining system or other methods of risk assessment consistent with that system may be appropriate for exchange members. Moreover, certain reduced risk positions may be margined at a level lower that the level of margin on an uncovered option position.

Commenters are encouraged, therefore, to discuss all aspects of the proposed guideline and, in particular, whether more specific standards may be appropriate. For example, with respect to spread positions, the Commission has generally required that the long option expire after the short option in order to avoid the potential that the margin on the short position would increase substantially immediately upon expiration of the long position. This requirement is not presently in the guideline, but commenters are specifically requested to address whether it should be included.

Guidline No. 3—Interpretative Statement Regarding Commission Consideration of Exchange Option Margin Rules Pursuant to Sections 4c(c) and 5a(12) of the Commodity Exchange Act.

Exchange option margin rules submitted to the Commission for review and approval pursuant to sections 4c(c) and 5a(12) of the Commodity Exchange Act must apply to exchange members as well as non-members and must meet the following requirements.

1. *Long Option Positions.*

(a) The full amount of each option premium must be received from each option customer at the time the option is purchased.

(b) The intrinsic value of a long option may not be used to margin other option positions, whether related or unrelated.

(c) The intrinsic value of a long option position may be used to margin a futures position, but only if such position is related to the long option position.

(d) Gains on a long option position may not be released before the option position is liquidated.

2. *Short Option Positions.*

(a) An uncovered short option position entered into by any customer must be subject to a reasonable minimum margin requirement in addition to the amount of the premium received.

(b) The cover associated with any covered short option position entered into by any customer must be in the possession or control of the exchange member who has entered into such option position on behalf of such customer.

3. *Reduced Risk Positions.*

(a) Combinations of options and futures positions such as straddles, spreads, boxes, conversions and reverse conversions, which provide reduced risks or are risk neutral may be subject to lower margin requirements, provided the margin required is commensurate with the risk assumed by such positions. In no event may the margin on such positions be less than zero.

(b) Each exchange which adopts rules relating to such combination positions must submit to the Commission documentation supporting its analysis that the lower margin requirements will be commensurate with the risk assumed. In this connection, the exchange must distinguish between combination positions such as conversions, reverse conversions and boxes that do not tend to change their risk exposure despite

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[4] 47 FR 56996, 57003 (December 22, 1982).

[5] Section 4d(2) of the Act provides in part: Sec. 4d. It shall be unlawful for any person to engage as a futures commission merchant . . . in soliciting orders or accepting orders for the purchase or sale of any commodity for future delivery, or involving any contracts of sales or any commodity for future delivery, on or subject to the rules of any contract market unless—

(2) such person shall . . . treat and deal with all money, securities, and property received by such person to margin, guarantee, or secure the trades or contracts of any customer of such person, or accruing to such customer as the result of such trades or contracts, as belonging to such customer. Such money, securities and property shall be separately accounted for and shall not be commingled with the funds of such commission merchant or be used to margin or guarantee the trades or contracts, or to secure or extend the credit of any customer or person other than the one for whom the same are held. . . .

It shall be unlawful for any person including but not limited to any clearing agency of a contract market and any depository, that has received any money, securities, or property for deposit in a separate account as provided in paragraph (2) of this section, to hold, dispose of or use any such money, securities, or property as belonging to the depositing futures commission merchant or any person other than the customers of such futures commission merchant.

subsequent market moves and other combination positions such as straddles and spreads that may change their risk exposure following subesequent market moves.

4. *Member Margin Requirements.*

(a) Each exchange may adopt systems to margin exchange member option positions which result in lower margin requirements for such members, provided such system meets all of the requirements of items 1(a), (b) and (d), 2 and 3 of this guideline and the margin required is commensurate with the risk assumed by such member.

(b) Each exchange which adopts rules establishing a system to margin exchange member option positions must submit to the Commission documentation supporting its analysis that the margin required under such a system is commensurate with the risk assumed by such member, particularly in volatile markets. This documentation must also explain the method by which such margin is calculated.

Issued in Washington, D.C., on July 30, 1985.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-18466 Filed 8-2-85; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

CGD2 85-27

Drawbridge Requirements; Black River and Ouachita River, LA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulations governing the operation of the following three bridges:

(1) The swing span bridge over Black River, mile 40.9, on US 84 at Jonesville, Concordia Parish.

(2) The swing span bridge over Ouachita River, mile 57.5, on LA 8 at Harrisonburg, Catahoula Parish.

(3) The lift span bridge over Ouachita River, mile 110.1, on US 165 at Columbia, Caldwell Parish.

This change would require that the draws of the three bridges open on at least four hours advance notice at all times. Presently, these draws are required to open on at least one hour advance notice at all times. This proposal is being made because of the continued infrequency of requests to open the draws and to provide greater flexibility in personnel assignments in responding to these requests. The action should relieve the bridge owner of the burden of having persons located in proximity to the bridges to open the draws, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before September 19, 1985.

ADDRESS: Comments should be mailed, or may be hand delivered, to the Second Coast Guard District, Bridge Branch, 1430 Olive Street, St. Louis, Missouri 63103.

Comments are available for examination and copying at this same address from 9:00 a.m. to 3:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Chief, Bridge Branch, at the address given above, telephone (314) 425-4607.

SUPPLEMENTARY INFORMATION: Interested parties are invited to participate in this proposed rule making by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope. The Commander, Second Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Roger K. Wiebusch, project officer, and Lt. R. E. Kilroy, project attorney.

Discussion of Proposed Regulations

Vertical bridge clearance in the closed position at normal pool is, respectively, 39.0 feet for the Jonesville bridge, 43.0 feet for the Harrisonburg bridge and 50.2 feet for the Columbia bridge. Waterway traffic through the bridges consists of barge tows, houseboats and motorboats. LDOTD reports that, usually, only tows require bridge openinings, and that this traffic is infrequent for all three bridges. Data submitted by LDOTD provided the following for review.

(1) Jonesville Bridge, Black River. In 1984, there were 211 bridge openings, an average of 17.6 per month or an average of about one opening every two days. In 1983, 82, 81, and 80, there were 168, 180, 120, and 216 bridge openings, respectively.

(2) Harrisonburg Bridge, Ouachita River. In 1984, there were 91 bridge openings, an average of 7.6 per month or an average of one opening every four days. In 1983, 82, 81, and 80, there were 120, 156, 84, and 156 bridge openings, respectively.

(3) Columbia Bridge, Ouachita River. In 1984, there were 82 bridge openings, an average of 6.8 per month or an average of about one opening every four days. In 1983, 82, 81, and 80, there were 108, 132, 60, and 168 bridge openings, respectively.

The method for giving the four hours advance notice for an opening of the draws would be the same as the method now in use for giving the one hour advance notice. A collect call can be placed at any time to the LDOTD District Office at Chase, Louisiana, telephone (318) 435-5154. Vessels underway may radio the public coast station or their land bases to make the call. Considering the few openings involved and the fact that the contract procedure for an opening would remain unchanged, adoption of the four hours advance notice should provide for the reasonable needs of navigation while allowing the bridge owner to reduce costs.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

An economic evaluation has not been conducted since the impact of this proposal is expected to be minimal. The basis for this conclusion is that there are few vessels requiring an opening of the draw, as evidenced by the 1980 through 1984 bridge statistics, and that the method for the giving of four hours advance notice for an opening would not change from the present method for the giving of one hour advance notice. In 1984, for example, the Jonesville bridge opened about once every two days while the Harrisonburg and Columbia bridges opened about once every four days on average. Those vessels needing an opening should reasonably be able to give four hours advance notice by placing a collect call to the bridge owner at any time. Affected mariners are mainly repeat users and scheduling their arrival at the bridges at the appointed time should involve little or no additional expense to them. Since the

economic impact of this proposal is expected to be minimal, the Coast Guard certifies that these rules, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by revising § 117.427 and § 117.483 to read as follows:

Part 117—Drawbridge Operation Regulations

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.427 is revised to read as follows:

§ 117.427 Black River.

The draw of the US 84 bridge, mile 41.0 at Jonesville, shall open on signal if at least four hours notice is given.

3. Section 117.483 is revised to read as follows:

§ 117.483 Quachita River.

The draws of the S 8 bridge, mile 57.5 at Harrisonburg, and the US 165 bridge, mile 110.1 at Columbia, shall open on signal if at least four hours notice is given.

Dated: July 22, 1985.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 85–18500 Filed 8–2–85; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Detached Address Cards

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would establish a uniform size standard for all detached address cards, wherever their use is authorized, and enable the Postal Service to gain processing economies associated with letter-size mail. It would also eliminate the present use of detached address cards of many sizes, which adversely affects the casing of mail.

DATE: Comments must be received on or before September 4, 1985.

ADDRESS: Written comments should be mailed or delivered to the Director, Office of Mail Classification, U.S. Postal Service, Room 8430, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260–5360. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, in Room 8430 at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. George E. Thomas, (202) 245–4512.

SUPPLEMENTARY INFORMATION: Detached address card standardization is necessary in order for the Postal Service to be able to realize the economies associated with the processing of letter-size mail as opposed to flats. Standardization is also required to eliminate the current usage of a wide range of detached address cards the sizes of which impact upon the carrier casing operation.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed revisions of the Domestic Mail Manual, which is incorporated by reference in the code of Federal Regulations. See 39 CFR Part 111.1.

List of Subjects in 39 CFR Part 111

Postal Service

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3219, 3403–3405, 3601, 3621; 42 U.S.C. 1973 cc–13, 1973 cc–14.

Part 452—Addressing

2. Revise 452.41 to read as follows:

452.4 Address Cards

.41 The address card must be made of paper or cardbord stock.

a. The address card must *NOT*:

(1) be folded, perforated, or creased.

(2) measure less than 3 and ½ by 5 inches.

(3) measure more than 4 by 9 inches.

(4) measure less than 0.007 of an inch thick.

b. The address for each flat must be placed on an address card. There must be one and only one address card for each flat. The address card must contain the recipient's address and the mailer's return address. Each address card must carry the following words in a bold type size of at least ⅛ inch:

"Postal Service regulations require that this address card be delivered together with its accompanying postage paid mail. If you should receive this card without its accompanying mail, please notify your local postmaster."

c. Nothing other than an address, the above quoted language, and an indicium of postage payment may appear on the front of the card, except for official pictures and data disseminated by the National Center for Missing and Exploited Children.

Part 661—Addressing

3. Revise 661.331 to read as follows:

661.33 Address Cards

.331 The address card must be made of paper or cardboard stock.

a. The address card must *NOT*:

(1) be folded, perforated, or creased.

(2) measure less than 3 and ½ by 5 inches.

(3) measure more than 4 by 9 inches.

(4) measure less than 0.007 of an inch thick.

b. The address for each flat must be placed on an address card. There must be one and only one address card for each flat. The address card must contain the recipient's address and the mailer's return address. Each address card must carry the following words in a bold type size of at least ⅛ inch:

"Postal Service regulations require that this address card be delivered together with its accompanying postage paid mail. If you should receive this card without its accompanying mail, please notify your local postmaster."

c. Nothing other than an address, the above quoted language, and an indicium of postage payment may appear on the front of the card, except for official pictures and data disseminated by the National Center for Missing and Exploited Children.

Part 767—Preparation of Bound Printed Matter

4. In 767.7 redesignate 767.7g as 767.7h and revise the introductory paragraph and 767.7a through f to read as follows:

767.7 Optional Handling of Bulk Mailings. At the option of the mailer, address cards and unaddressed pieces mailed at bound printed matter rates, which are addressed for delivery only in the mailer's local parcel post zones, may be mailed separately for local delivery at the office of mailing, subject to all of the following conditions:

a. The address cards must be made of paper or cardboard stock. The address cards must NOT:

(1) be folded, perforated, or creased.

(2) measure less than 3 and ½ by 5 inches.

(3) measure more than 4 by 9 inches.

(4) measure less than 0.007 of an inch thick.

b. The address cards must show the full name, address, and either the ZIP + 4 code or the 5-digit ZIP Code of the sender and addressee and must be sorted by the mailer to the fourth and fifth digit of the ZIP Code.

c. Postage must be paid by permit imprints for each card including cards returned as undeliverable. The imprint may be placed on the pieces or on the cards (see 145).

d. The mailer must submit a completed Form 3605, Statement of Mailing-Bulk Zone Rates, with each mailing.

e. The total weight of pieces placed in a sack, carton, crate, or any other type of container must not exceed 70 pounds.

f. The mailer must send the address cards to the postmaster at the delivery office. It is recommended that the mailer include with the cards separate documentation specifying the number of pieces sent for each 5-digit ZIP Code delivery unit.

g. Address cards bearing incorrect, nonexistent, or otherwise undeliverable addresses are corrected or endorsed to show why they are undeliverable and returned to the mailer. Each envelope is rated with postage due at the address correction fee (see 712.2) for each address label contained in the envelope. At the request of the mailer, the postmaster will notify the mailer (at the mailer's expense and by any reasonable means specified by the mailer and approved by the postmaster) of the number of address labels being returned. The request for notification must accompany the labels. Correctly addressed labels will be held awaiting arrival of the pieces.

h. * * *

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published, if the proposal is adopted.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85-18474 Filed 8-2-85; 8:45 am]

BILLING CODE 7710-12-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346; Sub-8]

Exemption From Regulation; Boxcar Traffic

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time for filing comments to notice of reopening of final rules.

SUMMARY: A 35-day extension of time is granted to file comments and evidence in this reopened proceeding, concerning the Commission's further consideration of whether regulation of boxcar joint rates is necessary under the criteria of 49 U.S.C. 10505. Various extensions of time were requested by the Consolidated Rail Corporation joined by Norfolk Southern Corporation (30 days), Union Pacific Railroad Company and Missouri Pacific Railroad Company (36 days), and the American Short Line Railroad Association, Itel Rail Corporation, and BRAE Corporation (60 days), to enable them to complete the preparation of responses to questions raised in the notice of reopening [50 FR 23741].

DATES: Evidence and comments are due September 9, 1985. Replies are due October 9, 1985.

ADDRESS: An original and 15 copies of comments and replies referring to Ex Parte No. 346 (Sub-No. 8), should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

Comments and replies must also be served on all parties of record in Ex Parte No. 346 (Sub-No. 8).

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

Decided: July 25, 1985.

By the Commission, Reese H. Taylor, Jr., Chairman.

James H. Bayne,

Secretary.

[FR Doc. 85-18493 Filed 8-2-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Chrysopsis Floridana (Florida Golden Aster)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a plant in the family Asteraceae (asters), *Chrysopsis floridana* (Florida golden aster), to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Critical habitat is not being proposed. This plant is endemic to small areas of ancient dunes in southern Hillsborough and Pinellas counties, Florida. All known colonies of the plant are on private property. *Chrysopsis floridana* is endangered by residential and commercial development of its habitat, and also by mowing, intense grazing, and heavy use of off-road vehicles. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for this plant. Comments on the proposal are invited from all interested parties.

DATES: Comments from all interested parties must be received by October 4, 1985. Public hearing requests must be received by September 19, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: David J. Wesley, Endangered Species Field Supervisor, at the above address (904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

Chrysopsis floridana was described by John K. Small in 1903 from specimens collected by S.M. Tracy at Bradenton, Manatee County, Florida, in 1901. Small subsequently collected the species at Long Key, Pinellas County, in 1921 (where it has since been extirpated), and in southern Hillsborough County in 1924. The species was not collected again until 1953. Since 1961, a number of collections have been made in southern Hillsborough County near Riverview and Ruskin. A specimen was collected

east of Bradenton, Manatee County, in 1964, but the species has now been extirpated there. A population was discovered near Seminole, Pinellas County, in 1983 (R. Wunderlin and A. Burdett, personal communications). All the known populations are on private land.

Several alternative taxonomic treatements have been proposed for *Chrysopsis floridana* and associated species. Fernald (1937) made *Chrysopsis floridana* a variety of *C. mariana*. Shinners (1951) merged the entire genus *Chrysopsis* into *Heterotheca;* Harms, in several publications, supported Shinners' view, and formally published the name *Heterotheca mariana* subspecies *floridana*. R. W. Long, preferring to recognize this plant as a species, published the name *Heterotheca floridana* (Long, 1970). In the 1970's John Semple began an extensive program of taxonomic research on golden asters that resulted n the reinstatement of *Chrysopsis* as a genus. A floristic treatment of the aster family in the southeastern United States by Cronquist (1980) included *Chrysopsis floridana* in *C. scabrella*, while noting that "work in progress by John C. Semple may necessitate the revival of some names here reduced to synonomy." Semple's (1981) revision of the genus *Chrysopsis* recognized *C. floridana* as a full species.

Chrysopsis floridana is a perennial herb of the aster family. Young plants form rosettes with leaves that are covered with dense, white, short-wooly hairs. Upright stems that grow from the rosettes are 0.3–0.4 meters (1–1.5 feet) tall, with closely-spaced, obovate-elliptic, hairy leaves. The leaves are nearly as large at the top of the stem as at the bottom. The flower heads are arranged in a more or less flat-topped cluster. Each head is slightly over 2.5 centimeters (1 inch) in diameter. Both the central disc and the rays are yellow. The plants grow in open, sunny areas in sand pine-evergreen oak scrub vegetation, on well-drained find white sand. In the past, it also grew on beach dunes. The plant has been extirpated from much of its former range by urban development. The two largest remaining sites are in residential subdivisions where streets and utilities already exists, and where many houses have been built. Other threats are intense cattle grazing and heavy off-road vehicle use (Wunderlin *et al.*, 1981).

Chrysopsis floridana was recognized as an endangered species by the Florida Committee on Rare and Endangered Plants and Animals in their 1979 publication on plants (Ward, 1979). In response to this project, the Service contracted a status survey by botanists from the University of South Florida. A preliminary status report was submitted in 1980 and a final report in 1981 (Wunderlin *et al.*, 1981.)

Chrysopsis floridana was included as a category-1 species in a revised list of plants under review for threatened or endangered classification published in the December 15, 1980, **Federal Register** (45 FR 82280). Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Chrysopsis floridana* was October 13, 1983. On October 13, 1983, and again on October 13, 1984, the petition finding was made that listing *Chrysopsis floridana* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(iii) of the Act. Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. The present action, proposing to list *Chrysopsis floridana* as endangered, satisifies the next required one year finding.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Chrysopsis floridana* Small (Florida golden aster) [synonyms: *Chrysopsis mariana* (L.) Ell. var. *floridana* (Small) Fern., *Heterotheca mariana* subsp. *floridana* (Small) Harms, and *Heterotheca floridana* (Small) long] are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The historical range of the Florida golden aster is uncertain because few specimens were ever collected. The plant has been extirpated from most of the sites where it was collected prior to the 1970's, including Long Key (St. Petersburg Beach), Bradenton Beach, and Bradenton. The specimen collected near Siminole in 1983 provides the only evidence that this golden aster occurred on the mainland of Pinellas County. The Seminole area, north of St. Petersburg, is urban, with little or no possible habitat left for the golden aster. The five existing populations in southern Hillsborough County are all on well-drained sand soil with sand pine-evergreen oak scrub vegetation. The two largest populations are in residential subdivisions. The Florida golden aster is restricted to vacant lots, where it occupies areas of bare sand at the edges of remnants of scrub vegetation. Other populations are in scrub vegetation grazed by cattle, on an abandoned railroad embankment, and in a recently burned sand pine scrub area. At least 16 tracts of scrub vegetation near the existing populations lack *Chrysopsis floridana* (Wunderlin *et al.*, 1981). *Chrysopsis floridana* requries bare sand. Consequently, the plant benefits from limited disturbance (which can include fire and limited land clearing, grazing, and off-road vehicle use), but may be destroyed by more intense, frequent, or extensive disturbance. The Florida golden aster is threatened to some extent by disturbance, including dumping, and intense off-road vehicle use. The plant does not tolerate mowing. The most significant threat to this plant it the direct loss of its habitats to residential construction on vacant lots as the urbanization of southern Hillsborough County progresses. The recent completion of Interstate Highway 75 from Tampa to Bradenton ensures rapid growth (Wunderlin *et al.*, 1981).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Two populations found in pastures are subject to grazing by cattle. Light grazing may be beneficial or non-harmful to this species; however, heavy grazing with associated soil compaction and errosion would further threaten *Chrysopsis floridana*.

D. *The inadequacy of existing regulatory mechanisms.* No Federal, State, or local laws or regulations protect *Chrysopsis floridana* or its habitat at present. The species is listed as endangered by the Florida Committee on Rare Plants and Animals (Ward, 1979), but this listing confers no protection.

E. *Other natural or manmade factors affecting its continued existence.* Restriction to specialized habitats and small geographically limited ranges tends to intensify any adverse effects upon the populations or the habitats of any rare plant. This is certainly true for

Chrysopsis floridana and is further intensified by the loss of habitat that has already taken place.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Chrysopsis floridana* as an endangered species. The very limited habitat and range of this plant render it highly vulnerable to residential and commercial real estate development. All the populations are on private land, and there are no Federal or State laws that offer them protection. Several sites where they formerly occurred have been lost and the species is in danger of extinction. Critical habitat is not being proposed for the reasons discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. Such designation of critical habitat would not be beneficial to *Chrysopsis floridana* since identification of critical habitat could be expected to increase the degree of threat from taking or vandalism. Designation of critical habitat affects only Federal agencies. The five known sites for this species are on private land with no known Federal involvement. Designation of critical habitat would not benefit the species, and might cause an increase in taking or vandalism at the sites.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Since all presently known sites with *Chrysopsis floridana* are on private land where no Federal involvement in known, there would be no effect on Federal agencies from the above requirements.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Chrysopsis floridana*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would be sought or issued since this species is not common in the wild or in cultivation. *Chrysopsis floridana* might be cultivated in the future for planting on barriér island dunes.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Chrysopsis floridana* is not known at present from Federal lands, so this prohibition would not have any practical effects. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903 or FTS 235-1093).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Chrysopsis floridana;*

(2) The location of any additional populations of *Chrysopsis floridana*, and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Chrysopsis floridana.*

Final promulgation of the regulation on *Chrysopsis floridana* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Endangered Species Field Station, 2747 Art Museum Drive, Jacksonville, Florida 32207.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental

Assessment, as defined under the authority of the National Environmental Policy Act of 69, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is David L. Martin, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791–2580 or FTS 946–2580). Ms. E. LaVerne Smith of the Washington Office of Endangered Species served as editor.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

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

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
* * *	*	*	*	*		
Chrysopsis floridana (= *Heterotheca floridana*).	Florida golden aster	U.S.A. (FL)	E	....	NA	NA
* * *	*	*	*	*		

Dated: July 22, 1985.

Susan E. Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–18471 Filed 8–2–85; 8:45 am]

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule To Determine Endangered Status for Mezoneuron Kavaiense (Uhiuhi)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for a Hawaiian plant, *Mezoneuron kavaiense* (uhiuhi). Once fairly common on the islands of Hawaii, Maui, Oahu, and Kauai, only 3 small populations of this endemic species, totaling fewer than 50 individuals, remain. These are located on State and privately owned land in North Kona, island of Hawaii; in the Waianae Mountains, island of Oahu; and in western Kauai. Populations of the species face threats from continued cattle grazing, wildfire, impaired seedling establishment becaue of exotic plant species, rodent and insect damage, and feral animal browsing on or near sites on which they occur. Protective measures are needed to ensure the continued existence of this species. Listing of *Mezoneuron kavaiense* as endangered would implement the protection provided under the Endangered Species Act of 1973, as amended. The Service seeks relevant data and comments.

DATES: Comments from all interested parties must be received by October 4, 1985. Public hearing requests must be received by September 19, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to Regional Director, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

Mezoneuron kavaiense (uhiuhi) is an endemic Hawaiian tree to 10 meters (34 feet) in height and 30 centimeters (12 inches) in trunk diameter, with loose, spreadng branches. The bark is rough-scaly and of a dark gray to brown color. The leaves are pinnate, having 4 to 8 leaflets about 3 centimeters (1.25 inches) in length. The flowers are arranged in terminal racemes 2.5 to 10 centimeters (1 to 4 inches) long and are dark red in color (Rock, 1913). Seed pods are flat, very thin, bluish-glaucous when young, and pale pink to gray when older. They are about 8 centimeters (3.2 inches) long and 5 centimeters (2 inches) wide, with a conspicuous line running down the length of the pod (Lamoureux, 1982).

Sites occupied by *Mezoneuron kavaiense* can be described as dryland open forest on rough weathered (unweathered on Hawaii) lava on steep slopes, ranging in elevation from 76 meters (250 feet) to 910 meters (3,000 feet). Annual rainfall varies from 75 centimeters (30 inches) to 152 centimeters (65 inches) and is evenly distributed throughout the year. Associated species include *Erythrina sandwicensis*, *Chenopodium oahuense*, *Diospyros ferrea*, and *Colubrina*

oppositifolia (Lamoureux, 1982). *Kokia drynarioides*, an endangered species (see 49 FR 47397; December 4, 1984), coexists with uhiuhi in North Kona, island of Hawaii.

Although well known to Hawaiian natives, who used its strong, dark, heavy wood for spears and fishing implements, the species remained uncollected by botanists until 1865, when Horace Mann, Jr. obtained specimens from Kauai. He later described them as a new species, *Caesalpinia kavaiensis* (Mann, 1867). William Hillebrand acquired additional specimens from Oahu and Maui and transferred the species to the genus *Mezoneuron*, as *Mezoneuron kavaiense* (Hillebrand, 1888). Commonly known as uhiuhi, the tree is also referred to as kea (on Maui only).

Historically known to have occurred on the islands of Hawaii, Oahu, Maui, and Kauai, *Mezoneuron kavaiense* has declined to only 3 populations, totalling fewer than 50 individuals, located on the slopes of Hualalai, North Kona, Hawaii; in the Waianae Mountains, Oahu; and in the Waimea Canyon in western Kauai. The Hawaii population occurs on the Pu'uwa'awa'a Ranch, State-owned land, and on private land owned by the Bernice P. Bishop Estate. These lands are leased as cattle pasture.

Grazing by cattle, goats, and other wild herbivores is the most probable cause for the species' decline, and continues to impact the remaining trees. In recent years rodent and insect damage and competition from exotic plant species, especially fountaingrass (*Pennisetum setaceum*), have reduced the number and survivorship of seedlings, and increased the probability, extent, and intensity of wildfire (Lamourex, 1982). Only 1 of the 3 remaining populations exhibits signs of successful reproduction. A cooperative effort among Federal, State, and private agencies is needed to preserve the remaining trees and promote the species' recovery.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94–51) was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review in the **Federal Register** (40 FR 27823) accepting this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended). On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to Section 4 of the Act. *Mezoneuron kavaiense* was included in the Smithsonian report, the notice of review of July 1, 1975, and the proposal of June 16, 1976.

The Act, as amended in 1978, required that all proposals over 2 years old be withdrawn, except that a 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with 4 other proposals that had expired (44 FR 70796). In the **Federal Register** of December 15, 1980 (45 FR 82480), the Service published a revised notice of review. *Mezoneuron kavaiense* was included in this notice as a category-1 species, indicating that existing data warranted a proposal to list as endangered or threatened.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species covered in the notice of review of December 15, 1980, are considered to be under petition, and the deadline for making a finding on those species, including *Mezoneuron kavaiense*, was October 13, 1983. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing *Mezoneuron kavaiense* was warraned, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made on or before October 13, 1985; this proposed rule constitutes the finding that the petition action is warranted, and proposes to implement the action in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; see revision at 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Mezoneuron kavaiense* (Mann) Hbd. (uhiuhi) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* At one time, *Mezoneuron kavaiense* was common enough in the Hawaiian islands to have its wood used by natives for spears and fishing implements. Since the arrival of European settlers and their domestic stock, the species has declined sharply and, in this past century alone, 3 populations have been extirpated and another has been reduced to a single tree. Fewer than 50 trees currently remain in the wild, occurring on Hualalai, North Kona, island of Hawaii; in the Waianae Mountains, island of Oahu; and in western Kauai. The species' habitat is subject to degradation through the grazing of cattle, sheep, goats, and other feral herbivores. Exotic plant species, especially fountaingrass, jeopardize its existence by inhibiting regeneration and increasing the probability, extent, and intensity of wildfire (Lamoureux, 1982). Presently, only the Oahu population is exhibiting signs of successful reproduction.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The wood of the uhiuhi is extremely hard, close-grained, dark-colored, and durable (Rock, 1913). It was used by native Hawaiians for spears and "la'au melo-melo" (fishing devices). Harvesting of the few remaining trees poses a continued threat since the wood is highly prized by certain knowledgeable people (Lamoureux, 1982, and Herbst, U.S. Fish and Wildlife Service, pers. comm., 1984).

Collection of seeds, seedlings, and saplings for private gardens presents an additional, if slight, threat to the species. The tree is attractive and, given proper care, grows readily in cultivation (Lamoureux, 1982).

C. *Disease or Predation.* The black coffee twig borer (*Xylosandrus compactus*) affects *Mezoneuron kavaiense* by reducing the survival of seedlings and saplings (Lamoureux, 1982). Rodent damage has been observed on Hawaii, where seeds were taken from fruit on the ground and on the tree (Lamoureux, 1982). The grazing of cattle (Hawaii), goats (Hawaii, Oahu, and Kauai), and sheep (Hawaii) on shoots, seedlings, and saplings also seriously affects the species.

D. *The inadequacy of existing regulatory mechanisms.* The Pu'uwa'awa'a Ranch is zoned for agriculture, and managed to maximize grazing potential rather than to provide protection for native species such as *Mezoneuron kavaiense*. State-owned land on Oahu and Kauai is zoned for conservation, but such zoning provides no specific protection to the species.

E. *Other natural or manmade factors affecting its continued existence.*

Reduction of the gene pool and genetic variability, resulting from small population sizes, could have detrimental effects on the continued existence of *Mezoneuron kavaiense*.

The Hawaii population, which occurs on the slopes of a dormant volcano, is also subject to potential destruction should an eruption occur. The last eruption of Hualalai sent lava through the center of the uhiuhi's present habitat.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Mezoneuron kavaiense* as endangered. The historical decline of the species, including its extirpation on Maui; the small number of individuals remaining in the wild; and the present threats faced by the species warrant this determination. For the reasons discussed below, critical habitat is not being designated at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under factor "B" in the "Summary of Factors Affecting the Species," *Mezoneuron kavaiense* is subject to taking, an activity difficult to control and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. *Mezoneuron kavaiense* occurs on State and private land not under Federal jurisdiction. Publication of a critical habitat description in the **Federal Register** would serve to increase the risk of taking or vandalism, while providing no additional benefit to the species. Therefore, it would not be prudent to determine critical habitat for *Mezoneuron kavaiense* at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. Section 6 of the Act details conditions for cooperative action between the Service and State agencies. The State of Hawaii has entered into a cooperative agreement with the Service, and this may facilitate needed protection for the uhiuhi. Since much of the species' habitat is on State land, cooperation between Federal and State officials is necessary to ensure its continued survival. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to any area proposed or designated as critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal activities are known or expected to affect *Mezoneuron kavaiense*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Mezoneuron kavaiense*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. Due to its depleted state in the wild, and low percentage of seedling survival, propagation of *Mezoneuron kavaiense* in nurseries may be necessary for its continued existence and recovery. Cultivated specimens are currently found on several sites in the Hawaiian Islands. If propagation of the species for its recovery is proposed, permits for scientific purposes and for enhancing the propagation of the species, allowed under section 17.62, may be requested. Otherwise, it is anticipated that few trade permits would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This provision would apply to *Mezoneuron kavaiense* should it be found on land under Federal jurisdiction. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. Currently, the species is known to occur only on State and private land not under Federal jurisdiction. It is anticipated that few, if any, collecting permits for the species will ever be requested. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning the following:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Mezoneuron kavaiense*;

(2) The location of any additional populations of *Mezoneuron kavaiense* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and the possible impacts on *Mezoneuron kavaiense*.

Final promulgation of the regulation on *Mezoneuron kavaiense* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if one is requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service (see "ADDRESSES" section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Hillebrand, W. 1888. Flora of the Hawaiian Islands. Carl Winter, Heidelberg. 673 pp.

Lamoureux, C. 1982. Unpublished status survey of *Mezoneuron kavaiense* (Mann) Hbd. U.S. Fish and Wildlife Service, Honolulu. 46 pp.

Mann, H., Jr. 1867. Enumeration of Hawaiian plants. Proc. Amer. Acad. Arts 7: 143–235.

Rock, J.F. 1913. The indigenous trees of the Hawaiian Islands. Honolulu. 518 pp.

Author

The primary author of this proposed rule is Dr. John J. Fay, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 or FTS 235–1975). Preliminary documentation was provided under contract by the Research Corporation of the University of Hawaii and Mr. Laurance Torok.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMEMDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

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

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Fabaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Fabaceae—Pea family.						
*	*	*	*	*		
Mezoneuron kavaiense	uhiuhi	U.S.A. (HI)	E		NA	NA
*	*	*	*	*		

Dated: July 9, 1985.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–18470 Filed 8–2–85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

Kiwifruit Grown in California; Extension of Time for Filing Comments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing of comments.

SUMMARY: This extension of time is necessary to allow interested persons additional opportunity to prepare and file written comments on the proposed grade, size, pack, and container requirements for California kiwifruit. The proposal is designed to provide for orderly marketing of kiwifruit under the California kiwifruit marketing order.

DATE: The date by which written comments must be postmarked is extended to August 7, 1985.

ADDRESS: Comments should be sent to: Docket Clerk, F&V, AMS, Rm. 2069–S, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written material shall be submitted, and will be made available for public inspection at the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

SUPPLEMENTARY INFORMATION: Notice was given of this proposed rulemaking in the **Federal Register** on July 2, 1985 (50 FR 27288). The notice provided an opportunity to file written comments thereto by August 1, 1985.

The request for an extension of the comment period to August 15 was filed by James A. Moody. In addition, Mr. Moody requested that the Department provide various items of information, explanations, and evaluations relating to the basis and justification of the proposed rule. The purpose of the comment period, however, is to provide interested parties an opportunity to submit relevant information and their evaluation of proposed rules to the Secretary for consideration in reaching a final decision on a proposal.

In view of the fact that a period of 30 days has already been provided for the submission of comments, the extension request to August 15 is considered excessive. The proposed rule is neither lengthy nor technically complicated. However, a shorter extension should be considered because: (1) Kiwifruit harvesting is not projected to begin until around October 1, 1985, so there is adequate time to complete this rulemaking proceeding well ahead of that date; and (2) the record of this proceeding will benefit by receiving comments from the requester and any other interested party that may need limited additional time. Therefore, in the interest of offering a sufficient opportunity for persons to file written comments in this rulemaking proceeding, the time for filing comments is hereby extended to August 7, 1985.

1. The authority citation for 7 CFR Part 920 continues to read as follows:

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

Dated: August 1, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc. 85–18683 Filed 8–2–85; 11:59 am]

BILLING CODE 3410-02-M

Notices

Federal Register
Vol. 50, No. 150
Monday, August 5, 1985

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

DEPARTMENT OF AGRICULTURE

Packers and Stockyards Administration

Posted Stockyards; M & R Livestock Co., Inc., et al.

Pursuant to the authority delegated under the Packers and Stockyards Act, 1981, as amended (7 U.S.C. 181 *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on respective dates specified below.

Facility No., name, and location of stockyard	Date of posting
IN-160 M & R Livestock Co., Inc., Loogootee, Indiana.	May 29, 1985.
KY-171 Choates Stockyards, Upton, Kentucky.	June 7, 1985.
MN-180 Sauk Centre Tel-O-Auction Coop, Sauk Centre, Minnesota.	Jan. 28, 1985.
ND-132 Litchville Feeder Pig, Litchfield, North Dakota.	June 19, 1985.
WI-139 Equity Livestock Auction Market, Lancaster, Wisconin.	Jan. 23, 1985.

Done at Washington, D.C., this 29th day of July, 1985.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 85-18475 Filed 8-2-85; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-501]

Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that natural bristle paint brushes and brush heads from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value, and that "critical circumstances" exist with respect to imports of the merchandise under investigation. Since we have not received a response to our questionnaire, United States price is based on the best information available. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by October 14, 1985.

EFFECTIVE DATE: August 5, 1985.

FOR FURTHER INFORMATION CONTACT: Paul Tambakis, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; Telephone: (202) 377-4136.

Preliminary Determination

We have preliminarily determined that natural bristle paint brushes and brush heads from the PRC are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have determined the weighted-average margin of sales at less than fair value to be 211.0 percent. We also found that critical circumstances exist on imports of this merchandise from the PRC.

If this investigation proceeds normally, we will make a final determination by October 14, 1985.

Case History

On February 19, 1985, we received an antidumping duty petition from the United States Paint Brush Manufacturers and Suppliers Ad Hoc Import Action Coalition, filed on behalf of domestic producers of natural bristle paint brushes and brush heads. In compliance with the filing requirements of § 353.36 of our regulations (19 CFR 353.36), the petitioner alleged that imports of natural bristle paint brushes and brush heads from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of the Act, and that these imports materially injure or threaten material injury to a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on March 11, 1985 (50 FR 10523). On April 5, 1985, the ITC determined that there is a reasonable indication that imports of natural bristle paint brushes and brush heads from the PRC are materially injuring a U.S. industry.

A questionnaire on United States price was presented to counsel for the Chinese National Native Produce and Animal By-Products Import-Export Corporation, the only known exporter of natural bristle paint brushes and brush heads to the United States, on May 1, 1985. On June 7, 1985, the Animal By-Products Corporation requested an extension of the time to respond to the Department's questionnaire. On June 12, 1985, we granted a two-week extension to June 21, 1985. On June 21, 1985, the Animal By-Products Corporation requested an additional extension of 7 days to complete the response. This request was denied. We did not receive a response from the Animal By-products Corporation for inclusion in this preliminary determinaton. On July 2, 1985, petitioner amended its petition to allege that "critical circumstances" exist with respect to imports of this merchandise as defined in section 733(e) of the Act.

We have determined that the PRC is a state-controlled-economy country for

the purpose of this investigation. This is further discussed under "Foreign Market Value".

Scope of Investigation

The products covered by this investigation are natural bristle paint brushes and brush heads as currently provided for in item 750.65 of the *Tariff Schedules of the United States Annotated* (*TSUSA*).

Fair Value Comparison

To determine whether sales in the United States of the subject merchandise were made at less than fair value, we compared United States price, based on best information available, with the foreign market value.

United States Price

We used the purchase price of the subject merchandise to represent United States price because the merchandise was sold to unrelated purchasers prior to its importation into the United States. We calculated the purchase price of the subject merchandise as provided in section 772 of the Act, on the basis of the average f.o.b. values for the six month period of investigation as provided in the IM-146, compiled by the Bureau of the Census. We used these data as the best information available instead of the price quotations provided in the petition primarily because those offers were made outside the period of investigation. We used best information available because respondent failed to respond to ur questionnaire.

Foreign Market Value

In accordance with section 773(c) of the Act, we used surrogate prices of paint brushes sold in the Sri Lankan home market to determine foreign market value. Petitioner alleged that the PRC is a state-controlled-economy country and that sales of the subject merchandise from that country do not permit a determination of foreign market value under section 773(a). After an analysis of the PRC's economy and consideration of the briefs submitted by the parties, we have preliminary determined that the PRC is a state-controlled-economy country for purposes of this investigation. Among the factors we considered were that output quotas are set by the State and that prices are administered at least up to the quota level.

As a result, section 773(c) of the Act requries us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled-economy" country. Section 353.8(a) of our regulations establishes a preference for foreign market value based upon prices at which similar merchandise is sold for consumption in the home market of that country, or to other countries, including the United States. Section 353.8(b) further provides that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the country with the state-controlled economy.

After an analysis of countries producing paint brushes, we determined that Sri Lanka would be an appropriate surrogate since it is at a level of economic development comparable to the PRC. We mailed questionnaires to the two known Sri Lankan producers of paint brushes and, on may 28 and July 26, 1985, received responses from these two companies.

We based foreign market value on a simiple-average of delivered, home market selling prices of the two Sri Lankan respondents for the most common sizes of paint brushes believed to be sold by the PRC in the U.S. We made a deduction for discounts in the Sri Lankan home market given by one of the respondents.

Preliminary Affirmative Determination of Critical Circumstances

Counsel for the petitioner alleged that imports of natural bristle paint brushes from the PRC present "critical circumstances." Under section 773(e)(1) of the Act, "critical circumstances." exist if we determine (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation, or the person by whom, or for whose acount, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of natural bristle paint brushes and brush heads from the PRC in the United States or elsewhere, we reviewed past antidumping findings of the Department of the Treasury as well as past Department of Commerce antidumping duty orders. We also reviewed the antidumping actions of other countries, and found a 1984 Canadian antidumping duty order issued on natural bristle paint brushes from the PRC.

Since there is a history of dumping in the United States or elsewhere, we do not need to consider whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value.

We generally consider the following concerning massive imports: (1) recent trends in import penetration levels; (2) whether imports have surged recently; (3) whether recent imports are significantly above the average calculated over the last three years; and (4) whether the pattern of imports over that three year period may be explained by seasonal swings.

In considering this question, we analyzed recent trade statistics on import levels and import penetration ratios for natural bristle paint brushes from the PRC for equal periods immediately preceding and following the filing of the petition. We also took into consideration seasonal factors. Based on this analysis, we find that imports of the subject merchandise from the PRC during the period subsequent to receipt of the petition have been massive when compared to recent import levels and import penetration ratios.

Therefore, we determine that critical circumstances exist with respect to imports of natural bristle paint brushes and brush heads from the PRC.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of natural bristle paint brushes and brush heads from the PRC that are entered or withdrawn from warehouse, for consumption, 90 days prior to the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. The average margin is 211.0 percent. This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC

access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration.

The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), we will hold, if requested, a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2 p.m. on September 5, 1985, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Acting Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by August 26, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

July 29, 1985.

[FR Doc. 85-18516 Filed 8-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-614-501]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Low-Fuming Brazing Copper Rod and Wire From New Zealand

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in New Zealand of low-fuming brazing copper rod and wire as described in the "Scope of Investigation" section of this notice. The estimated net bounty or grant is 7.03 percent *ad valorem* for the review period and 9.17 percent *ad valorem* for duty deposit purposes. Therefore, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of low-fuming brazing copper rod and wire from New Zealand which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit on these products equal to the estimated net duty deposit rate of 9.17 percent *ad valorem*.

EFFECTIVE DATE: August 5, 1985.

FOR FURTHER INFORMATION CONTACT: Jack Davies, Roy Malmrose, or Mary Martin, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-1785, 377-8320, or 377-3464.

SUPPLEMENTARY INFORMATION:

Final Determination

For purposes of this investigation, the following programs have been found to confer bounties or grants:

- Export Market Development Taxation Incentive (EMDTI)
- Regional Investment Allowance
- Export Investment Allowance
- Increased Exports Taxation Incentive (IETI)
- Export Performance Taxation Incentive (EPTI)

The estimated net bounty or grant is 7.03 percent *ad valorem* for the review period. Since the review period and prior to our preliminary determination, program-wide changes in three of the New Zealand tax laws have taken place which affect the bounty or grant on U.S. imports of low-fuming brazing copper rod and wire from New Zealand. Therefore, the estimated net bounty or grant is 9.17 percent *ad valorem* for duty deposit purposes.

Case History

On February 19, 1985, we received a petition in proper form from American Brass, Century Brass, and Cerro Metal Products of Rolling Meadows, IL, Waterbury, CT, and Bellefonte, PA, respectively, filed on behalf of the U.S. low-fuming brazing copper rod and wire industry. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in New Zealand of low-fuming brazing copper rod and wire receive directly or indirectly benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act). On May 10, a letter supporting the petition was filed by J.W. Harris Company of Cincinnati, Ohio, another domestic producer of low-fuming brazing copper rod and wire.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on March 11, 1985, we initiated an investigation (50 FR 11004). We stated that we expected to issue a preliminary determination by May 15, 1985.

At the time of our initiation, New Zealand was a "country under the Agreement" within the meaning of section 701(b) of the Act, and an injury determination was required for this investigation. Therefore, we notified the U.S. International Trade Commission (ITC) of our initiation. Effective April 1, 1985, however, the Office of the United States Trade Representative terminated New Zealand's status as a "country under the Agreement" within the meaning of section 701(b)(1) of the Act. Accordingly, the ITC terminated its investigation and will not be required to determine whether imports of these products cause or threaten material injury to a U.S. industry.

Since New Zealand is no longer a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303(a)(1) and 303(b) of the Act apply to this investigation.

We presented questionnaires to the government of New Zealand and the producers of low-fuming brazing copper rod and wire on March 22, 1985. On April 26 and 30, 1985, we received responses to our questionnaires from McKechnie Brothers (N.Z.) Ltd. (MKB) and the government of New Zealand, respectively. McKechnie Metals Products Ltd. (MMP), a subsidiary of MKB, is the sole manufacturer and exporter in New Zealand of the products under investigation.

On May 23, 1985, we published our preliminary determination that benefits which constitute bounties or grants are being provided to manufacturers, producers, or exporters in New Zealand of low-fuming brazing copper rod and wire (50 FR 21325). We conducted verification of the responses submitted by the government of New Zealand and MKB during June 5-13, 1985.

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written

views. We received written views from interested parties and have taken them into consideration in this determination.

Standing

On March 20, 1985, Aufhauser Brothers Corporation ("Aufhauser") requested that we rescind our initiation of this investigation, alleging that the petitioners had not filed "on behalf of" the domestic industry, as required by section 702 of the Act. We found at the preliminary determination that the information provided by Aufhauser did not rebut the evidence on the record that the petition was, in fact, filed on behalf of the U.S. industry (50 FR 21325). We have received no further evidence to change that determination.

Scope of Investigation

The products covered by this investigation are low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimension in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated, currently classified in the *Tariff Schedules of the United States Annotated* (TSUSA), under items 612.6205, 612.7220 and 653.1500. The chemical composition of the product under investigation is defined by Copper Development Association (CDA) standards 680 and 681.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of this investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the **Federal Register** (49 FR 18006).

For purposes of this determination the period for which we are measuring bounties or grants ("the review period") is August 1, 1983 through July 31, 1984, which corresponds to the 1984 fiscal and tax year of MKB and MMP.

Based upon our analysis of the petition, the responses to our questionnaire, our verification, and comments submitted by interested parties we determine the following.

I. Programs Determined to Confer Countervailable Benefits

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in New Zealand of low-fuming brazing copper rod and wire under the following programs:

A. Export Market Development Taxation Incentive (Section 156F, Income Tax Act 1976) (EMDTI)

Petitioners alleged that MKB receives tax credits for a percentage of the export market development expenditures it incurs. However, as the exporter, MMP, not MKB, is eligible for and has received this benefit.

Under the 1979 Amendment of the Income Tax Act of 1976, qualifying export market development expenditures include expenses incurred principally for seeking and developing markets, retaining existing markets, and obtaining market information. Exporters are eligible to receive an EMDTI tax credit equal to 67.5 percent of total qualifying export market expenditures. However, the qualifying export market expenses cannot be deducted for tax purposes as ordinary business expenses. The tax advantage to the exporter is the difference between treating export market development expenses as qualifying EMDTI expenses as opposed to ordinary business deductions. The after-tax benefit to the exporter under the EMDTI program is 22.5 percent of the total qualifying export market expenditures. Because the program is available only to exporters, we determine that EMDTI confers a bounty or grant.

Our tax methodology is based on a cash flow basis which for countervailing duty proposes means that the bounty or grant occurs when the tax benefit is effectively realized. We verified that the fiscal/tax year for MKB and MMP ends on July 31, that the company year-end audit is prepared by the following September, and that the MKB and MMP tax returns are filed the following November. Thus, any tax benefits earned during a given fiscal/tax year are effectively received by MKB and MMP in the following year. To calculate the net bounty or grant, we divide the tax benefits effectively realized during the review period by total sales or export sales for the review period, whichever is appropriate.

In accordance with our tax methodology, we calculated the amount of the bounty or grant by dividing 22.5 percent of the U.S.-related qualifying expenditures for low-fuming brazing rod and wire incurred by MMP in the 1983 tax year by the amount of 1984 exports of the subject merchandise to the U.S. We determine that the estimated net bounty or grant under EMDTI is 0.07 percent *ad valorem* for the review period. Because there have been no program changes in EMDTI since the review period, we determine that the estimated net bounty or grant is 0.07 percent *ad valorem* for duty deposit purposes.

B. Regional Investment Allowance

During verification, we found the MMP claimed a regional investment allowance on its 1983 tax return for certain investments it made during the year. Under the Regional Investment Allowance, 15 percent of an investment in plant and machinery may be deducted from assessable income over and above the normal allowance for depreciation. Because this program confers benefits on companies located in specific regions, we find it to be countervailable.

To estimate the tax savings, we multiplied the amount of the deduction for investments related to brass products times the corporate tax rate of 45 percent. To calculate the net bounty or grant, we divided the amount of the tax savings derived from the 1983 tax return by the total 1984 sales of brass products. We determine that the estimated net bounty or grant under this program is 0.17 percent *ad valorem*.

We verified that the New Zealand government terminated the Regional Investment Allowance on March 31, 1983, and that MMP did not claim benefits under this program on the tax return filed subsequent to the review period. Therefore, the duty deposit rate for this program is zero percent *ad valorem*.

C. Export Investment Allowance

We also found during verification that MMP claimed an export investment allowance on its 1983 tax return for the investments it made in the course of the year. The Export Investment Allowance provides for a tax deduction in addition to the Regional Investment Allowance and the normal deduction for depreciation. The amount of the allowance is calculated on a two for one basis in direct proportion to export performance with a maximum allowance of 20 percent. Because this program is available only to exporters, we determine it confers a bounty or grant.

The tax savings under this program were calculated according to the same methodology discussed in the previous sections. The estimated net bounty or grant was calculated by dividing the amount of tax savings calculated from the tax return filed during the review period by total 1984 export sales of brass products. We determine that the estimated net bounty or grant under this program is 0.62 percent *ad valorem*.

We verified that the New Zealand government terminated the Export

Investment Allowance on March 31, 1983, and that MMP did not claim benefits under this program on the tax return filed subsequent to the review period. Thus, the duty deposit rate for this program is zero percent *ad valorem*.

D. Increased Exports Taxation Incentive (IETI)

During verification, our examinations of MMP's 1983 tax return further disclosed that the company claimed benefits under IETI. From 1981 through 1983, New Zealand exporters had the option of continuing to claim benefits under IETI or of switching to the new Export Performance Taxation Incentive program (see section I.E below). Under the IETI program, exporters could claim a tax deduction proportionate to the company's increased export earnings. Because this program is available only to exporters, we determine that IETI confers a bounty or grant.

The tax savings under IETI were calculated in the same manner as outlined in the above sections. To calculate the net bounty or grant under the program, we divided the amount of tax savings realized in the 1983 tax return by total 1984 export sales. We determine that the estimated net bounty or grant under this program is 6.17 percent *ad valorem*.

We verified that the New Zealand government terminated the IETI program on March 31, 1983, and that MMP did not claims benfits under this program in the tax return filed subsequent to the review period. Consequently, the duty deposit rate for this program is zero percent *ad valorem*.

E. Export Performance Taxation Incentive (Section 156A, Income Tax Act 1976) (EPTI)

Petitioners alleged that the New Zealand government provides bounties or grants under EPTI to encourage exports. Under the 1979 Amendment of the Income Tax Act 1976, exporters receive a tax credit based on the f.o.b. value of qualifying goods exported. Credits are available as a deduction against income tax payable. If the tax credit exceeds the income tax payable, the remainder is paid to the taxpayer in cash. The rate of the tax credit is dependent upon the government predetermined value-added category into which the product falls. The amount of the tax credit in calculated by multiplying the applicable value-added category rate by the f.o.b. value of export sales. The products covered by this investigation are included in value-added category C for which the corresponding rate is 9.1 percent. Because this program is available only to exporters, we determine that EPTI confers a bounty or grant.

We verified that the New Zealand government terminated the IETI program on March 31, 1983, and the MMP claimed a 9.1 percent EPTI benefit on the tax return filed subsequent to the review period but prior to our preliminary determination. To reflect the fact that since the review period MMP has received EPTI rather than IETI benefits, we are using the verified EPTI rate as best information available. Accordingly, the estimated net bounty or grant is 9.1 percent *ad valorem* for duty deposit purposes.

II. Programs Determined Not To Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in New Zealand of low-fuming brazing copper rod and wire under the following programs.

A. Export Credit Insurance From the Export Guarantee Office (EXGO)

Established by the Export Guarantee Act of 1964, EXGO is a government agency which provides export credit insurance for goods and services sold outside of New Zealand. MMP has been a policyholder of EXGO since July 2, 1969, and has obtained export credit insurance for export shipments to the United States throughout the review period.

The Export Guarantee Act mandates that EXGO secure revenues sufficient to cover all its expenses. We verified that the premiums charged by EXGO have been sufficient to cover operating costs and the payment of claims in five of the last seven years. Because the premiums charged for export credit insurance are not manifestly inadequate to cover the long-term operating costs and losses of the program, we determine that the EXGO export credit insurance program does not confer a bounty or grant.

B. Extraordinary Depreciation Allowance

Petitioners alleged that, to encourage export production, the standard rate for the first year depreciation allowance on new and second-hand plant and equipment used for export production is 25 percent. We verified that the first year depreciation rate of 25 percent was available on an equal basis to all business in New Zealand and was not limited to export production. Since the first year depreciation allowance is not limited to a specific enterprise or industry or to a group of enterprises or industries, we determine that this program is not countervailable.

III. Programs Determined Not To Be Used

Based on our vertification of the responses of MKB and the government, we determine that manufacturers, producers, or exporters in New Zealand of low-fuming brazing copper rod and wire did not use the following programs.

A. Export Programme Suspensory Loan Scheme (EPSLS)

Petitioners alleged that suspensory loans for up to 40 percent of eligible expenditures are available to established exporters who increase their net foreign exchange earnings through the marketing of specific goods or services in a designed foreign market. If a predetermined sales forecast is accomplished, the suspensory loan is converted into a grant; if the forecast is not met the exporter must repay the loan with interest.

B. Export Programme Grant Scheme (EPGS)

The EPGS was superseded by the EPSLS as of June, 1982. However, petitioners alleged that grants under the EPGS could continue until June, 1985. Grants under the EPGS were given to exporters to encourage marketing research in targeted foreign markets. The grants, amounting to 64 percent of budgeted expenditures, were available for up to three years.

C. Industrial Development Plan Investment Allowance (IDPIA)

Petitioners alleged that an export investment allowance of up to 40 percent of the cost of new manufacturing plants and machinery is available to industries which have a significant export performance but whose products do not qualify for the increased exports taxation incentive.

At verification, we found that the IDPIA is actually a program available to any industry, regardless of export performance, that implements an approved development plan which meets the New Zealand government's policy objectives for industrial development. The investment allowance applies to new plant or machinery acquired under the industry plan and amounts to a maximum of 40 percent of the cost of the new plant or machinery.

D. Export Suspensory Loans (ESL)

Petitioners alleged that the New Zealand Development Finance Corporation makes suspensory loans for up to 40 percent of actual expeditures on plants and machinery used in the manufacturing of designated products. The suspensory loans are repayable at

commercial rates but can become grants if the borrower meets predetermined export sales targets.

E. Regional Development Investment Incentives

Petitioners alleged that the New Zealand government offers companies a variety of regional development incentives for regions classified as either priority regions or slow-growth regions.

F. Flexible Incentives Under the Investment Unit of the Department of Trade and Industry

Petitioners alleged that various flexible incentives are available to industries through the Investment Unit of the Department of Trade and Industry.

G. Exemption From Import Duties and Sales Taxes

Petitioners alleged that full or partial waiver of import duties on imports of capital equipment and qualifying raw materials used to manufacture exports can be received if such items are not available domestically. Petitioners also alleged that sales tax paid on equipment and intermediate goods used to produce goods for export may be refunded.

H. Export Production Assistance Scheme

Petitioners alleged that import licensing concessions are provided to companies which import materials for incorporation into goods to be exported. Such concessions may include additional availability of import licenses on components for incorporation in goods to be exported.

I. Export Promotion From the Export-Import Corporation

Petitioners alleged that the Export-Import Corporation, created by the New Zealand government, assists exporters with marketing overseas, negotiating contracts, arranging for the importation of goods, and generally promoting New Zealand exports.

J. Research and Development Assistance

Petitioners alleged that the New Zealand government provides grants and investment financing for research and development through the Industrial Research and Development Grants Advisory Committee and the Applied Technology Program administered by the Development Finance Corporation.

K. Export Credits From the Development Finance Corporation

Petitioners alleged that the Development Finance Corporation provides credits for exporters below commercial rates.

IV. Program Found Not To Exist

Based on our verification of the responses of MKB and the government, we determine that industry investment allowances are only available under IDPIA (see Section III, C. above) and that the following program does not exist.

A. Industry Study Investment Allowance

Petitioners alleged that when a company participates in an industry study which results in a plan for the industry it is eligible for an investment allowance for a percentage of the costs incurred for projects approved under the industry plan.

Petitioners' Comment

Petitioners contend that the IETI and EMDTI export tax incentives and the export and regional investment allowances claimed in the 1983 tax year by MMP are countervailable. Since the benefits from these tax programs were received in the 1984 review period, these benefits should be included in the final determination in accordance with the Department's tax methodology.

DOC Position

We have determined that these 1983 tax benefits are countervailable and have included them in the estimated net bounty or grant of 7.03 percent *ad valorem* for the review period. However, we verified that the IETI tax program and the export and regional incentive allowances were terminated by the New Zealand government on March 31, 1983, and that the respondent did not claim any benefits under these programs in the 1984 tax year. Since the review period and prior to our preliminary determination, benefits under these programs have not been accorded to U.S. imports of low-fuming brazing copper rod and wire from New Zealand; therefore, we have set a duty deposit rate of 9.17 percent *ad valorem* which excludes these programs.

Respondents' Comments

Comment 1. Respondents contend that the 1984 qualifying expenditures applicable under EMDTI to U.S. imports of low-fuming brazing copper rod and wire from New Zealand were verified to be lower than the 1984 qualifying EMDTI expenses used in the preliminary determination. Respondents argue, therefore, that the verified actual EMDTI expenses for 1984 should be used in the final determination.

DOC Position. We are required to use only verified information in final countervailing duty determinations. In accordance with our tax methodology, we used verified information on respondent's actual qualifying EMDTI expenses for the 1983 rather than the 1984 tax year for calculating the countervailable benefits under the EMDTI program.

Comment 2. Respondents argue that EPTI is not a tax program requiring a cash flow analysis under the Department's traditional tax methodology. Respondents maintain that EPTI tax benefits are earned on a sale-by-sale basis at uniform tax credit rates statutorily established for specific tax years. The Department has verified that under the New Zealand government's schedule for phasing-out the EPTI program, respondents' exports of low-fuming brazing copper rod and wire to the U.S. will earn a 4.55 percent EPTI credit during MMP's 1986 tax year (August 1, 1985 to July 31, 1986), a 2.275 percent EPTI credit during MMP's 1987 tax year (August 1, 1986 to July 31, 1987), and no more credits on or after August 1, 1987. Respondents conclude that any EPTI tax credits can be offset precisely by assessing a countervailing duty rate equal to the specified EPTI credit rates in effect during the tax years of the phase-out period.

DOC Position. We disagree. We believe that tax benefits are countervailable when a company actually receives the benefits, rather than when a company becomes eligible to receive them. Tax law changes, such as the EPTI phase-out schedule, cannot be considered to be in effect until fully implemented by the government and used by the respondent. We verified that MMP claimed and received a 9.10 percent EPTI tax credit in its most recently completed tax return, filed in November 1984 and covering MMP's 1984 tax year. We also verified that MMP will be eligible to claim a 9.10 percent EPTI credit for its 1985 tax return, which is scheduled to be filed in November 1985.

The 4.55 percent EPTI credit will not be available to MMP until the company's 1986 fiscal year, and, under our tax methodology, these benefits are not effectively realized until the year in which the 1986 tax return is filed. As such, current exports to the U.S. of low-fuming brazing copper rod and wire are benefiting from a bounty or grant equal to the 9.1 percent EPTI rate, which is the rate we are using for duty deposit purposes. If the scheduled EPTI changes are claimed in future tax returns, we will consider these changes in an administrative review under section 751 of the Act, if one is requested.

Comment 3. Respondents contend that the accelerated first year depreciation allowance on new plant and equipment is not countervailable because, as verified, this allowance is legally available on an equal basis to and is uniformly taken by any taxpayer in business in New Zealand.

DOC Position. We agree. See our discussion of this issue in section II.B.

Comment 4. Respondents argue that no tax credits taken by A.W. Fraser & Sons, Ltd. (AWF), a 60 percent owned New Zealand subsidiary of MKB, should be allocated to either MKB or MMP because (1) AWF does not produce low-fuming brazing copper rod and wire; (2) AWF operates independently of MMP, with no transfer of production between the two foundries; and (3) AWF cannot transfer profits or losses for tax purposes to MKB or MMP under New Zealand tax law.

DOC Position. We agree and have not allocated any tax credits received by AWF to MKB or MMP for purposes of this final determination.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During verification we followed normal verification procedures, including meeting with government officials and inspection of documents as well as on-site inspection of the accounting records of the company producing and exporting the merchandise under investigation to the United States.

Administrative Procedures

We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35). A public hearing was not requested. In accordance with the Department's regulations (19 CFR 355.34(a)), written views have been received and considered in this determination.

Suspension of Liquidation

The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall remain in effect until further notice. The estimated net bounty or grant is 7.03 percent *ad valorem* for the review period and 9.17 percent *ad valorem* for duty deposit purposes. In accordance with section 706(a)(3) of the Act, we are directing the United States Customs Service to require a cash deposit in the amount indicated above for each entry of the subject merchandise from New Zealand which is entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to assess countervailing duties in accordance with sections 706(a)(1) and 751 of the Act.

This notice is published in accordance with section 705(d) of the Act (19 U.S.C. 1671d(d)).

Theodore W. Wu,

Acting Assistant Secretary for Trade Administration.

July 29, 1985.

[FR Doc. 85-18517 Filed 8-2-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-791-501]

Final Negative Countervailing Duty Determination; Low-Fuming Brazing Copper Rod and Wire From South Africa

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in the Republic of South Africa of low-fuming brazing copper rod and wire. Therefore, our final countervailing duty determination is negative.

EFFECTIVE DATE: August 5, 1985.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman, Kenneth Haldenstein or Laura Winfrey, Office of Investigations, Import Adminstration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-2438, 377-4136, or 377-0160.

SUPPLEMENTARY INFORMATION:

Final Determination

For purposes of this investigation, the following programs are determined to be countervailable, however, the respondent did not use benefits under these programs during the period for which we are measuring bounties or grants or for the tax year subsequent to the review period:

- Categories A and B of the Export Incentive Scheme (Section 11 (bis) 6, 7 and 8 of the Income Tax Act)
- Category D of the Export Incentive Scheme (Section 11 (bis) 1-5 of the Income Tax Act)

Although we have determined these programs to be countervailable, the respondent received no benefits during the period for which we are measuring bounties or grants. Therefore, we determine that no benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended, are being provided to manufacturers, producers, or exporters in the Republic of South Africa of low fuming brazing copper rod and wire.

Case History

On February 19, 1985, we received a petition in proper form from American Brass, Century Brass, and Cerro Metal Products of Rolling Meadows, IL, Waterbury, CT, and Bellefonte, Pa, respectively, filed on behalf of the U.S. low-fuming brazing copper rod and wire industry. In compliance with the filing requirements of § 355.26 of our regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in South Africa or low-fuming brazing copper rod and wire receive directly or indirectly benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act). On May 10, a letter supporting the petition was filed by J.W. Harris Company of Cincinnati, Ohio, another domestic producer of low-fuming brazing copper rod and wire.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on March 11, 1985, we initiated an investigation (50 Fed. Reg. 11005). We stated that we expected to issue a preliminary determination by May 15, 1985.

Since South Africa is not a "country under the Agreement" within the meaning of section 701(b) of the Act and the merchandise being investigated is dutiable, sections 303(a)(1) and (b)(1) of the Act apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise from South Africa materially injure, or threaten material injury to, a U.S. industry.

We sent questionnaires to the government of South Africa and the producers of low-fuming brazing copper rod and wire on March 22, 1985. On April 23, 1985, we received responses to our questionnares from the government of South Africa and from McKechnie Brothers South Africa (PTY) Ltd. ("McKechnie"), the only manufacturer in South Africa exporting the products under investigation to the United States.

On May 23, 1985, we published our preliminary determination that no benefit constituting bounties or grants are being provided to manufacturers,

producers or exporters in South Africa of low-fuming brazing copper rod and wire (50 Fed. Reg. 21328). We conducted verfication of the responses of the government of South Africa and McKechnie from May 28, 1985, to June 6, 1985.

Our notice of preliminary determination gave interested parties an opportunity to submit oral and written views. We received written views from interested parties and have taken them into consideration in this determination.

Standing

On March 20, 1985, Aufhauser Brothers Corporation ("Aufauser") requested that we rescind our initiation of this investigation, alleging that the petitioners had not filed "on behalf of" the domestic industry, as required by section 702 of the Act. We found at the preliminary determination that the information provided by Aufhauser did not rebut the evidence on the record that the petition was, in fact, filed on behalf of the U.S. industry (50 FR 21328). We have received no further evidence to change that determination.

Scope of Investigation

The products covered by this investigation are low-fuming brazing copper rod and wire, principally of copper and zinc alloy ("brass"), of varied dimension in terms of diameter, whether cut-to-length or coiled, whether bare or flux-coated, currently classified in the *Tariff Schedules of the United States Annotated* (TSUSA), under items 612.6205, 612.7220 and 653.1500. The chemical composition of the product under investigation is defined by Copper Development Association (CDA) standards 680 and 681.

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of this investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the Federal Register (49 FR 18006).

For purposes of this determination the period for which we are measuring bounties or grants ("the review period") is July 1, 1983, through June 30, 1984, which corresponds to the government and company fiscal year.

Based upon our analysis of the petition, the responses to our questionnaire, our verification, and comments submitted by interested parties we determine the following.

I. Programs Determined To Be Countervailable

We determine that the following programs are countervailable and are available to manufacturers, producers, or exporters in South Africa of low-fuming brazing copper rod and wire.

A. Categories A and B of the Export Incentive Scheme (Section 11 (bis) 6, 7, and 8 of the Income Tax Act)

The petitioners alleged that the South African government provides bounties or grants under the Export Incentive Scheme, which consists of four categories of benefits to encourage exports. Categories A, B, and D are discussed below, and Category C is discussed in the section of this notice entitled "Programs Determined Not to be Used."

Category A of the Export Incentive Scheme provides for a tax credit allowing exporters to reduce income tax payable by 50 percent of the value of the Customs Tariff applicable to inputs used in the production of goods for export. Category A benefits can be claimed whether such inputs are actually imported or are purchased from local suppliers. Category A tax credits which have been approved, but not used, may be carried forward indefinitely. The tariff on the input (zinc) of low-fuming brazing rod and wire was removed in November, 1983. Since that time, exports of the subject merchandise have not been eligible for benefits under Category A. Category A tax credits have been accrued by McKechnie since 1981. McKechnie did not use these accrued Category A benefits to reduce its taxes payable during the review period.

Category B of the Export Incentive Scheme provides a tax credit which allows exporters to reduce income tax payable by 10 percent of the value-added on goods which are subsequently exported. This tax credit only applies to domestically manufactured goods which are protected by tariffs imposed on the imports of the same good. Brazing rod and wire is such a protected commodity. Category B tax credits which have been approved, but not used, may be carried forward indefinitely. McKechnie has received entitlement to benefits under this program since 1981, though it did not use these credits during the review period.

Because Categories A and B tax credits are available only to exporters, we determine that both programs are countervailable. For tax programs, however, we generally determine the value of the bounty or grant by calculating the amount of the benefit based on the tax return filed during the review period. During the review period and for the tax return filed the year following the review period, McKechnie did not receive any benefits under these programs because, while it accrued Category A and B tax credits, it did not use them and thus there was no effect on McKechnie's tax liability. Therefore, although we determine that these programs ar countervailable, we find the estimated net countervailable benefits to be zero.

B. Category D of the Export Incentive Scheme (Section 11 (bis) 1–5 of the Income Tax Act)

Category D of the Export Incentive Scheme allows exporters to claim an extra 75 percent (or if export turnover goals are exceeded, 100 percent) deduction from taxable income for marketing allowances such as, but not limited to, market research, advertising trade fair participation, and the Credit Guarantee Insurance Corporation of South Africa, Ltd. These tax deductions are for South African exporters whose goods have undergone a process of manufacture in the Republic of South Africa. These deductions have been claimed by McKechnie since 1981. Although Mckechnie has claimed these deductions, these deductions did not decrease McKechnie's tax liabilities during the review period, since McKechnie would have had a tax loss independent of these deductions. Since these tax deductions are available only to exporters, we determine that they are countervailable. However, because McKechnie's tax liability was not affected by the application of these benefits on the tax return filed during the review period or for the tax return filed the year following the review period, the estimated net countervailable benefit is zero.

II. Programs Determined Not to Confer Bounties or Grants

We determine that bounties or grants are not being provided to manufacturers, producers, or exporters in South Africa of low-fuming brazing copper rod and wire under the following programs.

A. Certain Investment Allowances

The respondent received certain tax investment allowances under section 12 of the Income Tax Act during the review period. These allowances permit deductions from taxable income, which may exceed the cost of buildings and/or machinery to which they are applicable. The Income Tax Act does not limit these allowances to a specific industry or

enterprise, or group of industries or enterprises. Further, we found at verification that these allowances are claimed by a wide variety of industries. Therefore, these allowances do not confer bounties or grants.

B. Export Credit Re-Insurance Program

The Export Credit Re-Insurance Program provides re-insurance coverage to exporters for foreign exchange and political risks insured by the private Credit Guarantee Insurance Corporation. McKechnie used foreign exchange and political risk re-insurance from the Government of South Africa during the review period. We found at verification that the premium rates charged in the re-insurance program are adequate to cover the program's long-term costs and losses. Therefore, we determine that the program does not confer a bounty or grant.

III. Programs Determined Not To Be Used

We determine that the following programs have not been used by manufacturers, producers, and exporters of low-fuming brazing copper rod and wire from South Africa.

A. Beneficiation Allowances

Under section 15A of the Income Tax Act, manufacturers may deduct the cost of investment in plants, machinery, building or building improvements used in refining (but not simply purifying) mined base minerals from taxable income derived from mining operations where the refined mineral is sold for export. McKechnie did not qualify or apply for this allowance.

B. Railroad Rate Subsidies

Petitioners alleged that, as the Department has found in prior cases, the South African Transport Services ("SATS"), the government-owned rail system, may be providing rail services to McKechnie for export sales at rates which, between the factory and the port, were lower than the rates between the same points for domestic sales (see "Final Affirmative Countervailing Duty Determinations, Certain Steel Products from South Africa" (47 Fed. Reg. 39379, September 7, 1982)). The petitioners also alleged that rail transportation of raw materials used in brazing rod and wire alloys which are destined for export enjoy preferential rates over rail transportation of the same raw materials used in brazing rod and wire alloys destined for domestic consumption.

We found at verification that McKechnie makes all export shipments of the subject merchandise in containers. Until April 1984, McKechnie shipped its goods for export at the published export tariff rate. In April 1984, a shipping company used by McKechnie negotiated a flat across-the-board rate with SATS for all containerized shipments regardless of whether the goods are sold for domestic consumption or export.

Therefore, since April 1984, export tariff rates have not been used by McKechnie for export shipments of low-fuming brazing rod and wire. As such, any low-fuming brazing rod and wire that may have been accorded benefits before April 1984, under this program is not likely to enter the United States on or after the date of the initiation of this investigation. We found at verification that the contracted flat fee was used by McKechnie for any type of containerized rail shipment, domestic or export. Therefore, we determine that McKechnie did not receive a countervailable benefit in the form of preferential rail rates for export shipments.

With respect to rail shipments of inputs used in the manufacture of low-fuming brazing rod and wire, we reviewed at verification all the types of tariffs used by SATS for rail shipments of any product in South Africa and found that SATS does not provide differential rates for shipments of materials to be incorporated into products for export as opposed to products to be sold domestically.

C. Industrial Development Corporation Loans

The Industrial Development Corporation (IDC), a South African government corporation, provides funds for the purposes of establishing new export capacity throughout the country and housing in decentralized areas. McKechnie has not received any IDC loans.

D. Category C Benefits Under the Export Incentive Scheme

Category C of the Export Incentive Scheme allows exporters to be reimbursed for certain marketing allowances in the form of cash grants. During the review period, McKechnie did not receive benefits under Category C.

E. Other Programs

The following programs were investigated in prior cases. Respondent provided us with information on these programs for this investigation. McKechnie did not use these programs.

- Exemption from stamp duties and other taxes;
- Homeland development, regional decentralization, and "growth point" benefits; and
- Benefits for appointment of agents outside the Republic of South Africa under section 17 of the Income Tax Act.

Petitioners' Comments

Comment 1. Petitioners argue that benefits to McKechnie under Categories A and B of the South African Export Incentive Scheme constitute a current benefit to McKechnie in the form of an accured credit fund and a lump sum benefit for the future. Further, they argue that Mckechnie's credit standing and ability to raise and generate funds is enhanced by the very existence of these accrued credits. Petitioners contend that, should the Department be unable to quantify the net benefit received at present, at a minimum, the Department must issue an affirmative final determination in recognition of the fact that McKechnie is accruing credits.

DOC Positions. We disagree. The benefit from a tax credit is measured by the effect the credit has on taxes payable. Because it is in a tax loss position, the receipt of Categories A and B credits did not affect McKechnie's current tax liability. Further, petitioners' argument regarding the effect of these accrued credits on McKechnie's credit standing and ability to raise and generate funds is unsubstantiated. Regardless, it is Department policy to disregard the secondary effects of subsidies.

Petitioners' suggestion that McKechnie will likely benefit from these countervailable credits at some point in the future is speculation that is not supported by the facts on the record. At verification we found that the tax return filed by McKechnie subsequent to the review period demonstrates that McKechnie continues to be in a tax loss position and thus continues not to use these benefits. In contrast to investigations where the Department has knowledge of receipt of benefits under a countervailable program subsequent to our review period, we have no knowledge of, and the record does not support a prospect for, future use of these accured credits by McKechnie. Under these circumstances, we believe it appropriate to issue a final negative determination. Should petitioners make a reasonable allegation in the future that McKechnie's financial position has changed, indicating that it is using the benefits from these programs, the Department will reexamine this issue in a new investigation.

Comment 2. Petitioners argue that McKechnie's tax losses, which are increased by Category D deductions, are currently being used to cover deferred taxation. Therefore, they contend that McKechnie is receiving a current benefit from these deductions.

DOC Position. The deferred taxation referred to by petitioners is described in McKechnie's statement of accounting policies as a provision for potential tax liability arising from all significant temporary differences between financial statement income and taxable income. We found at verification that the full amount of McKechnie's losses are being carried forward in a cumulative fashion from year to year and are not being used to offset current or past taxes payable.

Comment 3. Petitioners contend that McKechnie receives a rail rate subsidy from SATS through the contracted containerized shipping rates to the shipping company Saftainer. Petitioners argue that because the rate per container in Saftainer's contract is the same as SATS' tariff rates for exported containers and because the contract stipulates that Saftainer will ship a monthly minimum number of containers from Johannesberg to Durban, Saftainer is in effect receiving SATS' preferential export rate for its export shipments. Petitioners contend that the existence of Saftainer as middleman does not eliminate the subsidy being received by McKechnie from SATS.

DOC Position. We disagree. Although Saftainer's contract does stipulate a minimum monthly number of shipments between Johannesberg and Durban, there is no requirement that any of these shipments be for export. To the contrary, the contract provides Saftainer with a fixed fee for containerized shipments of any type, domestic or export, full or empty. Although McKechnie did not make domestic containerized shipments of the subject merchandise during the period of review, we found at verification that McKechnie used Saftainer's contract to make domestic containerized shipments of some of its other products at the same rate as its export shipments of the subject merchandise. For these reasons, we determine that McKechnie is not receiving preferential terms for export shipments as compared to domestic.

Comment 4. Petitioners argue that the DOC did not investigate the following three allegations that have a bearing on whether McKechnie was actually in a tax loss position during the review period:

1. whether profit and loss shifting was occurring between McKechnie and its related companies;

2. whether companies related to McKechnie are receiving government subsidies which flow forward to McKechnie; and

3. whether McKechnie is receiving certain private subsidies from a company related to it.

DOC Position. We found at verification that McKechnie files its own tax returns, compiles its own audited financial statements and does not shift profits or losses with related companies. We further found that under South African tax law, companies are not allowed to consolidate for tax purposes. As a result, we did not investigate whether related companies received government subsidies because we would find no basis for attributing any of the benefit under such subsidies, if they existed, to McKechnie. We also found at verification that none of the companies with an ownership interest in McKechnie are owned, in whole or in part, by the Government of South Africa. Absent evidence of government ownership or governmental direction, it is our standard practice not to investigate financial transactions between related entities because we view these merely as intracorporate transfers of funds.

Respondents' Comments

Comment 1. Respondent argues that McKechnie is not receiving any current benefits under Categories A and B of the Export Incentive Scheme.

DOC Position. We agree. See the DOC position on Petitioners' Comment 1.

Comment 2. Respondents argue that no Category D deductions have been utilized by McKechnie in the past five years to reduce its tax obligations and therefore no Category D benefits have been provided to the company.

DOC Position. We agree. See the DOC position on Petitioners' Comment 2.

Comment 3. Respondents argue that no railage preferences are given for export shipments of low-fuming brazing copper rod and wire to McKechnie.

DOC Position. We agree. See the DOC position on Petitioners' Comment 3.

Verification

In accordance with section 776(a) of the Act, we verified the data used in making our final determination. During verification we followed normal verification procedures, including meetings with government officials and inspection of documents, as well as on-site inspection of the accounting and tax records of the company producing and exporting the merchandise under investigation to the United States.

Administrative Procedures

We afforded interested parties an opportunity to present oral views in accordance with our regulations (19 CFR 355.35(a)). A public hearing was not requested. In accordance with the Department's regulations (19 CFR 355.34(a)), written views have been submitted and considered in this determination.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d).

Theodore W. Wu,

Acting Assistant Secretary for Trade Administration

[FR Doc. 85-18518 Filed 8-2-85; 8:45 am]

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[Docket Nos. 83-2, 84-2 83 JD]

Distribution of the 1982 and 1983 Jukebox Royalty Funds; Order Consolidating Proceedings and Setting Future Procedural Dates

Consolidation

On November 5, 1984, the Tribunal declared that a controversy existed in the distribution of the 1983 Jukebox Royalty Fund. On January 7, 1985, the Tribunal determined at a pre-hearing conference that the controversy existed only as to 5% of the fund which represents Spanish language musical works performed on jukeboxes. On May 30, 1985, the United States Court of Appeals for the Second Circuit vacated the 1982 Jukebox Royalty Distribution Determination for the disputed ten percent of the fund and remanded for further proceedings. The part of the fund which was in dispute was Spanish-language musical works performed on jukeboxes. The Tribunal finds that the parties and issues of the remanded 1982 proceeding and the 1983 proceeding are substantially the same, and that the time and resources of the parties and the Tribunal would better served by consolidating the two proceedings. The Tribunal has not yet received the Court's mandate. However, in the interest of conserving time to meet our statutory deadline, the Tribunal has determined to issue this order. Accordingly, the remanded part of the 1982 Jukebox Distribution Proceeding and the 1983 Jukebox Distribution Proceeding are hereby consolidated.

Evidentiary Hearing Required

In the judgement of the Tribunal, the Court of Appeals' opinion in *A.C.E.M.L.A. v. CRT* makes it necessary

to hold an evidentiary hearing on the following questions:

Status of Claimants. In the view of the Court of Appeals, the status of A.C.E.M.L.A., Latin American Music, and Latin American Music, Inc. (collectively, LAM) was left unresolved by the 1982 jukebox final determination, and it treated LAM as performing rights societies "for purposes of this appeal" but specifically did not foreclose "further examination of this issue by the CRT on the remand." The Court's opinion further appeared to say that a settlement among performing rights societies would only be effective in eliminating the necessity for proving entitlement if it was a settlement among all performing rights societies. The Copyright Act of 1976 defines ASCAP, BMI, and SESAC, Inc. as performing rights societies. 17 U.S.C. 116(e)(3). No further inquiry is necessary. However, the Tribunal will make inquiry into the status of A.C.E.M.L.A., Latin American Music, Latin American Music, Inc. and Italian Book Company (IBC) in this consolidated proceeding.

Entitlement—The Court stated that the CRT must "provide all the claiming societies an opportunity to prove entitlement to the ten percent of the 1982 fund that remains in controversy." We note that at the time the appeal was taken, we had retained 10 percent of the fund solely to assure sufficient funds to resolve any controversy, but after finding that Michael Walsh and Sammie Belcher, two individual claimants, had not appealed and that the extent of LAM's claim was 5 percent, we distributed another 5 percent of the fund. We believe we were correct in our analysis, and therefore, the parties need only prove entitlement to the five percent of the 1982 fund that remains in controversy in this consolidated proceeding. For the 1983 proceeding, the Tribunal believes it is necessary for ASCAP, BMI, and SESAC, Inc. to prove entitlement to 100 percent of the fund, and for LAM to prove entitlement to 5 percent of the fund. IBC must submit its 1983 claim, either a percentage of the fun or an absolute dollar figure, and must prove entitlement accordingly.

Criteria for Proving Entitlement for Amounts in Controversy

On January 7, 1985, the Tribunal heard oral argument on how the parties might prove entitlement to the portion of the fund which represents Spanish-language music performed on jukeboxes. ASCAP, BMI, and SESAC Inc. recommended either a survey of radio performances or a survey of radio and other media performances. LAM recommended an actual survey of jukeboxes to be funded by the royalty pool. The Tribunal has been reluctant to instruct parties how to prove entitlement, because it does not want to restrict or inhibit the production of any relevant evidence. Therefore, the following is intended to give the parties guidance only, and is not meant to foreclose any type of submission by any party.

Survey of jukeboxes. The Tribunal recommends a survey of jukeboxes. The question has been raised whether the claimant(s) or the Tribunal should bear the cost. The Tribunal does not have an appropriation to conduct a survey of jukeboxes. Further, it does not believe it has the authorization to conduct the type of survey recommended by LAM. Section 807 authorizes the Tribunal to assess "the reasonable costs" of a distribution proceeding. We believe that the cost of a jukebox survey of Spanish-language music would be so great in comparsion to the actual amount of Spanish-language music which the survey would find that we do not believe we could determine it "reasonable" under Section 807. However, any party may submit to the Tribunal a survey of jukeboxes at its own cost.

Sworn statement from jukebox operators. The Tribunal will accept into evidence and weigh the value of sworn statements from jukebox operators regarding jukebox play. The Tribunal reminds the parties that these representations, as all representations made to the Tribunal, are subject to Title 18, Section 1001 of the U.S. Code which makes misrepresentations to a governmental body punishable by fine and/or imprisonment.

Survey of radio and other media performances. The Tribunal recommends a survey of radio and other media performances. Pursuant to that recommendation, we will require all parties to make available to all parties and the Tribunal a representative sample of the top Spanish-language songs in their catalogue so that any party can conduct performance surveys. The Tribunal would like to see the result of any survey segregted by media and by year.

Hit Songs Charts. The Tribunal will weigh the evidentiary value of hit songs charts. The charts may be national, regional, or local. They may be radio charts, retail outlet charts, trade magazine charts, or any other charts any party believes are relevant.

Procedural Dates

August 9, 1985—All parties shall furnish to all parties and the Tribunal a representative sample of the most preformed Spanish-language songs in the catalogue, which shall include the full title of the work, the author(s), the publisher and the name of the most popular performer(s) of the work.

September 3, 1985—All parties shall file with the Tribunal and all the parties the results of any performances survey they might have conducted. All parties shall file any comments they might have on the replies to the Tribunal's fact-finding letter of May 16, 1985.

September 13, 1985—All parties shall file their written direct case. Part I shall include the following documentation to prove claimant is a performing rights society:

(a) Documentation of the ownership and structure of the claimant;

(b) The form(s) of the agreement with the copyright owners

(c) A list of the entities to whom the claimant licenses the public performance of the works;

(d) Documentation of the claimant's distribution system.[1]

Part II shall include all pertinent facts which a claimant believes tend to prove entitlement. For statutorily-defined performing rights societies, the written direct case shall consist of one part to prove entitlement. The written direct case may incorporate by reference the record evidence from past proceedings.

September 30, October 2, October 3—The Tribunal will hold hearings at a time and place to be announced. The Tribunal will take testimony and hear arguments on the status of the parties, the validity and relevancy of any surveys, and any other proofs of entitlement offered by each party.

October 17, 1985—All parties shall file Proposed Findings of Facts and Conclusions of Law.

October 24, 1985—All parties shall file Reply Findings of Facts and Conclusions of Law.

July 30, 1985.

Edward W. Ray,

Acting Chairman.

[FR Doc. 85-18486 Filed 8-2-85; 8:45 am]

BILLING CODE 1410-13-M

[1] The Tribunal has no subpoena power and therefore cannot compel production of these documents. Further, the Tribunal does not intend to state that failure to produce any one of these documents will result in an adverse finding. However, the extent to which these documents are or are not produced will necessarily affect the Tribunal's analysis. The burden of proof falls on the claimant to prove entitlement, and within that burden is the burden to prove performing rights society status for those parties not already defined as such by the Copyright Act. Hence, a party fails to provide the necessary documentation at its own risk.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Limits for Certain Cotton and Wool Textiles and Textile Products Produced or Manufactured in Peru; Correction

July 31, 1985.

On May 1, 1985 a notice was published in the **Federal Register** (50 FR 18547) which established import limits for certain categories of cotton and wool textiles and textile products, produced or manufactured in Peru and exported during the twelve-month period which began on May 1, 1985 and extends through April 30, 1986. Footnote 2 in the letter to the Commissioner of Customs which followed that notice should be corrected to read as follows:

[2] In Category 320, only TSUSA items 320.—, 321.— 322.—, 326.—, 327.—, and 328.—with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 85-18507 Filed 8-2-85; 8:45 am]

BILLING CODE 3510-DR-M

Establishing an Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Thailand

July 31, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 6, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On April 16, 1985, a notice was published in the **Federal Register** (50 FR 14958) which established an import restraint limit of 26,033 dozen for cotton playsuits in Category 337, produced or manufactured in Thailand and exported during the ninety-day period beginning on March 29, 1985 and extending through June 27, 1985, pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated July 27 and August 8, 1983, as amended, between the Governments of the United States and Thailand. No agreement was reached on a mutually satisfactory level for this category during consultations held July 1-2, 1985; however, the two governments have agreed to continue consultations. If agreement is reached on a new limit, further notice will be published in the **Federal Register**. In the meantime, the United States Government has decided, pursuant to the terms of the bilateral agreement, as amended, to establish a prorated annual limit of 67,982 dozen for Category 337 for the period which began on March 29, 1985 and extends through December 31, 1985 for goods exported during that period. A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 31, 1985

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854) and pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement effected by exchange of notes date July 24 and August 8, 1983, as amended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 6, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 337 produced or manufactured in Thailand and exported during the period which began on March 29, 1985 and extends through December 31, 1985 in excess of 67,982 dozen.[1]

In carrying out this directive, entries of cotton textile products in Category 337, which have been exported to the United States during the period which began on March 29, 1985 and extends through June 27, 1985 shall, to the extent of any unfilled balance, be charged against the level established for such goods during that period. In the event the level established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter.

[1] The level has not been adjusted to reflect any imports exported after March 28, 1985.

Textile products in Category 337 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), Decemberr 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July, 16 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

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

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-18508, Filed 8-2-85; 8:45 am]

BILLING CODE 3510-DR-M

New Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

July 31, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 6, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

During consultations held May 20-24, 1985, under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, the Governments of the United States and the People's Republic of China agreed to establish specific limits for the following categories, among others: other woven fabrics in Category 320pt. (only T.S.U.S.A. numbers 320.—, 321.—, 322.—, 326.—, 327.—, and 328.— with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80, and 98), polyester fabric in Category 613pt. (only T.S.U.S.A. numbers 338.539, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058, and 338.5059), and brassieres

in Category 649, produced or manufactured in China. The United States Government has decided to control imports in these categories at the new limits.

Merchandise in these categories which was exported on and after the period which began on January 1, 1984 and extended through May 28, 1985 (Category 320pt.), through June 25, 1985 (Category 613pt.) and through June 26, 1985 (Category 649), shall be subject to the staged entry amounts established in the directives of May 24, 1985, and June 24, 1985 (See 50 FR 21923 and 26401). Merchandise exported following the close of the previously established restraint periods shall be subject to the restraint limits in the letter to the Commissioner of Customs which follows this notice. In no case shall the staged entry amounts plus goods exported following the close of the previously established restraint periods be permitted to exceed the newly agreed 1985 restraint limits for these categories.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to prohibit entry or withdrawal from warehouse for consumption in the United States of textile products in the foregoing categories in excess of the designated restraint limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 31, 1985.

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

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed, effective on August 6, 1985, to prohibit entry for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 320pt.,[1] 613pt.,[2] and 649, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985, in excess of the following limits:

Category	12-mo restraint limit [3]
320pt.[1]	13,780,000 square yards.
613pt.[2]	24,205,000 square yards.
649	603,200 dozen.

[1] In Category 320, only T.S.U.S.A. numbers 320.—, 321.—, 322.—, 326.—, 327.— and 328.— with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80, and 98.

[2] In Category 613, only T.S.U.S.A. numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058, and 338.5059.

[3] The limits have not been adjusted to account for any imports exported after December 31, 1984.

Merchandise in the foregoing categories, exported during the periods which began on January 1, 1984 and extended, in the case of Category 320pt.,[1] through May 28, 1985, in the case of Category 613pt.,[2] through June 25, 1985, and in the case of Category 649, through June 26, 1985, shall remain subject to the staged entry amounts established in the directive of May 24, 1985, as amended, and the directive of June 24, 1985. Merchandise exported on and after May 29, 1985 (Category 320pt.[1]), June 26, 1985 (Category 613pt.[2]), and June 27, 1985 (Category 649), shall be subject to the restraint limits established in this directive. In no case shall the staged entry amounts, plus merchandise exported following the close of the previously established restraint period, which ended on May 28, 1985 (Category 320pt.[1]), June 25, 1985 (Category 613pt.[2]) and June 26, 1985 (Category 649), be permitted to exceed the 1985 restraint limits established in this directive.

A descriptive of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

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

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

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-18506 Filed 8-2-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 320, only T.S.U.S.A. numbers 320.—, 321.—, 322.—, 326.—, 327.— and 328.— with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.

[2] In Category 613, only T.S.U.S.A. numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058, and 338.5059.

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: August 19, 1985.

Times of Meeting: 1300–1700 hours.

Place: National Academy of Sciences Study Center, Woods Hole, Massachusetts.

Agenda: The Army Science Board Steering Committee will meet for the purpose of reviewing the Spring Functional Subgroup meetings and to discuss the Future of Functional Subgroup operations. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-18560 Filed 8-2-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Upward Bound Program; Application Preparation Workshops

AGENCY: Department of Education.

ACTION: Notice of dates and locations for application preparation workshops.

SUMMARY: The Assistant Secretary for Postsecondary Education will conduct Application Preparation Workshops to assist prospective applicants to develop applications for grants under the Upward Bound Program.

DATES: Workshops are scheduled to be held on September 26, October 4, 23, and 25.

ADDRESSES: The locations for the workshops are as follows.

September 26

Chicago, Illinois
Hyatt Regency Hotel, 151 East Wacker Drive, Chicago, Illinois 60601—Host Person: Mr. Walter Lewis, Chief, Education Outreach Branch, (202) 245-2165

October 4

Washington, D.C.

Regional Office Building #3, GSA Auditorium, First Floor (D Street Entrance), 7th and D Streets SW., Washington, D.C.—Host Person: Mr. Walter Lewis, Chief, Education Outreach Branch, (202) 245-1265

October 23

Atlanta, Georgia

Atlanta University, Robert W. Woodruff Library Exhibition Hall, Upper Level, 111 Chestnut Street SW, (Corner of Chestnut and Beckwith Streets)—Host Person: Mr. Marvin King, Morris Brown College, (404) 525-7831 ext. 250 or 252

October 23

Dallas, Texas

Bishop College, Recital Hall, Price-Branch Classroom Building, 3857 Simpson Stuart Road, Dallas, Texas—Host Person: Dr. Burtis Robinson, Director, Upward Bound Project, (214) 372-8766 or 8796

October 25

San Francisco, California

University of San Francisco, Parina Lounge, University Center, Main Entrance, Golden Gate Avenue and Kitteridge—Host Person: Ms. Janice Cook, Director, Upward Bound Project, (415) 666-6476.

The host person listed for each workshop location will assist you if you need directions to the workshop site.

FOR FURTHER INFORMATION CONTACT: Mr. Walter Lewis, Chief, Education Outreach Branch, Division of Student Services, Room 3060, ROB-3, U.S. Department of Education, 400 Maryland Avenue SW., Washington, D.C. 20202. Telephone: (202) 245-2165.

SUPPLEMENTARY INFORMATION: Each application workshop will last approximately one day, the presentation will include a review of the requirements for filing applications for the Upward Bound Program and a review of the program regulations. (Sections 417A, and 417C of the Higher Education Act of 1965, as amended and 34 CFR 645.2). Each of the workshops will begin with registration at 8:00 a.m. and presentations are scheduled from approximately 9:00 a.m. to 1:00 p.m. Time will be provided in the afternoon for informal discussions, questions and answers, and individual concerns. There is no registration fee for the workshops.

(Catalog of Federal Domestic Assistance Number: 84.047 Upward Bound Program)

Dated: July 30, 1985.

C. Ronald Kimberling,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 85-18511 Filed 8-2-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Invitation To Participate and Closing Date for Participation in Pell Grant Electronic Pilot—Correction

AGENCY: Department of Education.

SUMMARY: On July 23, 1985, the Secretary of Education published in the **Federal Register**, a notice of invitation to participate in the Pell Grant Electronic Pilot and the closing date for submission of requests to participate (50 FR 29999).

This notice corrects the telephone number under "For Further Information Contact" to read "245-0812".

(Catalog of Federal Domestic Assistance No. 84.063, Pell (Basic) Grant Program)

Dated: July 30, 1985.

C. Ronald Kimberling,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 85-18510 Filed 8-2-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Savannah River Plant Site, SC; Trespassing on Department of Energy Property

The Department of Energy (DOE), successor agency to the Atomic Energy Commission is authorized pursuant to section 229 of the Atomic Energy Act of 1954, as amended; section 104 of the Energy Reorganization Act of 1974 as implemented by 10 CFR Part 860; and section 301 of the Department of Energy Organization Act, to prohibit unauthorized entry and the unauthorized introduction of weapons or dangerous materials into and upon its nuclear sites. By Notice dated October 12, 1965, appearing at pages 13290-13294 of the **Federal Register** of October 19, 1965, the Atomic Energy Commission prohibited unauthorized entry into and upon certain portions of the Savannah River Plant Site located in the State of South Carolina. This Notice was amended in 1968 (33 FR 2402, dated January 31, 1968); in 1975 (40 FR 56717-56718, dated December 4, 1975); and in 1982 (47 FR 38580, dated September 1, 1982). This Notice further amends the site description in the previous notices to include the entire Savannah River Plant with the exception of the Lower Three Runs Corridor located in Barnwell and Allendale counties. Notices stating the pertinent prohibition of 10 CFR 860.3 and 860.4 and penalties of 10 CFR 860.5 will be posted at all entrances of said tracts and at intervals along its perimeters as provided in 10 CFR 860.6.

The site description of the Savannah River Plant Site is amended to read as follows:

All that tract of parcel of land lying or being situated in Aiken, Barnwell, and Allendale Counties, in the State of South Carolina, approximately 14 miles southeast of the city of Augusta, State of Georgia, and 12 miles south of the town of Aiken, State of South Carolina; bounded on the southwest and south by the Savannah River, on the east by lands of Florence L.S. Clark (Creek Plantation), on the north by lands of Catawba Timber Company, on the northwest by Aiken County Road 62, lands now or formerly of W.H. Harper, Fitch Gilbert, J.L. Pew, Mack Foreman, J.L. Steed et. al. and being more particularly described as follows:

Bearings on the following descriptions are referred to the Savannah River Plant coordinate system, unless otherwise specifically noted.

Beginning at S.R.P. monument number 1 near the Savannah River; thence N 70-26-17 E 3,224.13 feet to SRP monument 1A; thence N 70-26-17 E 523.0 feet to SRP monument 1B; thence N 70-26-17 E 1,311.11 feet to SRP monument 2; thence S 23-09-34 E 647.94 feet to SRP monument 3; thence N 71-10-56 E 1,406.53 feet to SRP monument 4; thence S 81-23-22 E 3,449.14 feet to SRP monument 4A; thence N 75-11-56 E 654.14 feet to SRP monument 4B; thence S 85-04-12 E 10,141.28 feet to SRP monument 4D; thence S 84-26-56 E 199.75 feet to SRP monument 5; thence N 0-05-36 W 3,322.85 feet to SRP monument 6; thence N 21-53-41 E 455.08 feet to SRP monument 6A; (said point having a coordinate value on the SRP coordinate system of N 94,773.45 and E 25,269.90 and having a coordinate value on the S.C. Lambert coordinate system south zone of N 525,964.97 and E 1,760,277.82) thence N 75-34-22 E 1,613.11 feet to SRP monument 7; thence N 78-33-33 E 1,854.49 feet to SRP monument 8; thence N 14-06-35 W 2,513.83 feet to SRP monument 9; thence N 73-37-31 E 3,390.15 feet to SRP monument 10; thence N 2-31-24 W 622.97 feet to SRP monument 11; thence N 73-05-52 E 458.29 feet to SRP monument 12; thence N 1-09-24 E 3,667.03 feet to SRP monument 13; beginning at SRP monument 13; thence on a line between SRP monument 13 and SRP monument 14, N 49°14'54" W a distance of 256.12 feet to the

southeastern right of way line of South Carolina Road S–2035; thence, with the southeastern right of way line of South Carolina Road S–2035, the following courses and distances: a. with a curve to the right having a radius of 785.65 feet and an arc length of 336.22 feet, b. N 53°49'13" E a distance of 996.56 feet, c. with a curve to the left having a radius of 988.04 feet and an arch length of 348.07 feet to a point on the line between SRP monument 14 and SRP monument 15; thence with the SRP boundary N 53°06'19" E, a distance of 121.46 feet to SRP monument 15; thence on a line between SRP monument 15 and SRP monument 16, N 38°48'08" W a distance of 47.32 feet to the southeastern right of way line of South Carolina Road S–2035; thence with the southeastern right of way line of South Carolina Road S–2035, the following courses and distances: a. N 31°10'01" E a distance of 101.51 feet, b. with a curve to the right having a radius of 349.52 feet and an arc length of 211.67 feet, c. N 65°51'52" E a distance of 247.07 feet, d. with a curve to the left having a radius of 2894.62 feet and an arc length of 460.29 feet, e. N 56°45'13" E a distance of 199.18 feet to a point on line between SRP monument 18 and SRP monument 19; thence with a line between SRP monument 18 and SRP monument 19, S 62°43'15" E a distance of 188.39 feet to SRP monument 19; thence N 55°35'21" E a distance of 197.80 feet to SRP monument 20; thence on a line between SRP monument 20 and SRP monument 21, N 63°04'41" W a distance of 184.43 feet to the southeastern right of way line of South Carolina Road S–2035; thence with the southeastern right of way line of South Carolina Road S–2035, the following courses and distances: a. N 56°45'13" E a distance of 832.84 feet, b. with a curve to the left having a radius of 749.06 feet and an arc length of 380.93 feet, c. N 27°36'59" E a distance of 384.61 feet, d. with a curve to the right having a radius of 785.69 feet and an arc length of 224.56 feet, N 43°59'30" E a distance of 20.98 feet, f. with a curve to the left having a radius of 606.79 feet and an arc length of 255.87 feet, g. N 19°49'57" E a distance of 60.48 feet to a point on a line between SRP monument 23 and SRP monument 24; thence with a line between SRP monument 23 and SRP monument 24, S 60°11'20" E a distance of 2065.50 feet to SRP monument 24, passing SRP monument 23A at 198.82 feet; thence along the meander of the centerline of S.C. Highway 125 to monument 25, (tie line N 00–42–14 2576.60 feet) thence along the meander of the southeast R/W of S.C. Highway 62 to monument 26, (tie line N 73–02–32 10,719.20 feet) thence N 68–22–43 E 286.97 feet to SRP monument 27; thence S 26–42–45 E 2,086.29 feet to SRP monument 28; thence S 88–45–19 E 1,784.15 feet to SRP monument 29; thence N 50–47–32 E 615.22 feet to SRP monument 30; thence S 16–34–58 E 675.58 feet to SRP monument 31; thence S 20–34–22 E 587.56 feet to SRP monument 32; thence N 59–53–09 E 653.65 feet to SRP monument 33; thence N 67–08–57 E 2,733.25 feet to SRP monument 34; thence N 65–56–45 E 618.93 feet to SRP monument 35; thence N 62–13–10 E 2,675.95 feet to SRP monument 36; thence S 1–28–24 W 1,284.83 feet to SRP monument 37; thence N 29–10–11 E 1,791.33 feet to SRP monument 38; thence S 58–47–44 E 3,228.36 feet to SRP monument 39; thence N 58–02–10 E 542.97 feet to SRP monument 40; thence N 40–38–25 E 1,281.40 feet to SRP monument 41; thence S 51–42–09 E 1,458.29 feet to SRP monument 42; thence N 89–27–05 E 2,723.37 feet to SRP monument 43; thence N 72–50–13 E 1,346.16 feet to SRP monument 44; thence S 26–04–58 E 886.05 feet to SRP monument 45; thence N 68–56–56 E 1,111.13 feet to SRP monument 46; thence S 45–16–34 E 849.06 feet to SRP monument 47; thence N 51–41–24 E 2,116.06 feet to SRP monument 48; thence S 4–58–33 E 977.91 feet to SRP monument 49; thence S 76–21–44 E 1,925.20 feet to SRP monument 50; thence N 47–36–32 E 890.43 feet to SRP monument 51; thence S 37–02–25 E 716.77 feet to SRP monument 52; thence N 29–55–46 E 226.48 feet to SRP monument 53; thence S 36–22–09 E 683.23 feet to SRP monument 54; thence N 63–52–16 E 325.38 feet to SRP monument 55; (pt. in centerline of unnamed dirt road) thence S 36–07–02 E 3,400.36 feet to SRP monument 56; (pt. in centerline of unnamed dirt road) thence N 65–17–41 E 2,780.78 feet to SRP monument 57; thence N 64–37–23 E 1,066.56 feet to SRP monument 58; thence S 55–32–02 E 2,275.19 feet to SRP monument 59; (said point having a coordinate value on the SRP coordinate system of N 107,479.34 and E 82,536.62 and having a coordinate value on the S.C. Lambert coordinate system south zone of N 569,940.55 and E 1,799,093.56) thence N 88–34–20 E 617.70 feet to SRP monument 60; thence S 10–09–16 E 208.98 feet to SRP monument 61; thence N 86–15–14 E 209.04 feet to SRP monument 62; thence S 7–22–25 E 1,464.98 feet to SRP monument 63; thence N 73–32–25 E 2,282.89 feet to SRP monument 64; thence S 57–38–39 E 12,645.58 feet to SRP monument 65R; thence along meander of Upper Three Runs Creek to SRP monument 66R; tie line (S 46–29–00 W; 1,833.06 feet) thence S 56–59–18 E 2,932.51 feet to SRP monument 67; thence S 40–36–11 E 3,491.43 feet to SRP monument 68; thence S 60–56–50 E 3,293.86 feet to SRP monument 69; (said point having a coordinate value on the SRP coordinate system of N 92,619.24 and E 102,740.91 and having a coordinate value on the S.C. Lambert coordinate system south zone of N 569,825.92 and E 1,824, 175.24) thence S 84–48–59 E 2,585.09 feet to SRP monument 70; thence S 38–04–09 E 341.98 feet to SRP monument 71; thence N 63–30–22 E 806.05 feet to SRP monument 72; thence S 39–38–55 E 781.62 feet to SRP monument 73; thence S 11–29–50 W 849.68 feet to SRP monument 74; thence S 71–55–15 E 2,931.66 feet to SRP monument 75; thence S 20–58–49 W 2,234.57 feet to SRP monument 76; thence along a meander to SRP monument 77; (tie line S 70–54–21 E; 2,420.00 feet) thence S 21–02–45 W 584.61 feet to SRP monument 78; thence S 30–23–19 E 455.48 feet to SRP monument 79; thence S 13–19–50 E 3,229.97 feet to SRP monument 80; thence S 67–13–53 E 2,567.60 feet to SRP monument 81; thence S 54–47–10 W 137.17 feet to SRP monument 82; thence S 8–23–04 W 2,466.24 feet to SRP monument 83; thence S 80–06–26 E 213.21 feet to SRP monument 84; thence S 21–20–49 W 1,136.02 feet to SRP monument 85; thence S 21–12–29 E 5,044.03 feet to SRP monument 86; thence S 50–39–07 E 2,115.84 feet to SRP monument 87; thence S 26–24–41 E 520.05 feet to SRP monument 88; thence S 86–21–48 W 254.45 feet to SRP monument 88A; thence S 51–16–44 W 271.80 feet to SRP monument 88B; thence S 77–14–41 W 320.37 feet to SRP monument 88C; thence 87–22–03 W 99.11 feet to SRP monument 88D; thence N 76–07–48 W 208.95 feet to SRP monument 88E; thence N 85–35–47 W 253.51 feet to SRP monument 89; thence S 8–18–26 E 1,464.01 feet to SRP monument 89A; thence N 86–39–08 E 412.10 feet to SRP monument 90; thence S 42–20–26 W 1,316.22 feet to SRP monument 91; thence S 39–52–08 W 598.85 feet to SRP monument 92; thence S 13–01–46 E 1,416.18 feet to SRP monument 93; thence S 52–57–31 E 679.77 feet to SRP monument 94; thence S 8–56–17 E 1,298.14 feet to SRP monument 95; thence S 31–35–48 W 605.47 feet to SRP monument 96; thence S 11–09–05 E 1,359.03 feet to SRP monument 97; thence S 85–54–29 W 1,378.48 feet to SRP monument 98; thence S 70–00–27 W 221.18 feet to SRP monument 99; thence S 18–50–25 E 422.49 feet to SRP monument 100; thence S 9–30–35 W 974.78 feet to SRP monument 101; thence S 10–14–30 E 2,517.39 feet to SRP

monument 102; thence S 63-27-49 W 445.77 feet to SRP monument 103; (said point having a coordinate value on the SRP coordinate system of N 59,549.65 and E 114,392.06 and having a coordinate value on the S.C. Lambert coordinate system south zone of N 549,957.30 and E 1,853,059. 14) thence S 21-30-57 E 3,748.86 feet to SRP monument 104; thence S 41-39-01 W 2,639.80 feet to SRP monument 105; thence S 58-26-39 W 1,514.08 feet to SRP monument 106; thence S 8-19-11 W 1,621.02 feet to SRP monument 107; thence S 38-25-51 W 1,880.12 feet to SRP monument 108; thence N 52-34-06 W 512.12 feet to SRP monument 109; thence S 39-52-14 W 690.43 feet to SRP monument 110; thence S 28-08-31 W 3,516.05 feet to SRP monument 111; thence S 30-34-31 W 205.97 feet to SRP monument 112; thence N 86-01-10 W 1,203.84 feet to SRP monument 113; thence S 24-21-01 W 657.46 feet to SRP monument 113A; thence S 25-12-17 W 1,858.36 feet to SRP monument 114; thence S 15-27-52 W 3,141.21 feet to SRP monument 115; thence N 60-32-44 W 853.31 feet to SRP monument 116; thence N 55-51-05 W 4,429.13 feet to SRP monument 330; thence S 38-20-42 W 7,043.25 feet to SRP monument 331; thence S 67-36-57 W 1,897.98 feet to SRP monument 332; thence S 66-13-49 W 2,627.19 feet to SRP monument 333; thence S 68-08-43 W 2,342.21 feet to SRP monument 334; thence S 50-51-24 W 2,230.29 feet to SRP monument 335; thence S 37-17-36 W 736.28 feet to SRP monument 336; thence S 21-03-46 W 1,096.99 feet to SRP monument 337; thence S 46-37-00 W 575.70 feet to SRP monument 338; thence S 31-26-41 W 775.94 feet to SRP monument 339; (said point having a coordinate value on the SRP coordinate system of N 32,156.28 and E 87,097.32 and having a coordinate value on the S.C. Lambert coordinate system south zone of N 511,753.52 and E 1,847,119.00) thence S 70-25-22 E 3,501.06 feet to SRP monument 340; thence S 53-33-00 E 3,756.03 feet to SRP monument 341; thence N 53-25-19 E 237.75 feet to SRP monument 342; thence S 20-23-27 E 465.57 feet to SRP monument 343; thence S 37-02-44 E 255.22 feet to SRP monument 344; thence S 53-33-26 E 721.94 feet to SRP monument 345; thence S 58-53-21 W 2,212.02 feet to SRP monument 130; thence S 61-23-47 W 1,032.92 feet to SRP monument 131; thence S 45-14-51 W 1,235.33 feet to SRP monument 132; thence S 44-09-48 W 1,009.13 feet to SRP monument 133; thence S 48-27-54 W 1,965.45 feet to SRP monument 134; thence S 34-43-15 E 1,843.70 feet to SRP monument 135; thence S 57-54-16 W 852.48 feet to SRP monument 136; thence N 71-47-51 W 1,733.99 feet to SRP monument 137; thence S 24-47-28 W 2,997.17 feet to SRP monument 138; thence N 77-38-35 W 532.96 feet to SRP monument 139; thence S 13-55-12 W 2,565.43 feet to SRP monument 140; thence N 78-16-06 W 2,097.45 feet to SRP monument 141; thence S 44-49-35 W 1,442.07 feet to SRP monument 142; thence S 15-50-02 W 1,140.11 feet to SRP monument 143; thence S 32-24-38 W 824.91 feet to SRP monument 144; thence S 50-39-29 W 1,014.57 feet to SRP monument 145; thence S 2-06-17 W 959.34 feet to SRP monument 146; thence S 73-57-02 W 530.43 feet to SRP monument 147; thence S 16-18-48 W 2,109.78 feet to C/L S.C. Highway 20 thence along the meanders of the centerline of S.C. Highway 20 in a southwesterly direction to the intersection of the Savannah River Plant boundary line and the centerline of said Highway between monuments 287 and 288 (tie line S 73-35-14 W 1943.80 feet) thence N 19-30-35 W 551.82 feet to SRP monument 288; thence N 64-03-21 W 650.11 feet to SRP monument 289; thence S 51-26-23 W 470.04 feet to SRP monument 290; thence N 70-03-29 W 375.12 feet to SRP monument 290A; thence N 58-31-15 W 208.18 feet to SRP monument 290B; thence N 52-06-58 W 204.01 feet to SRP monument 290C; thence N 60-51-27 W 207.88 feet to SRP monument 290D; thence N 45-28-00 W 330.19 feet to SRP monument 290E; thence N 55-06-30 W 804.18 feet to SRP monument 290F; thence N 40-55-48 W 934.01 feet to SRP monument 290G; thence N 42-36-21 W 216.34 feet to SRP monument 291; (said point having a coordinate value on the SRP coordinate system of N 12,578.33 and E 73,663.46 and having a coordinate value on the S.C. Lambert coordinate system south zone of N 488,001.29 and E 1,847,781.00) thence N 42-36-21 W 2,500.72 feet to SRP monument 292; thence S 32-31-16 W 1,446.56 feet to SRP monument 293; thence N 49-41-49 W 1,336.41 feet to SRP monument 294; thence S 30-07-03 W 2,479.84 feet to SRP monument 295; thence N 58-31-06 W 1,776.11 feet to SRP monument 296; thence S 52-19-42 W 848.32 feet to SRP monument 297; thence S 45-00-57 W 1,089.08 feet to SRP monument 298; thence N 79-30-46 W 3,022.06 feet to SRP monument 299; thence S 23-44-13 W 944.35 feet to SRP monument 300; thence N 60-50-35 W 1,664.02 feet to SRP monument 301; thence S 35-02-53 W 137.11 feet to SRP monument 302; thence N 64-14-27 W 1,875.56 feet to SRP monument 303; thence S 24-36-47 W 1,213.72 feet to SRP monument 304; thence N 63-42-40 W 1,337.36 feet to SRP monument 305; thence N 79-13-59 W 5,121.29 feet to SRP monument 306; thence S 24-30-32 W 1,573.96 feet to SRP monument 307; thence N 53-08-44 W 6,650.52 feet to SRP monument 308; thence N 73-08-44 W 2,614.12 feet to SRP monument 309; thence S 29-42-28 W 1,477.04 feet to SRP monument 310; thence S 62-29-19 E 1,340.94 feet to SRP monument 311; thence S 68-59-58 W 2,166.58 feet to SRP monument 312; thence N 10-09-35 W 1,415.01 feet to SRP monument 313; thence S 77-24-58 W 3,447.03 feet to SRP monument 314; thence N 3-22-41 W 154.90 feet to SRP monument 315; thence N 15-29-49 W 262.00 feet to SRP monument 316; thence N 11-54-40 W 379.71 feet to SRP monument 317; thence S 78-17-08 W 58.30 feet to SRP monument 318; thence S 78-17-08 W 594.02 feet to SRP monument 319; thence N 30-13-00 W 391.33 feet to SRP monument 320; thence N 39-56-44 W 4,171.28 feet to SRP monument 321; thence S 42-43-10 W 3,029.41 feet to SRP monument 322; thence N 68-05-48 W 1,001.01 feet to SRP monument 323; (said point having a coordinate value on the SRP coordinate system of N 16,810.30 and E 32,353.74 and having a coordinate value on the S.C. Lambert coordinate system south zone of N 467,103.36 and E 1,811,892.72) thence S 41-19-22 W 408.03 feet to SRP monument 324; thence S 35-24-46 W 6,891.15 feet to SRP monument 325; thence follow along the meanders of the Savannah River approximately 108,600 feet to Savannah River Plant monument 1, the point of beginning.

Excluded from the above-described tract are the following railroad rights-of-way, highway rights-of-way, and the designated demonstration area.

#1 Seaboard Coast Line Railroad

(formerly Charleston and Western Carolina Railroad)

A strip of right-of-way, averaging approximately 100 feet in width, the centerline of which is described as follows:

Beginning at the SRP boundary line near the Augusta Barricade; thence in a southerly direction through the former town of Ellenton, continuing in a southeasterly direction through Robbins Station to the SRP boundary line a distance of 14.2 miles and containing 173 acres more or less.

#2 Seaboard Coast Line Railroad

A strip of right-of-way averaging approximately 100 feet in width, the centerline of which is described as follows:

Beginning at Robbins Station, thence in an easterly and northeasterly

direction (crossing SRP Road A) to Meyers Mill siding, thence in a northeasterly direction to the intersection of the railroad and the Savannah River Plant boundary line between monuments 130 and 345.

#3 United States Highway 278

A strip of right-of-way 66 feet in width (33 feet each side of the centerline of said road), the centerline of which is described as follows:

Beginning at the intersection of the Savannah River Plant boundary line and the centerline of U.S. Highway 278 between S.R.P. monuments 54 and 55 east of the intersection of South Carolina Highway 19 and U.S. 278; thence along the meanders of the centerline of U.S. 278 in an easterly direction to the intersection of U.S. 278 and South Carolina Road 54; thence along the meanders of the centerline of U.S. 278 in an easterly direction to the intersection of the Savannah River Plant boundary line between Savannah River Plant monuments 75 and 76.

#4 United States Highway 278

A strip of right-of-way having a width of 66 feet (33 feet each side of the centerline of said highway), the centerline of which is described as follows:

Beginning at the intersection of the centerline of U.S. Highway 278 and the Savannah River Plant boundary line between Savannah River Plant monuments 86 and 87; thence in a southeasterly direction along the meanders of the centerline of U.S. Highway 278 to the intersection of the centerline of said highway and the Savannah River Plant boundary line between Savannah River Plant monuments 88C and 88D.

#5 South Carolina Highway 125

A strip of right-of-way 150 feet in width (75 feet each side of the centerline of said road), the centerline of which is described as follows:

Beginning at Savannah River Plant monument 25 near the intersection of S.C. Highway 125 and S.C. Highway 62, thence along the meanders of the centerline in a southeasterly direction to a point approximately 400 feet southeast of the Augusta Barricade at which point the right-of-way width reduces to 75 feet (37.5 feet each side of the centerline of said road); thence in a southeasterly direction through the old town of Ellenton, S.C. to a point approximately 400 feet northwest of the Allendale Barricade at which point the right-of-way width increases to 150 feet (75 feet each side of the centerline of said road); thence along the meanders of the centerline of S.C. Highway 125 in a southeasterly direction to the intersection of the Savannah River Plant boundary line and the centerline of S.C. Highway 125 between Savannah River Plant monuments 318 and 319.

#6 Green Pond Road (SRP D-1)

A strip of right-of-way having a width of 66 feet (33 feet each side of the centerline of said road), the centerline of which is described as follows:

Beginning at Savannah River Plant monument 33 (a nail in the centerline of said road); thence along the meanders of the centerline of Green Pond Road in a southeasterly direction to the intersection of the centerline of Green Pond Road and Savannah River Plant Road 1 (intersection being northeast along S.R.P. Road 1 of the 703 building).

#7 Designated Demonstration Area

Being a triangular parcel located in the southeast corner of the intersection of S.R.P Road 1 and S.C. Highway 125 described as follows:

Beginning at the point of intersection of the southern right-of-way of S.R.P. Road 1 (37.5 feet from the centerline of S.R.P. Road 1) and the eastern right-of-way of S.C. Highway 125 (75 feet from the centerline of the median of S.C. Highway 125); thence with the meanders of the eastern right-of-way of S.C. Highway 125 S 2-09 W 1232.11 feet to a point; thence with the Federal Trespass Line fence N 46-40 E 1796.15 feet to a point on the southern right-of-way of S.R.P. Road 1; thence with the meanders of the southern right-of-way of S.R.P. Road 1 S 89-56 W 1260.47 feet to the point of beginning, containing 17.81 acres more or less.

Dated in Washington, D.C. this 24th day of July, 1985.

John L. Gilbert,

Executive Assistant, Office of the Assistant Secretary for Defense Program.

[FR Doc. 85-18477 Filed 8-2-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA85-3-9-000,001]

Tennessee Gas Pipeline Co.; Rate Change Under Tariff Rate Adjustment Provisions

July 31, 1985.

Take notice that on July 26, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing Fifteenth Revised Tariff Sheet No. 21 to its FERC Gas Tariff, Original Volume No. 1 to be effective August 15, 1985:

Tennessee states that the revised tariff sheet reflects a Current Purchased Gas Cost Rate Adjustment of a negative 33.35 cents per dth based on a weighted average cost of purchased gas of $2.3870. Tennessee states that the rate reduction is attributable to implementation of a lower cost purchasing pattern consistent with its contractual rights and Emergency Gas Purchase Policy. All other rates and charges reflected on the revised tariff sheet are the same as those authorized by the Commission's order issued June 28, 1985 in Docket Nos. TA85-2-9-000, *et al.*

Tennessee requests waiver of the Commission regulations to the extent necessary to make this rate reduction effective on August 15, 1985, giving its customers the immediate benefit derived from Tennessee's implementation of the modified purchase pattern.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 7, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18525 Filed 8-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-130-001 and TA85-2-42-004]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

July 31, 1985.

Take notice that Transwestern Pipeline Company (Transwestern) on July 26, 1985 tendered for filling as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets.

Effective July 1, 1985

Twenty-ninth Revised Sheet No. 5

Alternate Twenty-ninth Revised Sheet No. 5
Original Sheet No. 5B
Twenty-seventh Revised Sheet No. 6
Alternate Twenty-seventh Revised Sheet No. 6
Original Sheet No. 35.
Original Street No. 36

Effective August 1, 1985

First Revised Sheet No. 38

The above tariff sheets are issued pursuant to Transwestern's Stipulation and Agreement, dated May 9, 1985 which was approved by the Commission, subject to the terms of Opinion No. 238, issued on July 1, 1985. Such tariff sheets reflect the terms of the Stipulation and Agreement with minor modifications to comply with the Commission's opinion and order.

In addition, Transwestern is filing First Revised Sheet No. 38 pursuant to Article VI of the Stipulation and Agreement in Docket Nos. RP81-130 and RP83-25 reflecting Transwestern's discounted transportation rate to be charged for service under Rate Schedule TS-1 of $0.1682/dth effective August 1, 1985.

Pursuant to the provisions of the Stipulation and Agreement, the above noted tariff sheets reflect an effective date of July 1, 1985 except for First Revised Sheet No. 38 which is to effective August 1, 1985.

Copies of the filing were served on Transwestern's jurisdictional customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 7, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18526 Filed 8-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-19-000]

Wylee Petroleum Corp.; Petition for Adjustment

July 30, 1985.

Take notice that on March 21, 1985, Wylee Petroleum Corporation (Wylee) filed an application with the Commission seeking a waiver of its obligation to pay a portion of its Btu refund liability of $29,031.87 required by Order No. 399, Refunds Resulting from Btu Measurement Adjustments, 49 FR 37735 (Sept. 26, 1984); Order No. 399-A, 49 FR 46353 (Nov. 26, 1984).

Wylee asserts that it has attempted unsuccessfully to collect the portion of the refund attributable to Bowie Lumber Company, Ltd., the owner of a 30% royalty interest in the gas. Wylee's application includes a copy of a letter from Bowie Lumber, wherein Bowie refuses to remit any part of the refund demanded by Wylee. Wylee estimates that the cost of litigation to recover the refunds owed by the royalty owner would be at least twice the amount owned.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 no later than 15 days after publication of this notice in the **Federal Register**.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18527 Filed 8-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI81-194-001, et al.]

ENSTAR Corp. (Successor to C&K Petroleum Inc.); Application to Amend Certificates of Public Convenience and Necessity, To Amend Applications, To Redesignate Rate Schedules, and To Redesignate Pending Proceedings

July 30, 1985.

Take notice that on July 10, 1985, ENSTAR Corporation (ENSTAR), of P.O. Box 2120, Houston, Texas 77252-2120, filed an application pursuant to the provisions of the Natural Gas Act and the Natural Gas Policy Act of 1978, and to the Commission's Rules of Practice and Procedure to amend the applications for and certificates of public convenience and necessity, as supplemented or amended, the temporary authorizations, issued or filed under each of the proceedings listed in Exhibit "A" attached hereto, by deleting therefrom the name C&K Petroleum, Inc. (C&K) and substituting therein the name of ENSTAR Corporation in such a manner and to the end that ENSTAR Corporation shall thereafter succeed to and be possessed of all of C&K's rights, titles interests and obligations heretofore had thereunder by C&K. On December 20, 1983 C&K was merged into ENSTAR.

Any person desiring to be heard or to make any protest with reference to said applications should on or before August 14, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Exhibit "A"

ENSTAR Corporation

NOTICE OF SUCCESSION, CERTIFICATE OF ADOPTION AND REDESIGNATION OF RATE SCHEDULES

C&K Petroleum, Inc., FERC gas rate schedule No.[1]	Certificate docket No.	Purchaser
3	CI81-194	El Paso Natural Gas Co.
4	CI81-331	United Gas Pipeline Co.
[2]	CI74-434	Transcontinental Gas Pipeline Corporation

[1] In order to maintain continuity of the acquired records, ENSTAR hereby requests that its rate schedules be assigned the same rate schedule numbers as the C&K rate schedules which they will replace.

[2] C&K's records indicate an Application for Certificate of Public Convenience & Necessity was filed in this Docket, there is no record of Commission disposition of C&K's application.

[FR Doc. 85-18528 Filed 8-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA82-1-21-016]

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

July 30, 1985.

Take notice that Columbia Gas Transmission Corporation (Columbia) on July 15, 1985 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective April 1, 1985:

Ninety-eighth Revised Sheet No. 16
Sixth Revised Sheets Nos. 16B and 16C
Thirty-fifth Revised Sheet No. 64
Original Sheet No. 88

Columbia states that this filing implements the Stipulation and Agreement filed with the Commission on April 4, 1985 which was approved by the Commission's Order dated June 14, 1985, as modified by Order dated June 25, 1985, in Docket Nos. TA82-1-21-001, *et al.*

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

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 6, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18519 Filed 8-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA85-42-000]

The Connecticut Light and Power Co.; Petition for Adjustment and Interim Relief

Issued: July 30, 1985.

On June 24, 1985, The Connecticut Light and Power Company (CL&P) filed with the Commission a petition for adjustment pursuant to section 206(d) of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (1982). CL&P requests that it be permitted to use a different formula for calculating the incremental pricing surcharge on gas supplied for industrial boiler use. CL&P states that formula is the one used by CL&P) in its filings with the Connecticut Department of Public Utility Control in connection with establishing rates for interruptible service provided to some CL&P) customers CL&P states that with the rapid decline in the price of #6 oil, the alternative fuel price ceilings as calculated by the Energy Information Administration that CL&P must use, exceed the true alternative fuel price. CL&P also claims that the requirement that it use a Btu conversion factor of 1.033 increases the incremental pricing surcharge. CL&P asserts that unless it can use a formula that reflects the actual cost of alternative fuels, it is faced with the loss of those customers who can switch to the cheaper alternative fuel. This could result in the loss of these customers, whose annual revenue purchases from CL&P are approximately $4.8 million. CL&P requests interim relief pursuant to § 385.1113 of the Commission's Regulations on the ground of immediate and irreparable injury to itself and its customers.

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18520 Filed 8-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-4-2-000, 001]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

July 31, 1985.

Take notice that on July 26, 1985, East Tennessee Natural Gas Company (East Tennessee) tendered for filing Substitute Twelfth Revised Sheet No. 4 to Original Volume No. 1 of its FERC Gas Tariff, to be effective August 15, 1985.

East Tennessee states that the purpose of this revised tariff sheet is to reflect a revised PGA rate adjustment based on a rate reduction filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) on July 26, 1985 in Docket No. TA85-3-9-000 to be effective August 15, 1985. East Tennessee requests that the Commission grant any waivers it deems necessary in order to make this filing effective August 15, 1985.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before August 7, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18521 Filed 8-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-172-000]

K N Energy, Inc.; Initial Rate Filing and Proposed Changes in FERC Gas Tariff

July 31, 1985.

Take notice that K N Energy, Inc. (K N), on July 19, 1985, tendered for filing the following:

Initial Rate Schedule SF-1 and SF-2 (Special Firm Service) consisting of Original Sheet Nos. 13A through 13E of K N's FERC Gas Tariff, Third Revised Volume No. 1 and Original Sheet No. 4B;

Initial Executed Service Agreement between K N Energy, Inc. and Western Gas Corporation;

Tariff changes in K N's FERC Gas Tariff, Third Revised Volume No. 1 consisting of: Third Revised Sheet No. 14; Second Revised Sheet No. 15; First Revised Sheet No. 17; First Revised Sheet No. 19; First Revised Sheet No. 24H; Original Sheet No. 24I; Original Sheet No. 24J; Original Sheet No. 24K; Third Revised Sheet No. 25; Second Revised Sheet No. 27B.

Initial Rate Schedule SF-1 and SF-2 provides for the wholesale of gas to customers not directly connected to K N's interstate facilities and is required in order for K N to effectuate its proposed sale to Western Gas Corporation (Western) all as more fully set forth in the filing. The initial executed service

agreement between K N and Western provides for the sale of gas by K N to Western under Rate Schedule SF-1 and IOR-1 upon the receipt of certificate authorization requested in Docket No. CP84-605. The proposed tariff revisions make miscellaneous changes to existing tariff provisions to reflect and reference the new Rate Schedule SF-1 and SF-2 and other revisions all as more fully set forth in the filing. In addition, a new section 13.c is being added to the General Terms and Conditions to provide alternate delivery reductions for customers whose aggregate calendar year purchases from K N constitute less than seventy-five percent of the customer's total gas requirements. K N's existing tariff provisions do not address delivery reductions to such customers.

Copies of the filing were served upon K N's jurisdictional customers and applicable state regulatory commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 7, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18522 Filed 8-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-6-5-000, 001]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

July 31, 1985.

Take notice that on July 26, 1985, Midwestern Gas Transmission Company (Midwestern) filed Fifteenth Rivised Sheet No. 5 to Original Volume No. 1 of its FERC Gas Tariff, to be effective August 15, 1985.

Midwestern states that the purpose of the filing is to reflect a revised PGA Rate Adjustment applicable to its Southern System customers based on a rate reduction filed by Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) on July 26, 1985 in Docket No. TA85-3-9-000 to be effective August 15, 1985. Midwestern requests that the Commission grant any waivers it deems necessary in order to make its filing effective August 15, 1985.

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

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protest should be filed on or before August 7, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 85-18523 Filed 8-2-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-550-000]

Rochester Gas and Electric Co.; Order Accepting for Filing and Suspending Rates, Granting Intervention, Granting Waiver, and Establishing Hearing Procedures

Issued: July 30, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa and Charles G. Stalon.

On May 31, 1985, Rochester Gas and Electric Company (RG&E) submitted a proposed rate increase for wheeling firm power and energy [1] from the Niagara Hydro Project of the Power Authority of the State of New York (PASNY) to customers of PASNY.[2] The proposed wheeling rate would increase revenues by approximately $62,000 (22.0%) during the calendar 1984 test period. RG&E requests a nominal effective date of August 1, 1985, with deferral of collection of charges until November 1, 1985, in accordance with the terms of its contract with PASNY.[3]

[1] The applicable rate schedule designation is: *Rochester Gas and Electric Company*, Supplement No. 2 to Rate Schedule FERC No. 25.

[2] Presently, two customers of PASNY, the Villages of Angelica and Spencerport, New York, receive PASNY power and energy wheeled by RG&E.

[3] The agreement provides that PASNY must receive five months' notice of any change in rate.

Notice of the filing was published in the **Federal Register**,[4] with comments due on or before June 27, 1985. PASNY filed a timely motion to intervene; it does not raise any issues in its pleading, however.

On July 1, 1985, the Municipal Electric Utilities Association of New York (MEUA) filed and utimely motion to intervene. In support of its late intervention, MEUA states that it did not become aware of the instant filing until after the notice period ended. MEUA alleges that the proposed wheeling rate is substantially excessive and, therefore, requests a five month suspension. In support of its request, MEUA cites the following cost of service issues: (1) Rate of return on common equity; (2) allocation of various expense and plant items; (3) income tax calculation; and (4) cash working capital.

On July 15, 1985, RG&E filed a timely response to MEUA's pleading. While not opposing MEUA's motion to intervene, RG&E denies that a five month suspension is warranted. In support, RG&E disputes the specific allegations contained in MEUA's pleading.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely motion to intervene serves to make PASNY a party to this proceeding. Furthermore, we find that good cause exists to grant MEUA's untimely intervention, given the interests of the constituency which it represents, the early stage of this proceeding, and the apparent absence of any undue prejudice or delay.

Our review of RG&E's filing and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be sustantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that RG&E's proposed rates may not yield substantially excessive revenues. In light of the fact that RG&E is contractually obligated to give PASNY five month's notice before the later must

[4] 50 FR 25310 (1985).

pay modified charges; we find that good cause exists to waive the advance filing requirements specified in section 35.3 of the Commission's regulations (18 CFR 35.3).[5] Therefore, we shall suspend RG&E's rates for one day to become effective, subject to refund, on November 2, 1985.

The Commission Orders

(A) MEUA's untimely motion to intervene is hereby granted subject to the Commission's Rules of Practice and Procedure.

(B) The 120-day advance filing requirement is hereby waived.

(C) RG&E's proposed rates are hereby accepted for filing and suspended for one day, to become effective, subject to refund, on November 2, 1985.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of RG&E's rates.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates, including the submission of a case-in-chief by RG&E, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Subdocket No. -000 of Docket No. ER85-550-000 is hereby terminated. The evidentiary hearing established herein is assigned Docket No. ER85-550-001.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-18524 Filed 8-2-85; 8:45 am]

BILLING CODE 6717-01-M

[5] RG&E has submitted its filing more than 120 days in advance of the date on which it proposes to begin collecting the proposed rates.

ENVIRONMENTAL PROTECTION AGENCY

[OPPE FRL-2873-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman, 202-382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

• *Title:* Request for Vehicle Exclusion from the Clean Air Act (EPA #0012). (This is a reinstatement of a former collection.)

Abstract: A manufacturer who wants a determination whether a particular type of vehicle is excluded from coverage of the Clean Air Act must submit information describing the size, use, top speed, and other specifications of the vehicle so that the determination can be made.

Respondents: Vehicle manufacturers requesting a determination of exclusion from the requirements of the Clean Air Act.

Office of Water

• *Title:* Information Requirements for Advanced Treatment Performance Evaluation (EPA #1251). (This is a one-time collection.)

Abstract: The Office of Municipal Pollution Control will compile performance data from one hundred publicly owned treatment works with advanced treatment (AT) effluent limits and identify resulting empirical relationships. The data will be used as a guideline for planning future AT facilities and to reduce costs of building, operating, and maintaining these expensive AT facilities.

Respondents: About one hundred AT facilities that collect effluent data on carbonaceous biochemical oxygen demand (CBOD, a pollutant indicator) and that operate at 80% to 120% of their design flow treatment capacity.

Comments on all parts of this notice may be sent to:

Nanette Liepman (PM-223), Office of Standards and Regulations, Regulation and Information Management Division, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

and

Wayne Leiss (ICR #0012)

or

Richard D. Otis (ICR #1251), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503.

Dated: July 29, 1985.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 85-18389 Filed 8-2-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59725; FRL-2874-7]

Premanufacture Notices; Chain-Stopped Alkyd Resin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 Fr 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of ploymers. PMNs for such ploymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of one such PMN and provides a summary of it.

DATES: Close of Review Period: Y 85-113; August 12, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-113

Manufacturer. Confidential.

Chemical. (G) Chain-stopped alkyd resin.

Use/Production. (S) Industrial Coating resin component. Prod. range: 6,500-79,000.

Toxicity Data. No data submitted.

Exposoure. No data submitted.

Environmental Release/Disposal. No data submitted.

Dated: July 29, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-8490 Filed 8-2-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0156

Title: State Operating Plan for Superfund Temporary Relocation Assistance

Abstract: This plan is used to document the State's proposal for temporary relocation implementation. It also includes budget and outlay information.

Type of Respondents: State or Local Governments

Number of Respondents: 12

Burden Hours: 144

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, D.C. 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: July 22, 1985.

Walter A. Girstantas,

Director, Administrative Support.

[FR Doc. 85-18473 Filed 8-2-85; 8:45 am]

BILLING CODE 6718-01-M

Emergency Food and Shelter National Board Program Amendment

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends awards amounts in the Emergency Food and Shelter National Board Program Plan listing of localities selected for funding, which was published in 49 FR 42680 (October 23, 1984) and amended in 50 FR 11754 (March 25, 1985) and 50 FR 23359 (June 3, 1985).

Remaining program funds were reallocated to supplement funding of jurisdictions previously selected under the category of "jurisdictions, including the balance of counties, with 18,000+ unemployed and a 7.5% rate of unemployment." Availability of funds limited distribution to the ten jurisdictions within this category with the highest rates of unemployment; distribution was made proportional to the original formula. (Considering program closing deadlines, the local board for Puerto Rico limited its award to the amount listed below.) Remaining funds were allotted to the next qualifying jurisdiction, Allegheny County, Pennsylvania.

The eleven qualifying jurisdictions were awarded amounts as follows:

Alabama: Jefferson County	$19,845
California:	
Fresno County	24,239
Kern County	22,407
Florida: Polk County	20,893
Michigan: Detroit City	82,853
New York: Buffalo City	20,340
Pennsylvania:	
Allegheny County	18,621
Westmoreland County	26,066
Ohio: Cuyahoga County	37,345
Puerto Rico	50,000
Texas: Hidalgo County	19,976

Dated: July 29, 1985.

FOR FURTHER INFORMATION CONTACT: Laurence I. Broun, Individual Assistance Division, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472; (202) 646-3652.

Dennis Kwiatkowski,

Chairman, National Board for Emergency Food and Shelter.

[FR Doc. 85-18472 Filed 8-2-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOME LOAN BANK BOARD

Bell Savings and Loan Association, San Mateo, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Bell Savings and Loan Association, San Mateo, California, on July 25, 1985.

Dated: July 31, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85-18545 Filed 8-2-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 223-010622-001.

Title: Houston Terminal Service Agreement.

Parties:

Port of Houston Authority of Harris County, Texas

Southside Services, Inc.

Synopsis: Agreement No. 223-010622-001 amends the basic agreement by changing the designated transit sheds of Southside Services, Inc. from Transit Sheds 41 through 44, located on the south side of the Houston Ship Channel,

to Transit Sheds 21 and 22, Warehouse 21-A and Wharf 23, the latter of which are located on the north side of the channel. All other provisions of the basic agreement remain the same.

Agreement No.: 202-010676-006

Title: Mediterranean/U.S.A. Freight Conference

Parties:

Atlanttrafik Express Service, Ltd.
Achille Lauro
C.I.A. Venezolana de Navigacion
Compania Transatlantica Espanola, S.A.
Constellation Lines, S.A.
Costa Armatori, S.p.A.
d'Amico Societa di Navigazione per Azioni
Farrell Lines, Inc.
Flota Mercante Grancolambiana, S.A.
"Italia" Societa Per Azioni di Navigazione
Jugolinija
Jugooceanija
Lykes Bros. Steamship Co., Ltd.
Nedlloyd Lines
Nordana Line
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: This amendment revised the basis Agreement to explicitly provide that the geographic scope of the Agreement covers the transportation of all cargo within the Agreement trade, whether or not such cargo is subject to the tariff filing requirements of the Shipping Act of 1984.

By Order of the Federal Maritime Commission.

Dated: July 31, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-18515 Filed 8-2-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Binger Agency, Inc., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c) (8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consumation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the partly commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 26, 1985.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Binger Agency, Inc.*, Binger, Oklahoma; to engage *de novo* directly in the activity of leasing personal property.

B. **Board of Governors of the Federal Reserve System,** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Security Pacific Corporation*, Los Angeles, California; to engage *de novo* through its subsidiary, Xcel Business Systems, Inc., Mill Valley, California, in a joint venture in providing to others data processing and data transmission services, facilities (including data processing and data transmission hardware, software, documentation or operating personnel), data bases, or access to such services facilities, or data bases by any technological means. Such activities will involve a packaged system including all applications needed to meet the data processing requirements of financial and banking institutions, including the processing of general ledgers, deposits and extensions of credit. This application may be inspected at the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, July 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-18452 Filed 8-2-85; 8:45 am]

BILLING CODE 6210-01-M

Eagle National Holding Company, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 26, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Eagle National Holding Company, Inc.*, Miami, Florida; to acquire 80 percent of the voting shares of Tower Bank, N.A., Hialeah Gardens, Florida.

2. *Tri-State Bancshares, Inc.*, Knoxville, Tennessee; to acquire 86 percent of the voting shares of The Tradera National Bank, Tullahoma, Tennessee.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Scott Bancshares, Inc.*, Bethany, Illinois; to acquire 100 percent of the voting shares of State Bank of Niantic, Niantic, Illinois.

2. *Southwest Financial Corporation*, Evergreen Park, Illinois; to acquire 97

percent of the voting shares of Orland Park Plaza Bank, Orland Park, Illinois.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *JDOB, Inc.*, Naples, Florida; to acquire 83 percent of the voting shares of Sandstone State Bank, Sandstone, Minnesota.

Board of Governors of the Federal Reserve System, July 30, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-18453 Filed 8-2-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 83V-0141 et al.]

Availability of Approved Variances for Laser Products

Correction

In FR Doc. 85-15971 beginning on page 27687 in the issue of Friday, July 5, 1985, make the following correction: In the table near the bottom of the page, in the second entry, in the third column, "Laser product", "Q-Swithched" should read "Q-Switched".

BILLING CODE 1505-01-M

[Docket No. 77N-0240; DESI 1786]

Certain Single-Entity Coronary Vasodilators-Nitroglycerin Buccal Tables; Drug Efficacy Study Implementation; Revocation of Exemption; Announcement of Marketing Conditions.

Correction

In FR Doc. 856-15970 beginning on page 27688 in the issue of Friday, July 5, 1985, make the following corrections:

1. On page 27688, in the second column, under "SUPPLEMENTARY INFORMATION", in the second paragraph, in the fourteenth line, "tropical" should read "topical".

2. On page 27688, in the third column in the fourth line from the bottom, "demodynamic" should read "hemodynamic".

3. On page 27689, in the third column, in the fourth complete paragraph, in the fifth line, "dinitroglyicerols" should read "dinitroglycerols".

4. On page 27690, in the second column, in the second line, "pectortis" should read "pectoris"; in the first complete paragraph, in the fourth line, "infraction" should read "infarction"; in the second complete paragraph, in the third line, "3-5 hours" should read "3-5 hour".

5. On page 27690, in the third column, in the fifth complete paragraph, in the ninth line, "hpernea" should read "hypernea"; in the eleventh line, "haert" should read "heart"; in the thirteen line, "fever paralysis" should read "fever, paralysis".

6. On page 27691, in the first column in the first line, "intraveonously" should read "intravenously"; in the third complete paragraph, in the ninth line, "does" should read "dose".

7. On page 27691, in the third column, the FR Doc. number should read "85-15970".

BILLING CODE 1505-01-M

Health Care Financing Administration

Medicaid Program; Hearing: Reconsideration of Disapproval of a New York State Plan Amendment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on September 27, 1985 in New York, New York to reconsider our decision to disapprove New York State Plan Amendment 84-17.

DATE: *Closing Date:* Requests to participate in the hearing as a party must be received by the Docket Clerk, August 20, 1985.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 365 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove a New York State Plan Amendment.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether New York's amendment which would delay implementation of the current reduction of payments to public psychiatric hospitals for inappropriate level of care services violates section 1902(a)(13)(A) of the Social Security Act

Section 1902(a)(13) of the Act requires States to reduce the rate of reimbursement to hospitals to reflect the level of care actually provided to recipients. Section 2366 of the Deficit Reduction Act of 1984, Pub. L. 98-369, however, provides that the provisions of section 1902(a)(13) shall not apply to payments made to public psychiatric hospitals before July 1, 1985. Section 2366 provides further that payments to such hospitals are to be reduced by one-third of the full reduction called for by section 1902(a)(13) of the Act during the 12-month period ending June 30, 1986, and by two-thirds of the full reduction during the 12-month period ending June 30, 1987.

At the time the Congress was considering section 2366 of the Deficit Reduction Act of 1984 there was only one State (New Jersey) which, under its approved State Plan, was reimbursing its public psychiatric hospitals without excluding days spent at a lower level of care when determining occupancy level (for purposes of determining the payment for cases in the hospital which required a lower level of care). According to the Committee reports discussing this legislative provision, that State was going to suffer serious dislocation if legislative relief was not granted to enable it to continue its practice. As evidenced by the legislative history, section 2366 was intended solely to address the unique circumstances of that State. It clearly was *not* the intent of the Congress to enable other States, whose State plans provided for reducing payments in accordance with section 1902(a)(13), to change their State plans and no longer do so. Therefore, HCFA has determined that New York's proposal is in violation of section 1902(a)(13)(A) of the Social Security Act.

The notice to New York announcing an administrative hearing to reconsider our disapproval of its State plan amendment reads as follows:

Mr. David Emil,

Deputy Commissioner and General Counsel, Department of Social Services, 40 North Pearl Street, Albany, New York 12243

Dear Mr. Emil: This is to advise you that your request for reconsideration of the decision to disapprove New York State Plan Amendment 84-17 was received on July 1, 1985. You have requested a reconsideration of whether the plan amendment which would delay implementation of the current reduction of payments to public psychiatric hospitals for inappropriate level of care services, conforms to the requirements for approval under the Social Security Act and pertinent Federal regulations.

I am scheduling a hearing on your request to be held on September 27, 1985 at 10 a.m., in Room 305A, 3rd Floor, 26 Federal Plaza, New York City, New York. If this date if not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely yours,

Carolyne K. Davis, Ph.D.

(Sec. 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: July 29, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 85-18544 Filed 8-2-85; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Togiak National Wildlife Refuge Draft Comprehensive Conservation Plan, Environmental Impact Statement and Wilderness Review; Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; correction.

SUMMARY: This document corrects a notice of availability that appeared on page 21511 in the **Federal Register** of Friday, May 24, 1985 (50 FR 21511). This action is necessary to correct the date by which comments to the draft document should be submitted.

FOR FURTHER INFORMATION CONTACT: William Knauer, Wildlife Resources, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786-3399.

The following correction is made in FR Doc. 85-12520 appearing on pages 21511-2:

On page 21511, column one, second paragraph, first sentence, "**DATES,**" is corrected to read "Comments on the draft CCP/EIS must be submitted on or before September 30, 1985, to receive consideration in the preparation of the final CCP/EIS."

Dated: July 29, 1985.

Robert E. Gilmore,

Regional Director.

[FR Doc. 85-18461 Filed 8-2-85; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[No. MC-C-10963]

Armstrong World Industries, Inc.; Transportation Within Texas; Petition for Declaratory Order

July 30, 1985.

Notice in this proceeding was originally published at 50 FR 28296, July 11, 1985.

At the request of the petitioner, the date for filing comments is extended to September 11, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-18484 Filed 8-2-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 179X)]

Chicago and North Western Transportation Co.; Abandonment Exemption; in Kossuth County, IA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirement of prior approval under 49 U.S.C. 10903, *et seq.*, the abandonment by the Chicago and North Western Transportation Company of 2.8 miles of rail line between milepost 145.9 near Burt and milepost 148.7 near Bancroft, in Kossuth County, IA, subject to standard employee protective conditions and a public use condition under 49 U.S.C. 10906.

DATES: This exemption is effective September 4, 1985. Petitions to stay must be filed by August 15, 1985, and petitions for reconsideration must be filed by August 26, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-1 (Sub-No. 179X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representatives: Anne E. Keating, One North Western Center, Chicago, IL 60606

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: July 19, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Chairman Taylor dissented with a separate statement. Commissioner Lamboley dissented with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 85-18487 Filed 8-2-85; 8:45 am]

BILLING CODE 7035-01-M

LEGAL SERVICES CORPORATION

Notice and Request for Comments on a Grant Award; Crawford County Bar Association

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces that it is considering awarding a special one-time grant of $70,000 in 1985 to the Crawford County Bar Association (Pennsylvania) to provide legal services to indigents in Crawford County through the *pro bono* services of individual practitioners.

DATE: All comments and recommendations must be received by the Office of Field Services/Program Development and Substantive Support Unit (OFS/PDSS) within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Legal Services Corporation, Office of Field Services, Keith Osterhage, Manager, Program Development & Substantive Support Unit, 733 Fifteenth Street, NW., Washington, D.C. 20005, (202) 272-4356.

SUPPLEMENTARY INFORMATION: Under this project, the Crawford County Bar

Association will administer a legal services operation to serve poor persons in Crawford County. The project will employ a full-time attorney serving as administrative director. The attorney-director will accept assignment, and process cases, and will be supervised by a volunteer senior member of the bar association. Routine cases subject to expeditious processing through internal systems will be retained by the employed attorney while more complex matters in the domestic relations area and in other legal areas will be referred to volunteer attorneys for representation without charge. LSC is providing interim financial assistance to this project so that the CCBA program can continue to operate while permanent funding sources are sought.

Interested persons are also invited to submit written comments and/or recommendations concerning this grant action to Keith Osterhage.

Dated: July 31, 1985.

Peter P. Broccoletti,

Acting Director, Office of Field Services.

[FR Doc. 85-18531 Filed 8-2-85; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions 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 the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506:

Date: August 20-21, 1985

Time: 9:00 a.m. to 5:00 p.m.

Room: 430

Program: This meeting will review Challenge Grants applications from Ph.D. Universities, Presses and Research Libraries, for projects beginning after December 1, 1985.

The proposed 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 1966, as amended, included discussion of information given in confidence to the agency by grant applicants. Because the proposed meeting 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 this meeting 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 about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee, Management Officer.

[FR Doc. 85-18482 Filed 8-2-85; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing

[Docket Nos. 50-369 and 50-370]

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF-9 and Facility Operating License No. NPF-17, issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendments would change Technical Specification 3.6.5.1 for McGuire Units 1 and 2 to allow operation with a total minimum weight of ice in the containment Ice Condenser System reduced from 2,466,420 to 2,355,320 pounds.

By letter dated April 5, 1985, the licensee requested the proposed change and provided the results of a reanalysis of the design basis containment pressure calculation provided in FSAR Section 6.2.1. The new analysis was performed by Westinghouse using a reduced ice bed weight and an earlier diversion of partial Residual Heat Removal System flow to the containment spray pumps (from 3590 to 3000 seconds after the LOCA), and resulted in a slightly earlier and reduced containment peak pressure. (Earlier RHR spray actuation during a LOCA is implemented by the licensee through changes to plant operating procedures rather than Technical Specifications.) On the basis of the revised Westinghouse calculations, the licensee concludes that implementation of the proposed changes would provide for the control of a containment pressure transient in a shorter time without reduction of existing safety margins.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended, (the Act) and the Commission's regulations.

By September 4, 1985, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in

the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed in Elinor G. Adensam: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated April 5, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28242.

Dated at Bethesda, Maryland, this 31st day of July 1985.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Acting Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 85-18538 Filed 8-2-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302, License No. DPR-72 and EA 84-104]

Florida Power Corp. (Crystal River 3); Order Imposing Civil Monetary Penalty

I

Florida Power Corporation (licensee) is the holder of Operating License No. DPR-72 (license) issued by the Nuclear Regulatory Commission (Commission) which authorized the licensee to operate the Crystal River facility in accordance with the conditions specified therein. The license was issued on January 24, 1979.

II.

A routine safeguards inspection of the licensee's activities was conducted on August 12-16, 1984. As a result of this inspection, it appeared that the licensee had not conducted its activities in full compliance with the conditions of its license. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated January 10, 1985. The Notice stated the nature of the violations, requirements of the Commission that the licensee had violated, and the amount of the civil penalty proposed for the violations in the Notice. A response to the Notice of Violation and Proposed Imposition of Civil Penalty dated March 1, 1985 was received from the licensee. In addition, the licensee met with the Director, Office of Inspection and Enforcement, on May 8, 1985 to discuss the violations.

III

Upon consideration of the licensee's responses and the statements of fact, explanation, and arguments for mitigation and remission contained therein, the Director, Office of Inspection and Enforcement, has determined as set forth in the Appendix to this Order that the violations occurred as stated and that the penalty proposed for the violations in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing, and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 92-295), and 10 CFR 2.205, it is hereby ordered that:

The licensee pay the civil penalty in the amount of Fifty Thousand Dollars ($50,000) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555. A copy of the hearing request shall also be sent to the Executive Legal Director at the same address and the Regional Administrator, USNRC, RII, 101 Marietta Street, Suite 3100, Atlanta, Georgia, 30323. If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within thirty days of the date of this Order, the provisions of this Order shall be effective without further proceedings; and if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 29th day of July 1985.

For the Nuclear Regulatory Commission.

James M. Taylor, Director,

Office of Inspection and Enforcement.

[FR Doc. 85-18539 Filed 8-2-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket: 50-285, License DPR-40 and EA 84-122]

Omaha Public Power District (Ft. Calhoun Station); Order Imposing Civil Monetary Penalties

I

Omaha Public Power District, 1623 Harney, Omaha, Nebraska (the "licensee") is the holder of License DPR-40 (the "license") issued by the Nuclear Regulatory Commission (the "NRC"). License DPR-40 authorizes the licensee to operate the Ft. Calhoun Station at the designated location in Washington County, Nebraska, in accordance with the procedures and limitations set for in the license and the rules and regulations of NRC.

II

An inspection of the licensee's activities under its license was conducted during the period August 20-24, 1985. As a result of the inspection, it appears that the licensee had not conducted its activities in full compliance with the conditions of its license. The results of the inspection were discussed with licensee representatives during an enforcement conference on Octoer 11, 1984. A written Notice of Violation and Proposed Iimposition of Civil Penalties was served upon the licensee by letter dated February 14, 1985. This Notice stated the nature of the violations, the provisions of its license conditions which the licensee had violated, and the amount of civil penalties proposed. An answer dated March 15, 1985 to the Notice of Violation and Proposed Imposition of Civil Penalties was received from the licensee.

III

Upon consideration of the answers received and the statements of fact, explanation, and arguments for remission or mitigation of the proposed civil penalties contained therein, as set forth in the Appendix to this Order, the Director of the Office of Inspection and Enforcement has determined that, with one exception, the panalties proposed for the violations designated in the Notice of Violation and Proposed Iimposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2282, Pub. L. 95-295) and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the total amount of Twenty One Thousand Four Hundred Twenty-five Dollars within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States, and mailed to the Director of the Office of Inspection and Enforcement, USNRC, Washington, D.C. 20555.

V

The licensee may, within 30 days of the date of this Order, request a hearing. A request for hearing shall be addressed to the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of any request for hearing shall also be sent to the Executive Legal Director at the same address. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing.

Upon failure of the licensee to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties, as modified by the Appendix to this Order; and

(b) Whether on the basis of such violations this Order shall be sustained.

Dated at Bethesda, Maryland, this 30th day of July 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

[FR Doc. 85-18541 Filed 8-2-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352/353]

Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2); Issuance of Director's Decision

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has denied the Petition and supplementing documents filed under 10 CFR 2.206 by R.L. Anthony and the Friends of the Earth regarding the Limerick Generating Station Units 1 and 2 (the facility).

The Petitioner requested that the NRC institute show cause proceeding to revoke the Facility Operating License No. NPF-27, heretofore granted to the Philadelphia Electric Company (PECo) to authorize operation of the Limerick Unit 1 facility at power levels not to exceed five percent of rated power. Various issues related to the safe operation of the Limerick Unit 1 plant were raised by the Petition and its supplements. Issues included the appropriateness of certain exemptions granted when License No. NPF-27 was issued and alleged poor facility design and operational performance. The Director concluded that those issues did not constitute a substantial safety concern warranting the institution of show cause proceedings.

The reasons for the above conclusions are fully described in a "Director's Decision Under 10 CFR 2.206", dated July 29, 1985, (DD-85-11) which is available for public inspection in the Commission's Public Document Room located at 1717 H Street NW., Washinton, D.C. 20555, and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland, this 29th day of July 1985.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 85-18540 Filed 8-2-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-23774; 70-7129]

Southern Co.; Proposed Indemnification, Liability, and Guarantee Agreements With Respect to System Service Company

July 30, 1985.

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed a declaration with this Commission pursuant to section 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder.

As indicated in the letter dated June 28, 1985, of Southern Company Services, Inc. ("SCS"), filed with the Commission in File No. 37-59, SCS intends to serve as registrar, transfer agent, and dividend disbursing agent for the common stock of Southern, as well as agent to administer Southern's Dividend Reinvestment and Stock Purchase Plan. SCS must obtain the acceptance of the New York Stock Exchange ("the

NYSE"), on which Southern's common stock is listed, as a qualified transfer agent and registrar for the common stock before SCS may serve as such. Officials of the NYSE have informed Southern that, as a condition to such acceptance, Southern must provide: (a) An agreement to indemnify bona fide purchasers of the company's common stock against losses arising out of over- or under-issuances by SCS acting as transfer agent and registrar and (b) an agreement to assume liability for and guarantee the obligations of SCS as transfer agent and registrar. Accordingly, Southern proposes to enter into such agreements and requests authorization therefor through December 31, 1991.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by August 26, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-18534 Filed 8-2-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-14082]

Application and Opportunity for Hearing; Weyerhaeuser Co.

July 30, 1985

Notice is hereby given that Weyerhaeuser Company, a Washington corporation (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939, as amended (the "1939 Act"), for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Irving Trust Company, a New York banking corporation (the "Bank"), under two indentures which are not qualified under the 1939 Act, and the proposed successor trusteeship of the Bank under one indenture so qualified, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under any of said indentures.

The Company alleges that:

1. The Bank, as trustee, has entered into an indenture dated as of September 1, 1981 (the "1981 indenture") with the County of Monroe Industrial Development Agency (the "Monroe County Agency"), a corporate government agency constituting a body corporate and politic and and a public benefit corporation of the State of New York, pursuant to which the Monroe County Agency issued its Industrial Development Revenue Bonds (Weyerhaeuser Company Project) Series 1981 (the "1981 Bonds") in the aggregate principal amount of $1,000,000. The 1981 Bonds have been issued to finance the cost of certain industrial development facilities located in the City of Rochester in Monroe County, New York (the "1981 Project"). The Company has entered into a Lease Agreement dated as of September 1, 1981 (the "1981 Lease"), with the Monroe County Agency, whereby the Company has leased the 1981 Project to be acquired and constructed with the proceeds from the sale of the 1981 Bonds and whereby the Company must repurchase the 1981 Project at the end of the leasehold. The 1981 Bonds are payable from, and secured by, the pledge of the income and revenues derived from the lease of the 1981 Project, which income and revenues shall be sufficient to pay the principal of, premium, if any, and interest on the 1981 Bonds. Furthermore, the Company has entered into a Guaranty Agreement dated as of September 1, 1981 (the "1981 Guaranty"), with the Bank, whereby the Company has guaranteed the payment of principal of, premium, if any, and interest on the 1981 Bonds.

The 1981 Bonds have not been registered under the Securities Act of 1933, as amended (the "1933 Act") on the basis of the exemption provided by section 3(a)(3) thereof and the 1981 Indenture has not been qualified under the 1939 Act on the basis of the provisions of section 304(a)(4)(A) thereof.

2. The Bank, as Trustee, has entered into an Indenture dated as of October 1, 1982 (the "1982 Indenture") with the Onondaga County Industrial Development Agency (the "Onondaga County Agency), a corporate government agency constituting a body corporate and politic and a public benefit corporation of the State of New York, pursuant to which the Onondaga County Agency issued its Industrial Development Revenue Bonds (Weyerhaeuser Company Project), Series 1982 (the "1982 Bonds") in the aggregate principal amount of $2,200,000. The 1982 Bonds have been issued to finance the cost of certain industrial development facilities located in the Town of Clay in Onondaga County, New York (the "1982 Project"). The Company has entered into a Lease Agreement dated as of October 1, 1982 (the "1982 Lease") with the Onondaga County Agency, whereby the Company has leased the 1982 Project to be acquired and constructed with the proceeds from the sale of the 1982 Bonds and whereby the Company must repurchase the 1982 Project at the end of the leasehold. The 1982 Bonds are payable from, and secured by, the pledge of the income and revenues derived from the lease of the 1982 Project, which income and revenues shall be sufficient to pay the principal of, premium, if any, and interest on the 1982 Bonds. Furthermore, the Company has entered into a Guaranty Agreement dated as of October 1, 1982 (the "1982 Guaranty"), with the Bank, whereby the Company has guaranteed the payment of principal of, premium, if any, and interest on the 1982 Bonds. The 1982 Bonds have not been registered under the 1933 Act on the basis of the exemption provided by section 3(a)(2) thereof and the 1982 Indenture has not been qualified under the 1939 Act on the basis of the provisions of section 304(a)(4)(A) thereof.

3. The Company and the Bank propose that the Bank succeed Morgan Guaranty Trust Company of New York ("Morgan") as Trustee under an Indenture dated May 1, 1966 (the "1966 Indenture") between the Company and Morgan, as Trustee, pursuant to which there have been issued $150,000,000 aggregate principal amount of Company's 5.20% Sinking Fund Debentures Due May 1, 1991 (the "1966 Indentures"). The 1966 Debentures are wholly unsecured. The 1966 Indenture was filed as Exhibit 2(a) to the Registration Statement No. 2-24865 under the 1933 Act.

4. The Company is not the issuer of the 1981 Bonds or the 1982 Bonds; therefore, the 1981 Indenture and the 1982 Indenture may be said to create no potential conflict of interest as defined in section 7.08 of the 1966 Indenture and in section 310(b) of the 1939 Act. Nevertheless, because the principal of, premium, if any, and interest on the 1981 Bonds and the 1982 Bonds are payable

solely from the income and revenues pledged by the Company under the 1981 Lease and the 1982 Lease, respectively, and because the Company has guaranteed the payment of the 1981 Bonds and the 1982 Bonds, it may be argued that the 1981 Bonds and the 1982 Bonds are "securities" of the Company. If so,then under section 7.08(c)(1)(ii) of the 1966 Indenture, the Bank shall not be deemed to have a conflicting interest by reason of acting as Trustee under the 1981 Indenture and the 1982 Indenture if the Company shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that the trusteeships under the 1966 Indenture, the 1981 Indenture and the 1982 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under any of said Indentures.

5. Section 5.01 of the 1981 Indenture provides that the 1981 Bonds are limited obligations of the Monroe County Agency payable solely from the rents and other amounts to be derived from the lease of 1981 Project under the 1981 Lease. The Company is required under section 5.2 of the 1981 Lease to pay rent to the Monroe County Agency in amounts sufficient to pay the principal of, premium, if any, and interest on the 1981 Bonds. Section 5.3 of the 1981 Lease provides that the Company's obligations to make the aforementioned payments are absolute and unconditional. The 1981 Bonds are further payable under the terms of the 1981 Guaranty. Finally, the 1981 Bonds are guaranteed by the Company under the terms of the Finance and Guaranty and Contingent Purchase Agreement dated as of August 1, 1981 (the "Guaranty & Purchase Agreement") between the Company and The First National Bank of Atlanta, purchaser of the 1981 Bonds.

6. All rentals payable by the Company under section 5.2(a) of the 1981 Lease have been assigned by the Monroe County Agency to the Bank for the benefit of the holders of the 1981 Bonds. Upon default of the Company under the 1981 Lease, the Bank may accelerate all amounts then due and payable on the 1981 Bonds and take whatever action at law or in equity necessary or desirable to collect all rental payments or to enforce any obligations of the Company under the 1981 Lease. In addition, the 1981 Bonds have the benefit of the 1981 Guaranty and the Guaranty & Purchase Agreement.

7. To the extent that the Company is an obligor on the 1981 Bonds, its obligations under the 1981 Lease, the 1981 Guaranty and the Guaranty & Purchase Agreement are wholly unsecured. In the event of default on the payment of the 1981 Bonds, the rights of the holders of the 1981 Bonds are in each case limited to a claim as general creditors either for unpaid rental payments under the 1981 Lease or directly under the terms of the 1981 Guaranty or the Guaranty & Purchase Agreement. Any possible additional security for the 1981 Bonds derived from the 1981 Project relates solely to property owned by the Monroe County Agency and not by the Company.

8. Section 701 of the 1982 Indenture provides that the 1982 Bonds are limited obligations of the Onondaga County Agency payable solely from the rents and other amounts to be derived from the lease of 1982 Project under the 1982 Lease. The Company is required under section 5.3 of the 1982 Lease to pay rent to the Onondaga County Agency in amounts sufficient to pay the principal of, and redemption premium, if any, and interest on the 1982 Bonds. Section 5.4 of the 1982 Lease provides that the Company's obligations to make aforementioned payments are absolute and unconditional. The 1982 Bonds are further payable under the terms of the 1982 Guranty.

9. All rentals payable by the Company under section 5.3(a) of the 1982 Lease have been assigned by the Onondaga County Agency to the Bank for the benefit of the holders of the 1982 Bonds. Upon default of the Company under the 1982 Lease, the Bank may accelerate all amounts then due and payable as rent under the 1982 Lease and has the right to convey the 1982 Project to the Company, to take possession of and sublet the 1982 Project or terminate the 1982 Lease and exclude the Company from the 1982 Project. The Bank may also take whatever action at law or in equity necessary or desirable to collect all rent or to enforce any obligations of the Company under the 1982 Lease. In addition, the 1982 Bonds have the benefit of the 1982 Guaranty.

10. To the extent that the Company is an obligor on the 1982 Bonds, its obligations under the 1982 Lease and the 1982 Guaranty are wholly unsecured. In the event of default on the payment of the 1982 Bonds, the rights of the holders of the 1982 Bonds are in each case limited to a claim as general creditors either for unpaid rental payments under the 1982 Lease or directly under the terms of the 1982 Guaranty. Any possible additional security for the 1982 Bonds derived from the 1982 Project relates solely to property owned by the Onondaga County Agency and not by the Company.

11. The Company is not in default under the 1966 Indenture, the 1981 indenture or the 1982 Indenture. The Company is not in default under the 1981 Lease, the 1982, the 1981 Guaranty or the 1982 Guaranty.

12. The Company's obligations under the 1966 Debentures are not subordinated to the Company's Obligations under the 1981 Lease, the 1982 Lease, the 1981 Guaranty or the 1982 Guaranty. The 1966 Debentures, the 1981 Bonds and the 1982 Bonds are all wholly unsecured as to the Company's obligations. The 1966 Debentures and the Company's obligations under the 1981 Lease, the 1982 Lease, the 1981 Guaranty and the 1982 Guaranty (and thereby indirectly on the 1981 Bonds and the 1982 Bonds) are all of equal rank as to one another, without priority or preference.

13. In the opinion of the Company, such differences as exist between the 1966 Indenture, the 1981 Indenture, the 1982 Indenture, the 1981 Lease, the 1982 Lease, the 1981 Guaranty and the 1982 Guaranty are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under any of said Indentures.

The Company has waived (a) notice of hearing, (b) hearing on the issues raised by said application and (c) all rights to specify procedures under Rule VIII(b) of the Commission's Rules of Practice.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, File No. 22-14082, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street NW., Room 1024, Washington, D.C. 20549.

Notice is further given that any interested person may, not later than August 26, 1985, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of

investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-18535 Filed 8-2-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-22277; File No. SR-MSRB-85-15]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change

The Municipal Securities Rulemaking Board ("MSRB"), Suite 800, 1818 N Street NW., Washington, D.C. 20036-2491, submitted on June 17, 1985, copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to conform delivery ticket requirements in Rule G-12 for dealers to the more detailed requirements in Rule G-15 for customers, thus requiring interdealer delivery tickets to designate called or prefunded securities. The rule change also required delivery tickets to state the maturity value for zero coupon bonds, compound interest, and multiplier securities.

Notice of the proposed rule change was given by the issuance of Securities Exchange Act Release No. 22165 (June 24, 1985) and by publication in the Federal Register (50 FR 26869, June 28, 1985). No comments were received.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and, in particular, the requirements of section 15B 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 hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 30, 1985.

John Wheeler,

Secretary.

[FR Doc. 18536 Filed 8-2-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Means of Compliance With § 23.629, Flutter

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Availability of Proposed Draft Advisory Circular (AC) and Request for Comments.

SUMMARY: This AC provides information and guidance concerning compliance with Part 23 of the Federal Aviation Regulations (FAR) applicable to flutter, airfoil divergence, and control reversal. This is a proposed revision to AC 23.629-1.

DATE: Commenters must identify File AC 23.629-1A; Subject: Means of Compliance with § 23.629, Flutter, and comments must be received on or before October 4, 1985.

ADDRESS: Send all comments on the proposed draft AC to: Federal Aviation Administration, ATTN: Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Joseph W. Burress, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; commercial telephone (816) 374-6941, or FTS 758-6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments Invited

Interested parties are invited submit comments on the proposed draft AC. The proposed draft AC and comments received may be inspected at the offices of the Regulations and Policy Office (ACE-110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

This revision was discussed at the Airframe Policy and Program Review Meeting held in Wichita, Kansas, on June 8-9, 1983, and covers five of the agenda items. These items included whirl mode instability, control suface flutter, instrumented fight flutter testing, propeller blade fore-and-aft and out-of-phase excitation, and editorial revisions. Comments from that meeting have been considered in this draft.

Issued in Kansas city, Missouri, July 24, 1985.

Barry D. Clements,

Manager, Aircraft Certification Division.

[FR Doc. 85-18458 Filed 8-2-85; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-85-20]

Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursusnt to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 15, 1985.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c),(e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 29, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Divisions.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
24326	Hawaiian Airlines	14 CFR 91.303	To amend Exemption 4218E, to allow petitioner to operate two Stage 1 DC-8 aircraft at additional airports.

[FR Doc. 85-18459 Filed 8-2-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 30, 1985.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Internal Review Service

OMB Number: New
Form Number: IRS Form 8453
Type of Review: New
Title: U.S. Individual Income Tax Declaration for Electronic Filing

OMB Number: 1545-0191
Form Number: IRS Form 4952
Type of Review: Extension
Title: Investment Interest Expense Deduction

OMB Number: 1545-0601
Form Number: IRS Forms 6744 and 6744SP
Type of Review: Revision
Title: Volunteer Assistor's Test (English and Spanish)

OMB Number: 1545-0001
Form Number: IRS Form CT-1
Type of Review: Revision
Title: Employer's Annual Railroad Retirement Tax Return

OMB Number: 1545-0140
Form Number: IRS Form 2210 and 2210F
Type of Review: Revision
Title: Underpayment of Estimated Tax by Individuals and Underpayment of Estimated Tax by Farmers and Fisherman

OMB Number: 1545-0187
Form Number: IRS Form 4835
Type of Review: Revision
Title: Farm Rental Income Expenses
Clearance Officer: Garrick Shear (202) 566-6150, Room 5571, 1111 Constitution Avenue, N.W., Washington, D.C. 20224
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Comptroller of the Currency

OMB Number: 1557-0036
Form Number: CC Forms 7020-44, 7020-45, 7023-06, and 7023-02
Type of Review: Revision
Title: Merger Applications (Merge, Consolidate or Purchase & Assume/ Corporate Reorganization)
Clearance Officer: Eric Thompson, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219
OMB Reviewer: Robert Neal (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

Joseph F. Maty,

Departmental Reports Management Office.

[FR Doc. 85-18501 Filed 8-2-85; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: July 30, 1985.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureau(s)), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7221, 1201 Constitution Avenue, NW., Washington, D.C. 20220.

Alcohol, Tobacco and Firearms

OMB Number: 1512-0006
Form Number: ATF F 3310.4
Type of Review: Extension
Title: Report of Multiple Sale or Other Disposition of Pistol and Revolvers
Clearance Officer: Howard Hood, (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 2228, Federal Building, 1200 Pennsylvania Avenue, NW., Washington, D.C. 20226
OMB Reviewer: Milo Sunderhaul, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503

James V. Nasche, Jr.,

Departmental Reports Management Office.

[FR Doc. 85-18502 Filed 8-2-85; 8:45 am]

BILLING CODE 4810-25-M

[Number: 110-2]

Responsibilities and Functions of the Office of the Assistant Secretary (Public Affairs and Public Liaison)

Dated: July 25, 1985.

By virtue of the authority vested in me as Secretary of the Treasury, including the authority vested in me by 31 U.S.C. 301 and 321(b), it is ordered that:

1. The position of Assistant Secretary (Public Affairs and Public Liaison) is hereby established. The Assistant Secretary (Public Affairs and Public Liaison) reports to the Secretary and is responsible for:

a. Establishing general operating policies and guidelines, and providing leadership, direction and management strategy for administering public affairs, intergovernmental relations, and business and consumer affairs programs and activities in all Treasury offices and bureaus.

b. Formulating and executing media information policies and programs which will increase the public's knowledge and understanding of Treasury's activities and services.

c. Serving as the principal advisor to the Secretary, the Deputy Secretary, and senior officials throughout the Treasury Department on relations with the news media including development of strategies to enhance relations with the press; accompanying the Secretary on

official travel to serve as a principal media assistant.

d. Providing business, consumer affairs, and intergovernmental relations program and policy development for the Office of the Secretary.

e. Communicating the Secretary's policies and views orally and through press releases and other written materials; keeping the Secretary well informed of news media developments that bear on the Secretary's responsibilities.

f. Serving as the principal advisor to the Secretary, the Deputy Secretary, and senior officials throughout the Treasury Department on matters affecting the understanding by businesses, trade, professional, and consumer groups of Treasury policies and programs.

2. The Office of the Assistant Secretary (Public Affairs and Public Liaison) is hereby established.

a. The Assistant Secretary (Public Affairs and Public Liaison) may have two Deputy Assistant Secretaries, one for Public Affairs, the other for Public Liaison.

b. The Director, Office of Consumer Affairs, is located within the Office of the Assistant Secretary (Public Affairs and Public Liaison). The Director, Office of Consumer Affairs, shall have direct access to the Secretary on consumer affairs matters.

c. Except as set forth in a. and b. immediately above, the Assistant Secretary (Public Affairs and Public Liaison) is authorized to define the organizational structure and the specific responsibilities of the positions and the personnel assigned to the Office of the Assistant Secretary (Public Affairs and Public Liaison).

3. The positions of Assistant Secretary (Business and Consumer Affairs) and Assistant Secretary (Policy Planning and Communications) are hereby disestablished. The Offices of the Assistant Secretary (Business and Consumer Affairs) and Assistant Secretary (Policy Planning and Communications) are hereby disestablished.

a. The functions delegated to the Office of Assistant Secretary (Policy Planning and Communications) by Treasury Order No. 110–1, October 3, 1984, and those delegated to the Assistant Secretary (Business and Consumer Affairs) by Treasury Order No. 113–1, August 17, 1983, are hereby delegated to the Office of the Assistant Secretary (Public Affairs and Public Liaison), except for those functions provided for by Pub. L. 95–507, relating to small and disadvantaged business utilization, which functions are transferred to the Assistant Secretary (Management).

b. All personnel, records, property and unexpended funds of the Office of the Assistant Secretary (Policy Planning and Communications) and those of the Office of the Assistant Secretary (Business and Consumer Affairs) are transferred to the Office of the Assistant Secretary (Public Affairs and Public Liaison), except for those relating to the Small and Disadvantaged Business Utilization Program, which are transferred to the Office of the Assistant Secretary (Management).

4. This order supersedes Treasury Department Order No. 110–1, dated October 3, 1984. Treasury Department Order No. 113–1, dated August 17, 1983, is hereby rescinded. All other Treasury Department Orders which are inconsistent with the above are hereby amended or susperseded.

James A. Baker III,

Secretary of the Treasury.

[FR Doc. 85–18503 Filed 8–2–85; 8:45 am]

BILLING CODE 4810-25-M

[Number: 100–20]

Delegation of Authority To Act for the Secretary To Review Appeals Under the Revenue Sharing Act

Dated: July 19, 1985.

By virtue of the authority vested in me as the Secretary of the Treasury by 31 U.S.C. 321(b), I hereby delegate to the Under Secretary or, in the event of a vacancy in that office, to the Assistant Secretary (Management) the authority of the Secretary under the Revenue Sharing Act, 31 U.S.C. 6701–6724, and the implementing regulations, specifically 31 CFR 51.221, to review appeals from initial decisions and orders of administrative law judges and to make final agency decisions thereon. This delegation shall apply to reviews pending on the date of this order and to all subsequent reviews.

James A. Baker III,

Secretary of the Treasury.

[FR Doc. 85–18504 Filed 8–2–85; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

Treasury Current Value of Funds Rate

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of rate for use in Federal debt collection and discount evaluation.

SUMMARY: Pursuant to section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3717), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6–8000) also prescribed use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate is 9% for the first quarter of FY 1986.

DATES: The rate will be in effect for the period beginning on October 1, 1985 and ending on December 31, 1985.

Notice of change: Effective October 31, 1985, the Current Value of Funds Rate will be published annually instead of quarterly. This rate will be computed and published each year by October 31, for applicability effective January 1. The Current Value of Funds Rate is subject to quarterly revisions as prescribed by the Debt Collection Act of 1982. If revised, the new rate will be published in the **Federal Register** on or around the end of the first month of a calendar quarter and is to be applied to overdue payments arising during the succeeding calendar quarter.

FOR FURTHER INFORMATION CONTACT: Inquiries should be directed to the Cash Management Division, Financial Management Service, Department of the Treasury, Treasury Annex No. 1, PB–711, Washington, D.C. 20226 (Telephone: 202/634–5131).

SUPPLEMENTARY INFORMATION: The rate reflects the current value of funds to the Treasury for use in connection with Federal cash management systems and is based on investment rates set for purposes of Pub. L. 95–147, 91 Stat. 1227. Computed each year by averaging investment rates for the twelve-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on a moving basis, changes by 2 per centum. The rate in effect for the first quarter of FY 1986 reflects the average investment rates for the twelve-month period ended June 30, 1985.

Dated: July 26, 1985.

Michael Smokovich,

Director, Working Capital Group.

[FR Doc. 85–18479 Filed 8–2–85; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 25]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Occidental Fire & Casualty Company of North Carolina

Notice is hereby given that the Certificate of Authority issued by the Treasury to Occidental Fire & Casualty Company of North Carolina under sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27258, July 2, 1984.

With respect to any bonds currently in force with Occidental Insurance Company of North Carolina, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634-2349.

Dated: June 27, 1985.

W.E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-18481 Filed 8-2-85; 8:45 am]

BILLING CODE 4810-35-M

[Dept. Circ. 570, 1984 Rev., Supp. No. 26]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Wilshire Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Wilshire Insurance Company of California under sections 9304 to 9308 of Title 31 of the United States Code, to qualify as an acceptable surety on Federal bonds is hereby terminated effective this date.

The company was last listed as an acceptable surety on Federal bonds at 49 FR 27262, July 2, 1984.

With respect to any bonds currently in force with Wilshire Insurance Company, bond-approving officers for the Government should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding.

Questions concerning this notice may be directed to the Surety Bond Branch, Finance Division, Financial Management Service, Department of the Treasury, Washington, D.C. 20226, telephone (202) 634-2349.

Dated: June 27, 1985.

W. E. Douglas,

Commissioner, Financial Management Service.

[FR Doc. 85-18480 Filed 8-2-85; 8:45 am]

BILLING CODE 4810-35-N

Sunshine Act Meetings

Federal Register
Vol. 50, No. 150
Monday, August 5, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Wednesday, August 7, 1985.

LOCATION: Third Floor Hearing Room, 1111–18th Street, NW., Washington, D.C.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Chain Saws

The staff will brief the Commission on staff activities regarding the Chain Saw Project and on the staff recommendation that the Commission terminate its proceeding to develop a standard addressing the risk of rotational kickback.

2. Voluntary Standards Priorities

The staff will brief the Commission on the methods by which priorities are set for voluntary standards projects.

FOR A RECORDED MESSAGE CONTAINING THE LASTEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301–492–6800.

Dated: August 1, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85–18620 Filed 8–1–85; 2:37 pm]

BILLING CODE 6355-01-M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:30 a.m., Thursday, August 8, 1985.

LOCATION: Third Floor Hearing Room, 1111—18th Street, NW., Washington, D.C.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED:

Enforcement Matter OS #4665

The Commission and staff will discuss Enforcement Matter OS#4665.

FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Dated: August 1, 1985.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 85–18621 Filed 8–1–85; 2:37 pm]

BILLING CODE 6355-01-M

3

FARM CREDIT ADMINISTRATION

Correction of Sunshine Act Notice

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on July 25, 1985 (50 FR 30330) of the forthcoming meeting of the Federal Farm Credit Board scheduled to be held on August 5 and 6, 1985. This notice is to revise the agenda for Tuesday, August 6, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Federal Farm Credit Board, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703–883–4010).

SUPPLEMENTARY INFORMATION: The agenda for Tuesday, August 6, is revised to read as follows:

Tuesday, August 6

8. Regulation Changes

Final

Section 615.5370—Banks for Cooperatives' Earnings

Part 611—Liquidations of Banks and Associations

Proposed

Sections 615.5135, 615.5140, 615.5141, 615.5142 and 615.5144—Investments

Part 606—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Farm Credit Administration

9. Office of Administration Report

(a) Economic Report
(b) Legislative Report
(c) Budget Performance Report

10. FCS Building Association.

11. Other Items

(a) 1986 Calendar
(b) National Farm Credit Directors Conference, Jackson Hole, Wyoming, September 16–17, 1985

12. 1:00 p.m.—Joint Meeting with Farm Credit Board of Louisville

(a) Overview of the Louisville District
(b) Discussion of Issues:

1. Proposed Legislation Granting the FCA Intermediate Enforcement Authorities, and Other Legislative Proposals of System Interest
2. FCA's Position on the Farm Credit Corporation of America
3. Methods of Consolidating System Capital
4. Financial Stress in the System.

Dated: July 31, 1985.

Donald E. Wilkinson,

Governor.

[FR Doc. 85–18586 Filed 8–1–85 12:18 p.m.]

BILLING CODE 6705-01-M

4

FEDERAL COMMUNICATIONS COMMISSION

July 31, 1985.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, August 7, 1985, which is scheduled to commence at 9:30 A.M., in Room 856, at 1919 M Street, NW., Washington, D.C.

Agenda, Item No., and Subject

General—1—*Title: Third Report and Order in Gen. Docket No. 81-768.* Amendment of the Commission's Rules to Allow the Selection from Among Certain Competing Applications Using Random Selection or Lotteries Instead of Comparative Hearings. *Summary:* In this *Third Report and Order* the Commission will consider whether to grant women a lottery preference under section 309(i) of the Communications Act.

Private Radio—1—Title: Amendment of Part 94 of the Commission's Rules and Regulations to Authorize Private Carrier Systems in the Private Operational-Fixed Microwave Radio Service. Summary: The Commission will consider whether to adopt a *Further Notice of Proposed Rule Making* relating to (1) the question of whether Part 94 licensees should be permitted to lease their excess capacity to common carriers for the transmission of common carrier communications; and (2) whether there is a need for the Commission to preempt state entry and rate regulation of private fiber optic systems.

Common Carrier—1 & 2—Title: Preemption of state and local regulation of facilities within one state used to originate/terminate interstate communications. Summary: The Commission will consider a petition for declaratory ruling filed by Cox Cable Communications seeking preemption of state and local regulations, and other proposed actions.

Common Carrier—3—Title: Inquiry into the policies to be followed in the authorization of common carrier facilities to meet North Atlantic Telecommunications needs during the 1985–1995 period. Summary: The Commission will consider the adoption of a Second Report and Order in CC Docket No. 79-184 addressing policies for the distribution of circuits among North Atlantic facilities for the 1986–1991 period.

Common Carrier—4—Title: Inquiry into the policies to be followed in the authorization of common carrier facilities to meet Pacific Telecommunications needs during the period 1981–1995. Summary: Consideration of Second Report and Order in CC Docket No. 81-343 adopting long-term facilities plans for the Pacific Ocean Region for the 1987–1995 time period.

Common Carrier—5—Title: Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Companies. Summary: The Commission will consider a Supplemental Notice of Proposed Rulemaking to devise procedures for prescribing interstate rates of return.

Mass Media—1—Title: Inquiry into § 73.1910 of the Commission's Rules and Regulations Concerning the General Fairness Doctrine Obligations of Broadcast Licensees. Summary: The Commission will address the statutory, constitutional and policy underpinnings of the fairness doctrine in order to determine whether or not it should modify or eleminate the doctrine.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

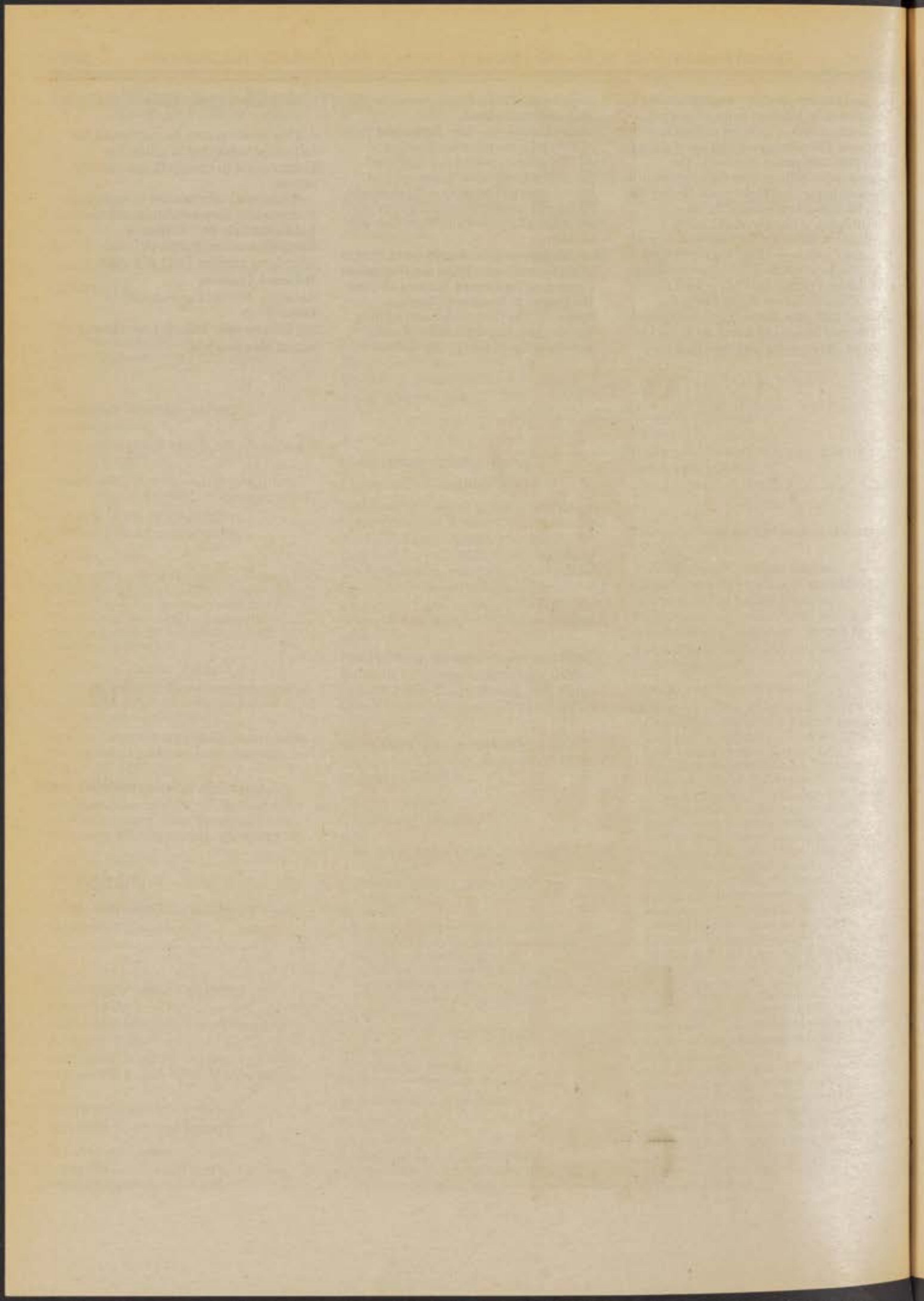
Additional information concerning this meeting may be obtained from Judith Kurtich, FCC Office of Congression and Public Affairs, telephone number (202) 254-7674.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 85-18627 Filed 8-1-85; 2:58 pm]

BILLING CODE 6712-01-M



federal register

Monday
August 5, 1985

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 910 et al.

Surface Coal Mining and Reclamation Operations Under Federal Programs in Georgia et al.; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, and 947

Surface Coal Mining and Reclamation Operations Under Federal Programs in Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining (OSM) of the U.S. Department of the Interior (DOI) proposes to update Federal programs promulgated under the Surface Mining Control and Reclamation Act of 1977 to reflect section numbering changes and rule content revisions made in OSM's permanent program rules during regulatory reform. Because of these changes, certain Federal program cross-reference citations are incorrect. This proposed rule would correct those inaccurate cross-references and revise the Federal programs to include those changes made during regulatory reform.

DATES: The public comment period on this proposed rule will extend until October 9, 1985. Upon request, OSM will hold public hearings on this proposed rule in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at 9:00 a.m. local time on October 4, 1985. The deadline for requesting a hearing is 5:00 p.m. eastern time on August 30, 1985. If requested, the public hearings will be held at locations to be announced in the **Federal Register**. Any person interested in making an oral or a written presentation at the hearing must contact OSM at the address and phone number listed under "**FOR FURTHER INFORMATION CONTACT**" by August 30, 1985.

ADDRESSES: Written comments must be mailed to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record Room, 5315-L, 1951 Constitution Avenue, NW., Washington, D.C. 20240; or hand-carried to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C. 20005.

Copies of the proposed rule are available for inspection Monday through Friday, 8:30 a.m. to 4 p.m., excluding holidays, at the following addresses: Office of Surface Mining, Birmingham Field Office, 228 West Valley Avenue, Homewood, Alabama 34209; Office of Surface Mining, Columbus Field Office, 2242 South Hamilton Road, 2nd Floor, Columbus, Ohio 43232; Office of Surface Mining, Knoxville Field Office, 530 Gay Street, Knoxville, Tennessee 37902; Office of Surface Mining, 101 South 2nd Street, Suite L-4, Harrisburg, Pennsylvania 17101; Office of Surface Mining, Casper Field Office, Freden Building, Basement, 935 Pendell Boulevard, Mills, Wyoming 82644; Office of Surface Mining, Room 5315-L, 1100 L Street, NW., Washington, D.C.

If requested, the public hearings will be held at locations to be announced in the **Federal Register** beginning at 9 a.m. local time. If no one has contacted OSM by August 30, 1985 to express an interest in participating in a particular hearing, that hearing will not be held. Those interested in attending but not testifying at the hearing should contact OSM at the address and phone number listed under "**FOR FURTHER INFORMATION CONTACT**" before the scheduled hearing date to find out whether the hearing will be held.

FOR FURTHER INFORMATION CONTACT: Leila Ishak, Program Analyst, Branch of Regulatory Programs, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: (202) 343-5366.

SUPPLEMENTARY INFORMATION: To assist the reader, this preamble is arranged as follows:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Changes
IV. Procedural Matters

I. Public Comment Procedures

Public Hearings

Individual testimony at the public hearings will be limited to 15 minutes unless extended by the presiding official. The hearings will be transcribed by a court reporter. OSM requests that individuals file a written statement when they testify to assist the court reporter and ensure an accurate record. Receiving written statements before the hearing will allow OSM more time to consider an individual's testimony and will help OSM determine whether it needs additional or more specific information from the witness.

Public Meetings

During the comment period, OSM officials will be available to meet with members of the public to receive the public's recommendations and comments on the proposed rule. To schedule or attend these meetings, contact the individual listed under "**FOR FURTHER INFORMATION CONTACT.**" OSM representatives will be available for meetings between 9 a.m. and 4 p.m. local time, Monday through Friday, excluding holidays. All meetings will be open to the public. The dates, times, and locations of meetings will be posted in advance in the Administrative Record Room, Room 5315, 1100 L Street, NW., Washington, D.C. 20005.

Public Comments

Written and oral comments should be as specific as possible. Although all comments are invited, comments supported by reason will be more likely to influence decisions on the rule.

OSM must receive all written comments by 5:00 p.m. local time on the closing date of the comment period. OSM cannot ensure that written comments received after the close of the comment period or delivered during the comment period to any location other than that specified above will be considered and included in the administrative record. Notice of meetings, summaries of all meetings and telephone conversations, all public comments received, and transcripts of the public hearings will be available for public review at the Office of Surface Mining at the address noted above.

II. Background

On March 13, 1979, OSM promulgated permanent program regulations to implement the requirements of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, 44 FR 14902. On May 16, 1980, OSM published a general notice of intent to promulgate Federal programs. 45 FR 32328. The notice stated that each Federal program would implement the permanent program regulations and environmental protection provisions of the Act and that each Federal program would be specific to the State for which it was promulgated. 45 FR 32328 at 32329.

In the winter and spring of 1982, OSM published numerous proposed changes to its permanent program rules. *See* 47 FR 30266 (July 13, 1982). On July 13, 1982, a notice concerning both the proposed and final permanent program rules appeared in the **Federal Register**. 47 FR 30266-30267. The notice advised the public that any change in a permanent program rule would result in a corresponding change in the Federal programs. The notice invited comments on whether changes were necessary to accommodate unique or unusual aspects of surface mining in any Federal program State so that OSM could tailor

the Federal program for such a State as necessary.

OSM subsequently promulgated Federal programs for ten States. OSM promulgated these Federal programs using cross-references to the permanent program regulations which set the substantive standards.

Sections on various topics cross-reference the counterpart permanent program rules on those topics. The cross-referencing system made repeating the full text of the permanent regulations in each Federal program unnecessary. Where any permanent program regulation needed to be modified for use in a particular Federal program, an additional paragraph was added to change or supplement the permanent program requirement applicable to that State. In fact, few such changes were needed in the ten Federal programs promulgated thus far. Where changes were made, the changes were usually needed to incorporate more stringent State environmental protection standards, to list other State laws with which OSM would coordinate permit reviews, and to accommodate the State's unique terraine, climate, biological, chemical, and physical conditions.

On September 8, 1983, OSM revised its permanent program regulations on requirements for coal exploration. 48 FR 40622. On September 28, 1983, OSM revised its permanent program rules on: (1) Permit processing for surface coal mining operations, (2) general content requirements for permit applications, and (3) legal, financial, compliance, and related information requirements for permit applications. 48 FR 44344. The changes in OSM's permanent program rules were needed to clarify requirements and procedures for permit applications. In addition, OSM removed Parts 818 and 826 during regulatory reform. 48 FR 24638 (June 1, 1983); 48 FR 23356 (May 24, 1983). Because of these changes, however, some of the Federal program cross-reference citations were rendered incorrect.

This proposed rule would correct those inaccurate cross-references and revise the Federal programs to include changes made during regulatory reform.

III. Discusssion of Proposed Changes

This proposed rule affects nine of the ten Federal program States; it is not necessary to amend the most recently promulgated Federal program (Tennessee), published on October 1, 1984, because it cross-referenced the revised permanent program regulations. To streamline the explanation of this proposed rule, one preamble has been written which explains the proposed changes in all nine Federal programs. Nine separate rules follow the preamble, with minor variations for each State.

Rather than repeating the section numbers for each State every time a section is cited in the preamble, OSM has used two blank spaces in the citation to signify that the citation refers to all nine Federal program States discussed here. For example, the preamble discussion of § 9—.770 refers to §§ 910.770, 912.770, 921.770, 922.770, 933.770, 937.770, 939.770, 941.770, and 947.770.

The nine rules following the preamble differ from each other in minor ways. For example, only six of the nine programs now contain a § 9—.818, which would be removed by this proposed rule. Since the other three Federal programs never contained § 9—.818, it is unnecessary to propose removing it from them.

Another difference between the programs occurs in section 9—.773, since the State statutes listed there are specific to each State.

The reader should also be aware that the index listing the section in each part for each State would be revised to reflect the changes in titles and section numbers proposed in this rule.

The following is an explanation first of those proposed revisions which affect Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington, followed by an explanation of proposed revisions specific to each particular Federal program.

Proposed General Revisions

Sections 9—.770 and 9—.771

Section 9—.770 and 9—.771 would be removed under this proposed rule because they cross-reference superseded permanent program regulations. When OSM revised its permanent program rules, Parts 770 and 771 were removed and their provisions were consolidated into a new Part 773. 48 FR 44334 (September 28, 1983).

Although § 9—.770 would be removed by this proposed rule, the applicable State statutes cited in Paragraphs (b), (c), and (d) (where they occur) would be moved intact to § 9—.773. The paragraphs may be given different letter designations, if necessary, to maintain alphabetical order within the new section. Any references within these paragraphs to Part 770 would be corrected to cite Part 773. No change in substance is proposed or intended. For further explanation, see the discussion in this preamble of changes in § 9—.773.

Paragraph (b) of § 9—.771 would be removed because it refers to § 736.25, a section that was never promulgated. OSM recently proposed to adopt § 736.25. 50 FR 7522 (February 22, 1985). If § 736.25 is adopted, it will apply to all Federal programs. The permit fee provision referred to in § 9—.771(b) is now found in § 777.17, and would be included in each Federal program by this proposed rule through a cross-reference at § 9—.777.

Section § 9—.772

Section 9—.772, which contains requirements for coal exploration, would be added in this proposed rule. Part 772 contains some of the provisions previously found in Part 776, which was removed during regulatory reform. 48 FR 40622 (September 8, 1983). Paragraphs (a) and (b) and Paragraph (c), where it occurs, of § 9—.776 would be redesigned as Paragraphs (a), (b), and (c) of § 9—.772 and would cross reference Part 772. No change in the content or meaning of these paragraphs is proposed or intended.

Section 9—.773

Proposed § 9—.773 would be added to cross-reference Part 773 of the permanent program regulations. Proposed § 9—.773(b) would add to the requirements under the corresponding permanent program rules to provide additional guidance to the permit applicant. The section would also establish procedures for handling permit applications, as 30 CFR Part 773 requires. The procedures would provide guidelines for handling applications which are grossly deficient, for obtaining additional information, and for determining administrative completeness. These permit application procedures were promulgated in the Tennessee Federal program. 49 FR 38874, 38894 (October 1, 1984).

Proposed § 9—.773(c) would authorize the Office to obtain permit information beyond that specified in 30 CFR Part 773. The Office may need the additional information in order to meet its obligations under the Federal laws identified in 30 CFR 773.12. The provision would also allow the Office to obtain information needed to comply with the National Environmental Policy Act. This provision was incorporated into the Tennessee Federal program. 49 FR at 38894.

As noted above, the State statutes listed in § 9—.770 would be moved to § 9—.773, since § 9—.770 would be removed under this proposed rule. The paragraphs would be redesignated to maintain alphabetical order within the new section. Any references within these paragraphs to Part 770 would be

replaced with references to Part 773. For example, in Massachusetts, § 921.770(b) would be redesignated § 921.773(d). No change in meaning is proposed or intended. The paragraph's internal reference to Part 770 would be changed to Part 773. Section 921.770(c) would then become § 921.773(e), and its internal reference to Part 770 would be changed to Part 773. The existing requirement in §§ 933.786(b) and 947.786(b) that OSM notify certain North Carolina and Washington State agencies of permit decisions would remain substantively unchanged. However, these sections would be redesignated as §§ 933.773(f) and 947.773(g) respectively.

Section 9—.774

Proposed § 9—.774 provides procedures and requirements for permit revisions, renewals, and transfer, assignment or sale of permit rights.

Proposed § 9—.774(b) would specify that any revision to the approved permit would be subject to review and approval by OSM. Proposed § 9—.774(b)(1) would further specify that significant revisions are to be processed in accordance with the public notice and hearing provisions listed in § 774.13(b)(2) of the permanent program rules.

Section 774.13(b)(2) of the permanent program rules directs the regulatory authority to develop guidelines establishing the scale or extent of permit revisions for which all the permit application information requirements and procedures of Subchapter G, including notice, public participation, and notice of decision requirements of §§ 773.13, 773.19(b) (1) and (3), and 778.21 shall apply. The regulation further provides that such procedures shall apply at a minimum to all significant permit revisions. Accordingly, as discussed below, § 9—.774(b)(2) proposes eight guidelines which OSM would consider when determining the scale or extent of the proposed permit revision and when determining whether the revision is significant.

OSM is proposing these guidelines because the Agency believes they are valid measures of permit changes which could affect the level of environmental protection, ability to reclaim, or recoverability of the coal being mined by the operator. These guidelines include such factors as environmental effects likely to result from the proposed revision, significance of production changes or recoverability of the coal resource, public interest in the operation, possible adverse impacts to fish and wildlife, and impacts to cultural resources.

Proposed guideline (i) implements section 511(a)(2) of the Act which provides that any significant alteration in the reclamation plan shall be subject to formal revision. Proposed guidelines (ii), (iii), (iv), and (vii) implement section 511(a)(2) of the Act and were adapted from § 750.12(c)(3)(ii)(B) of OSM's Federal Program for Indian Lands. (49 FR 38479). Proposed guideline (v) was adapted from § 750.12(d)(2)(vi) of OSM's Federal Program for Indian Lands. (49 FR 38479). Proposed guideline (vi) was adapted from § 746.18(d)(2) of the Federal lands rules. Proposed guideline (viii) was adapted from § 746.18(d)(6) of the Federal lands rules.

Section 774.13(b)(1) of the permanent program rules directs the regulatory authority to establish a time period within which it will approve or disapprove an application for a permit revision. Proposed § 9—.774(b)(3) would implement this by stating that "OSM shall make every effort to act on an application for permit revision within 60 days of receipt." If OSM is unable to take action within 60 days, under the proposed rule, OSM would notify the applicant that more time is needed to complete the review, setting forth the reasons and the additional time that is needed.

Proposed § 9—.774(c) would specify a 30-day period within which to submit written comments on an application for approval of a transfer, assignment, or sale of a permit. There is no period set in 30 CFR 774.17. This provision would be added to give commenters guidance on a reasonable time frame. A provision similar to § 9—.774 (b) and (c) of this proposed rule was promulgated in the Tennessee Federal program. 49 FR 38894.

Section 9—.775

Proposed § 9—.775 would be added to cross-reference Part 775, which was added during OSM's regulatory reform. Part 775, which addresses administrative and judicial review of decisions on permits, contains some provisions previously found in Part 787, which was removed during regulatory reform.

Section 9—.776

OSM proposes to remove § 9—.776 because it cross-references a superseded permanent program regulation. Requirements for coal exploration would now be found in proposed § 9—.772.

Section 9—.777

Part 777 was added during OSM's regulatory reform and would be cross-referenced to the Federal programs in this proposed rule. Part 777 contains general content requirements for permit applications. Portions of previous Part 771 were incorporated into Part 777 during regulatory reform.

Section 9—.778

OSM proposes to revise § 9—.778 in the Federal programs to reflect 30 CFR Part 778 as revised during regulatory reform. Part 778 contains rules on the legal, financial, and compliance information required in permit applications. Previous 30 CFR 782, which is cross-referenced in existing Federal programs at § 9—.782, addressed underground mines and was incorporated into Part 778 during regulatory reform.

Sections 9—.782, 9—.786, 9—.787, 9—.788, 9—.818, 9—.826

OSM proposes to remove these sections because they cross-reference superseded permanent program regulations. During regulatory reform, the requirements of previous Part 782 were incorporated into Part 778. Most of the requirements of previous Part 786 were incorporated into Part 773. The requirements of previous Part 787 were incorporated into Part 775, and requirements from previous Part 778 were included in Part 774. *See* 48 FR 44344 (September 28, 1983).

It is not necessary to remove § 9—.818 in Massachusetts, North Carolina, or Rhode Island, because Part 818 was not cross-referenced in these Federal programs. This proposed rule would remove § 9—.818 from the other six Federal programs, because Part 818 was removed during regulatory reform. 48 FR 24638 (June 1, 1983).

OSM proposes to remove § 9—.826 from all nine Federal programs because it cross-references Part 826, which was removed during regulatory reform. 48 FR 23356 (May 24, 1983).

Section 9—.850

OSM proposes to delete § 9—.850 from four of the Federal programs which include cross-references to Part 850. Part 850 establishes the requirements applicable to the development of blaster certification and training programs. This part automatically applies to all regulatory authorities. Moreover, Part 850 imposes no requirements on operators or blasters. As discussed below, Part 855, proposed on September 11, 1984 will impose requirements on operators and blasters. Therefore, including a cross-reference to Part 850 in the Federal programs is unnecessary.

Section 9—.855

OSM proposes to adopt Part 855 in the nine Federal programs discussed here. Part 855, Certification of Blasters, was proposed in the **Federal Register** on September 11, 1984 (49 FR 35714) to provide standards for the training and certification of blasters in Federal program States. Although the certification rule would automatically apply in the Federal program States when it is promulgated, by incorporating this section now, OSM will not have to update the Federal program cross-references when the certification rule is promulgated in final form. Persons wishing to comment on proposed Part 855 were asked to submit comments on problems unique to their states. Final Part 855 is expected to address those issues.

Proposed Revisions Specific to Each Affected Program

Sections 910.700, 912.700, 921.700, 922.700, 937.700, and 941.700

OSM proposes minor editorial revisions in the titles of §§ 910.700, 922.700, and 937.700. OSM also proposes minor editorial revisions to § 9—.700(d) in the Idaho, Massachusetts, and South Dakota Federal programs to improve clarity.

OSM proposes to revise § 9—.700(g) in the Massachusetts, North Carolina, South Dakota and Washington Federal programs. These paragraphs incorrectly cross-reference §§ 9—.770 through 9—.778. The correct cross-reference would be to §§ 9—.772 through 9—.785.

Sections 910.816 and 910.817

OSM proposes to remove references in § 910.816 of the Georgia Federal program to 30 CFR 816.49(a), 816.89(b), and 816.112(d). OSM also proposes to remove references in § 910.817 to 30 CFR 817.49(a), 817.89(b), and 817.112(d). This proposed revision is an editorial change to remove specific references which were rendered inaccurate during regulatory reform. No change in the content or meaning of these sections is proposed or intended, since §§ 910.816 and 910.817 continue to cross-reference Parts 816 and 817 respectively.

IV. Procedural Matters

Federal Paperwork Reduction Act

The recordkeeping and reporting requirements of Federal programs are the same as those of the permanent program regulations which have been approved by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The DOI has examined this proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it does not constitute a major rule and does not require a regulatory impact analysis. No major economic impact would occur if this rule were adopted, because the rule would affect only a small number of mining operations.

Regulatory Flexibility Act

The DOI has examined this proposed rule according to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, and determined that it will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

Section 702(d) of the Act provides that promulgation of Federal programs does not constitute a major Federal action under the National Environmental Policy Act, 42 U.S.C. 4332. This provision has been interpreted to include revisions to Federal programs. Thus, no environmental assessment is required for this rule.

List of Subjects in 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, and 947

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Reporting and recordkeeping requirements.

Drafting Information

This rule was drafted by Leila Ishak, Branch of Regulatory Programs, Office of Surface Mining, and Kathleen McDermott, Office of the Solicitor, Department of the Interior.

Accordingly, it is proposed that 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, and 947 be amended as follows:

Dated: June 13, 1985.

J. Steven Griles,

Deputy Assistant Secretary for Land and Minerals Management.

PART 910—GEORGIA

1. The authority citation for Part 910 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

1(a). The table of contents to Part 910 is revised to read as follows:

Sec.
910.700 Georgia Federal program.
910.701 General.
910.707 Exemption for coal extraction incident to government-financed highway or other construction.
910.761 Areas designated unsuitable for surface coal mining by Act of Congress.
910.762 Criteria for designating areas as unsuitable for surface coal mining operations.
910.764 Process for designating areas as unsuitable for surface coal mining operations.
910.772 Requirements for coal exploration.
910.773 Requirements for permits and permit processing.
910.774 Revision; renewal; and transfer, assignment, or sale of permit rights.
910.775 Administrative and judicial review of decisions.
910.777 General content requirements for permit applications.
910.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
910.779 Surface mining permit applications—minimum requirements for information on environmental resources.
910.780 Surface minimg permit applications—minimum requirements for reclamation and operation plan.
910.783 Underground mining permit applications—minimum requirements for information on environmental resources.
910.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
910.785 Requirements for permits for special categories of mining.
910.795 Small operator assistance.
910.800 General requirements for bonding of surface coal mining and reclamation operations.
910.815 Performance standards—coal exploration.
910.816 Performance standards—surface mining activities.
910.817 Performance standards—underground mining activities.
910.819 Special performance standards—auger mining.
910.823 Special performance standards—operations on prime farmland.
910.824 Special performance standards—mountaintop removal.
910.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
910.828 Special performance standards—in situ processing.
910.842 Federal inspections.
910.843 Federal enforcement.
910.845 Civil penalties.
910.855 Certification of blasters.

2. The title of § 910.700 is revised to read as follows:

§ 910.700 Georgia Federal program.

§ 910.770 [Removed]

3. Section 910.770 is removed.

§ 910.771 [Removed]

4. Section 910.771 is removed.

5. Section 910.772 is added to read as follows:

§ 910.772 Requirements for coal exploration.

(a) Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

6. Section 910.773 is added to read as follows:

§ 910.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the application in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 910.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C. 4322, shall be considered in the determination of a complete application. The Office may require specific additional information from the applicant as any environmental review progresses when such specific information is needed. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Issuance of permits shall also be coordinated with permits issued pursuant to the Georgia Water Quality Control Act, section 17-501; the Georgia Solid Waste Management Act, section 43-1681; the Georgia Air Quality Act of 1973; the Georgia Safe Dams Act of 1973; the Georgia Hazardous Waste Management Act of 1979; the Georgia Groundwater Use Act; and the rules of the Georgia Fire Safety Commission on blasters' permits.

(e) The Secretary shall incorporate in the permit applicable requirements of the Georgia Wildflower Preservation Act of 1973, section 43-1801 *et seq.*; the Georgia Endangered Wildlife Act of 1973, section 43-2101 *et seq.*; the Georgia Heritage Trust Act of 1975, section 43-2301 *et seq.*; and the Georgia Cave Protection Act of 1977, section 43-2501 *et seq.*

7. Section 910.774 is added to read as follows:

§ 910.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSM.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b) (1) and (3), and 778.21 and of Part 775.

(2) OSM shall consider the following guidelines in determining the scale or extent of the proposed permit revision and in determining whether the revision is significant: (i) Possible adverse impacts to reclamation as specified in the approved plan; (ii) the environmental effects likely to result from the proposed revision including possible changes in air or water quality; (iii) the public interest in the operation, or likely interest in the proposed revision; (iv) possible adverse impacts from the proposed revision on fish or wildlife, endangered species, bald or golden eagles, and cultural resources or historic sites; (v) possible adverse impacts, including noise, to scenic and aesthetic resources; (vi) any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining; (vii) changes in production or recoverability of the coal resource; and (viii) any change that would result in an alteration in the post mining land use.

(3) OSM shall make every effort to act on an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever, is later.

8. Section 910.775 is added to read as follows:

§ 910.775 Administrative and judicial review of decisions.

Part 775 of this chapter, Administrative and Judicial Review of Decisions, shall apply to all decisions on permits.

§ 910.776 [Removed]

9. Section 910.776 is removed.

10. Section 910.777 is added to read as follows:

§ 910.777 General content requirements for permit applications.

Part 777 of this chapter, General Content Requirements for Permit Applications, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

11. Section 910.778 is revised to read as follows:

§ 910.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

§ 910.782 [Removed]

12. Section 910.782 is removed.

§ 910.786 [Removed]

13. Section 910.786 is removed.

§ 910.787 [Removed]

14. Section 910.787 is removed.

§ 910.788 [Removed]

15. Section 910.788 is removed.

16. Paragraph (b) of § 910.816 is revised to read as follows:

§ 910.816 Performance standards—surface mining activities.

* * * * *

(b) No person shall conduct surface coal mining operations except in compliance with the Georgia Safe Dams Act and Rules for Safety of the Department of Natural Resources, Environmental Protection Division; the Solid Waste Management Rules of the Georgia Department of Natural Resources, Environmental Protection Division, Chapter 391-3-4; and the Georgia Seed Laws and Regulation 4.

17. Paragraph (b) of § 910.817 is revised to read as follows:

§ 910.817 Performance standards—underground mining activities.

* * * * *

(b) No person shall conduct underground coal mining operations except in compliance with the Georgia Safe Dams Act and Rules for Safety of the Department of Natural Resources, Environmental Protection Division; the Georgia Solid Waste Management Rules of the Department of Natural Resources, Environmental Protection Division, Chapter 391-3-4; and the Georgia Seed Laws and Regulation 4.

§ 910.818 [Removed]

18. Section 910.818 is removed.

§ 910.826 [Removed]

19. Section 910.826 is removed.

20. Section 910.855 is added to read as follows:

§ 910.855 Certification of blasters.

Part 855 of this chapter, Certification of Blasters, shall apply to any person who conducts coal exploration or surface coal mining and reclamation operations.

PART 912—IDAHO

21. The authority citation for Part 912 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

21(a). The table of contents to Part 912 is revised to read as follows:

Sec.

912.700 Idaho Federal program.
912.701 General.
912.707 Exemption for coal extraction incident to government-financed highway or other construction.
912.761 Areas designated unsuitable for surface coal mining by Act of Congress.
912.762 Criteria for designating areas as unsuitable for surface coal mining operations.
912.764 Process for designating areas as unsuitable for surface coal mining operations.
912.772 Requirements for coal exploration.
912.773 Requirements for permits and permit processing.
912.774 Revision; renewal; and transfer, assignment, or sale of permit rights.
912.775 Administrative and judicial review of decisions.
912.777 General content requirements for permit applications.
912.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
912.779 Surface mining permit applications—minimum requirements for information on environmental resources.
912.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
912.783 Underground mining permit applications—minimum requirements for information on environmental resources.
912.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
912.785 Requirements for permits for special categories of mining.
912.795 Small operator assistance.
912.800 General requirements for bonding of surface coal mining and reclamation operations.
912.815 Performance standards—coal exploration.
912.816 Performance standards—surface mining activities.
912.817 Performance standards—underground mining activities.
912.819 Special performance standards—auger mining.
912.822 Special performance standards—operations in alluvial valley floors.
912.823 Special performance standards—operations on prime farmland.
912.824 Special performance standards—mountaintop removal.
912.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
912.828 Special performance standards—in situ processing.
912.842 Federal inspections.
912.843 Federal enforcement.
912.845 Civil penalties.
912.855 Certification of blasters.

22. Paragraph (d) of § 912.700 is revised to read as follows:

§ 912.700 Idaho Federal program.

* * * * *

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

* * * * *

§ 912.770 [Removed]

23. Section 912.770 is removed.

§ 912.771 [Removed]

24. Section 912.771 is removed.

25. Section 912.772 is added to read as follows:

§ 912.772 Requirements for coal exploration.

(a) Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

26. Section 912.773 is added to read as follows:

§ 912.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the application of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 912.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C. 4322, shall be considered in the determination of a complete application. The Office may require specific additional information from the applicant as any environmental review progresses when such specific information is needed. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons in one location, or surface coal mining operations without permits issued and/or certificates required by the State of Idaho, pursuant to Idaho Code sections 47-704, 47-1317, 47-1318, 47-1319, 47-1317 (Supp.), and 39-101 *et seq.* (Supp.)

27. Section 912.774 is added to read as follows:

§ 912.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSM.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b) (1) and (3), and 778.21 and of Part 775.

(2) OSM shall consider the following guidelines in determining the scale or extent of the proposed permit revision and in determining whether the revision is significant: (i) Possible adverse impacts to reclamation as specified in the approved plan; (ii) the environmental effects likely to result from the proposed revision including possible changes in air or water quality; (iii) the public interest in the operation, or likely interest in the proposed revision; (iv) possible adverse impacts from the proposed revision on fish or wildlife, endangered species, bald or golden eagles, and cultural resources or historic sites; (v) possible adverse impacts, including noise, to scenic and aesthetic resources; (vi) any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining; (vii) changes in production or recoverability of the coal resource; and (viii) any change that would result in an alteration in the post mining land use.

(3) OSM shall make every effort to act on an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

28. Section 912.775 is added to read as follows:

§ 912.775 Administrative and judicial review of decisions.

Part 775 of this chapter, Administrative and Judicial Review of Decisions, shall apply to all decisions on permits.

§ 912.776 [Removed]

29. Section 912.776 is removed.

30. Section 912.777 is added to read as follows:

§ 912.777 General content requirements for permit applications.

Part 777 of this chapter, General Content Requirements for Permit Applications, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

31. Section 912.778 is revised to read as follows:

§ 912.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

§ 912.782 [Removed]

32. Section 912.782 is removed.

§ 912.786 [Removed]

33. Section 912.786 is removed.

§ 912.787 [Removed]

34. Section 912.787 is removed.

§ 912.788 [Removed]

35. Section 912.788 is removed.

§ 912.818 [Removed]

36. Section 912.818 is removed.

§ 912.826 [Removed]

37. Section 912.826 is removed.

38. Section 912.855 is added to read as follows:

§ 912.855 Certification of blasters.

Part 855 of this chapter, Certification of Blasters, shall apply to any person who conducts coal exploration or

surface coal mining and reclamation operations.

PART 921—MASSACHUSETTS

39. The authority citation for Part 921 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

39(a) The table of contents to Part 921 is revised to read as follows:

Sec.
921.700 Massachusetts Federal program.
921.701 General.
921.707 Exemption for coal extraction incident to government-financed highway or other construction.
921.761 Areas designated unsuitable for surface coal mining by Act of Congress.
921.762 Criteria for designating areas as unsuitable for surface coal mining operations.
921.764 Process for designating areas as unsuitable for surface coal mining operations.
921.772 Requirements for coal exploration.
921.773 Requirements for permits and permit processing.
921.774 Revision; renewal; and transfer, assignment, or sale of permit rights.
921.775 Administrative and judicial review of decisions.
921.777 General content requirements for permit applications.
921.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
921.779 Surface mining permit applications—minimum requirements for information on environmental resources.
921.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
921.783 Underground mining permit applications—minimum requirements for information on environmental resources.
921.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
921.785 Requirements for permits for special categories of mining.
921.795 Small operator assistance.
921.800 General requirements for bonding of surface coal mining and reclamation operations.
921.815 Performance standards—coal exploration.
921.816 Performance standards—surface mining activities.
921.817 Performance standards—underground mining activities.
921.819 Special performance standards—auger mining.
921.823 Special performance standards—operations or prime farmland.
921.824 Special performance standards—mountaintop removal.
921.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
921.828 Special performance standards—in situ processing.
Sec.
921.842 Federal inspections.
921.843 Federal enforcement.
921.845 Civil penalties.
921.855 Certification of blasters.

40. Paragraphs (d) and (g) of § 921.700 are revised to read as follows:

§ 912.700 Massachusetts Federal program.

* * * * *

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

* * * * *

(g) The Secretary may grant a limited variance from the performance standards of §§ 921.815 through 921.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§ 921.772 through 921.785 demonstrates in the application that:

(1) Such a variance is necessary because of the nature of Massachusetts' terrain, climate, biological, chemical or other relevant physical conditions; and

(2) The proposed variance is not less effective than the environmental protection requirements of the regulations in this program and is consistent with the Act.

§ 921.770 [Removed]

41. Section 921.770 is removed.

§ 921.771 [Removed]

42. Section 921.771 is removed.

43. Section 921.772 is added to read as follows:

§ 921.772 Requirements for coal exploration.

(a) Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

44. Section 921.773 is added to read as follows:

§ 921.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 921.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C. 4322, shall be considered in the determination of a complete application. The Office may require specific additional information from the applicant as any environmental review progresses when such specific information is needed. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an

applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) No person shall conduct coal exploration which results in the removal of more than 250 tons of coal nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR Part 773 and applicable permits issued pursuant the laws of the State of Massachusetts, including: the Historic and Scenic Rivers Act, Mass. Ann. Laws Ch. 21, Sections 8–17B; Massachusetts Register of Historic Places, Mass. Ann. Laws Ch. 152 and the regulations (950 CMR 71); historical preservation statutes, Mass. Ann. Laws Ch. 9, Sections 26–27(D); real property statutes, Mass. Ann. Laws Ch. 184, Sections 31–32; statutes governing State forests and parks, Mass. Ann. Laws Ch. 132, Sections 40–46; the Wetlands Protection Act Ch. 131, Sections 40–46; statutes and rules governing dredging permits, Mass. Ann. Laws Ch. 21A; Section 14, 310 CMR 9.01 *et seq.*; the Massachusetts Hazardous Waste Management Act Ch. 21C, Sections 1–14; the Massachusetts Clean Water Act Ch. 21, Sections 26–53; statutes governing the construction of roads, drains, or ditches, Mass. Ann. Laws Ch. 252 Sections 15–18; statutes governing drilling or removal of sand or any minerals, Mass. Ann. Laws Ch. 132A, Sections 13–18; and statutes governing use, storage, and handling of explosives, Mass. Ann. Laws Ch. 148, Sections 9–19.

(e) The Secretary shall coordinate review and issuance of a coal exploration or surface coal mining and reclamation permit with the review and issuance of other Federal and State permits listed in the subpart and Part 773 of this chapter.

45. Section 921.774 is added to read as follows:

§ 971.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, Revision; Renewal; and Transfer, Assignment, or Sale or Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSM.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b) (1) and (3), and 778.21 and of Part 775.

(2) OSM shall consider the following guidelines in determining the scale or extent of the proposed permit revision and in determining whether the revision is significant: (i) Possible adverse impacts to reclamation as specified in the approved plan; (ii) the environmental effects likely to result from the proposed revision including possible changes in air or water quality; (iii) the public interest in the operation, or likely interest in the proposed revision; (iv) possible adverse impacts from the proposed revision on fish and wildlife, endangered species, bald or golden eagles, and cultural resources or historic sites; (v) possible adverse impacts, including noise, to scenic and aesthetic resources; (vi) any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining; (vii) changes in production or recoverability of the coal resource; and (viii) any change that would result in an alteration in the post mining land use.

(3) OSM shall make every effort to act on an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

46. Section 921.775 is added to read as follows:

§ 921.775 Administrative and judicial review of decisions.

Part 775 of this Chapter, Administrative and Judicial Review of Decisions, shall apply to all decisions on permits.

§ 921.776 [Removed]

47. Section 921.776 is removed.

48. Section 921.777 is added to read as follows:

§ 921.777 General content requirements for permit applications.

Part 777 of this chapter, General Content Requirements for Permit Applications, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

49. Section 921.778 is revised to read as follows:

§ 921.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

§ 921.782 [Removed]

50. Section 921.782 is removed.

§ 921.786 [Removed]

51. Section 921.786 is removed.

§ 921.787 [Removed]

52. Section 921.787 is removed.

§ 921.788 [Removed]

53. Section 921.788 is removed.

§ 921.826 [Removed]

54. Section 921.826 is removed.

§ 921.850 [Removed]

55. Section 921.850 is removed.

56. Section 921.855 is added to read as follows:

§ 921.855 Certification of blasters.

Part 855 of this chapter, Certification of Blasters, shall apply to any person who conducts coal exploration or surface coal mining and reclamation operations.

PART 922—MICHIGAN

57. The authority citation for Part 922 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

57(a). The table of contents to Part 922 is revised to read as follows:

Sec.

922.700 Michigan Federal program.
922.701 General.
922.707 Exemption for coal extraction incident to government-financed highway or other construction.
922.761 Areas designated unsuitable for surface coal mining by Act of Congress.
922.762 Criteria for designating areas as unsuitable for surface coal mining operations.
922.764 Process for designating areas as unsuitable for surface coal mining operations.
922.772 Requirements for coal exploration.
922.773 Requirements for permits and permit processing.
922.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

Sec.
922.775 Administative and judicial review of decisions.
922.777 General content requirements for permit applications.
922.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
922.779 Surface mining permit applications—minimum requirements for information on environmental resources.
922.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
922.783 Underground mining permit applications—minimum requirements for information on environmental resources.
922.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
922.785 Requirements for permits for special categories of mining.
922.795 Small operator assistance.
922.800 General requirements for bonding of surface coal mining and reclamation operations.
922.815 Performance standards—coal exploration.
922.816 Performance standards—surface mining activities.
922.817 Performance standards—underground mining activities.
922.819 Special performance standards—auger mining.
922.823 Special performance standards—operations on prime farmland.
922.824 Special performance standards—mountaintop removal.
922.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
922.828 Special performance standards—in situ processing.
922.842 Federal inspections.
922.843 Federal enforcement.
922.845 Civil penalties.
922.855 Certification of blasters.

58. The title of § 922.700 is revised to read as follows:

§ 922.700 Michigan Federal program.

* * * * *

§ 922.770 [Removed]

59. Section 922.770 is removed.

§ 922.771 [Removed]

60. Section 922.771 is removed.

61. Section 922.772 is added to read as follows:

§ 922.772 Requirements for coal exploration.

(a) Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conducts coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

62. Section 922.773 is added to read as follows:

§ 922.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 922.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C. 4322, shall be considered in the determination of a complete application. The Office may require specific additonal information from the applicant as any environmental review progresses when such specific information is needed. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons in one location, or surface coal mining operations without permits issued pursuant to the : Michigan Construction and Maintenance Act, MCL section 254.25, pertaining to the alteration of watercourses; Michigan Dams in Streams or Rivers Act of 1963, MCL section 281.131; Michigan Explosives Act of 1970, MCL section 29.41, pertaining to the use of explosives (permit is issued by an officer of a local police or sheriff's department or a designated officer of the State police); Michigan Hazardous Waste Management Act of 1980, MCL section 299.501; Michigan Inland Lake and Streams Act of 1972, MCL section 281.951; Michigan Mineral Wells Act of 1969, MCL section 319.211; Michigan Sand Dune Protection and Management Act of 1976, MCL section 281.651; Michigan Solid Waste Management Act of 1978, MCL section 299.401; Michigan Water Resources Commission Act, MCL section 323.1; Michigan Water Resources Commission General Rules, R-323.1001 *et seq.*; Michigan Water Quality Standards, R-323.1041; the Michigan Wetland Protection Act of 1969, MCL section 281.701; Michigan Aboriginal Records and Antiquities Act, MCL section 299.51; Michigan Great Lakes Submerged Lands Act, MCL section 322.701 and the Michigan Historical Activities Act, MCL section 399.201.

(e) The Secretary shall incorporate in the permit, applicable requirements of the Michigan Air Pollution Act of 1965, MCL section 336.11 and the Michigan Administrative Rules for Air Pollution Control, R-336.1101 *et seq.*; the Michigan Control and Eradication of Noxious Weeds Act, MCL section 247.61; the Michigan Endangered Species Act of 1974, MCL secton 299.221 and the Michigan Hazardous Waste Management Act of 1980. The Secretary shall further coordinate review of

permits, where applicable, with the appropriate State agencies concerning compliance with the Michigan Farmland and Open Space Preservation Act, MCL section 554.71.

63. Section 922.774 is added to read as follows:

§ 922.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSM.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b)(1) and (3), and 778.21 and of Part 775.

(2) OSM shall consider the following guidelines in determining the scale or extent of the proposed permit revision and in determining whether the revision is significant: (i) Possible adverse impacts to reclamation as specified in the approved plan; (ii) the environmental effects likely to result from the proposed revision including possible changes in air or water quality; (iii) the public interest in the operation, or likely interest in the proposed revision, (iv) possible adverse impacts from the proposed revision on fish or wildlife, endangered species, bald or golden eagles, and cultural resources or historic sites; (v) possible adverse impacts, including noise, to scenic and aesthetic resources; (vi) any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining; (vii) changes in production or recoverability of the coal resource; and (viii) any change that would result in an alteration in the post mining land use.

(3) OSM shall make every effort to act on an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

64. Section 922.775 is added to read as follows:

§ 922.775 Administrative and judicial review of decisions.

Part 775 of this chapter, Administrative and Judicial Review of Decisions, shall apply to all decisions on permits.

§ 922.776 [Removed]

65. Section 922.776 is removed.

66. Section 922.777 is added to read as follows:

§ 922.777 General content requirements for permit applications.

Part 777 of this chapter, General Content Requirements for Permit Applications, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

67. Section 922.778 is revised to read as follows:

§ 922.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Permit Applications—Minimum Requirements for Legal, Finanical, Compliance, and Related Information, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

§ 922.782 [Removed]

68. Section 922.782 is removed.

§ 922.786 [Removed]

69. Section 922.786 is removed.

§ 922.787 [Removed]

70. Section 922.787 is removed.

§ 922.788 [Removed]

71. Section 922.788 is removed.

§ 922.818 [Removed]

72. Section 922.818 is removed.

§ 922.826 [Removed]

73. Section 922.826 is removed.

74. Section 922.855 is added to read as follows:

§ 922.855 Certification of blasters.

Part 855 of this chapter, Certification of Blasters, shall apply to any person who conducts coal exploration or surface coal mining and reclamation operations.

PART 933—NORTH CAROLINA

75. The authority citation for Part 933 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

75(a). The table of contents to Part 933 is revised to read as follows:

Sec.

933.700 North Carolina Federal program.
933.701 General.
933.707 Exemption for coal extraction incident to government financed highway or other construction.
933.761 Areas designated unsuitable for surface coal mining by Act of Congress.
933.762 Criteria for designating areas as unsuitable for surface coal mining operations.
933.764 Process for designating areas as unsuitable for surface coal mining operations.
933.772 Requirements for coal exploration.
933.773 Requirements for permits and permit processing.
933.774 Revision; renewal; and transfer, assignment, or sale of permit rights.
933.775 Administrative and judicial review of decisions.
933.777 General content requirements for permit applications.
933.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
933.779 Surface mining permit application—minimum requirements for information on environmental resources.
933.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
933.783 Underground mining permit applications—minimum requirements for information on environmental resources.
933.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
933.785 Requirements for permits for special categories of mining.
933.795 Small operator assistance.
933.800 General requirements for bonding of surface coal mining and reclamation operations.
933.815 Performance standards—coal exploration.
933.816 Performance standards—surface mining activities.
933.817 Performance standards—underground mining activities.
933.819 Special performance standards—auger mining.
933.823 Special performance standards—operations on prime farmland.
933.824 Special performance standards—mountaintop removal.
933.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
933.828 Special performance standards—in situ processing.
933.842 Federal inspections.
933.843 Federal enforcement.

Sec.
933.845 Civil penalties.
933.855 Certification of blasters.

76. Paragraph (g) of § 933.700 is revised to read as follows:

§ 933.700 North Carolina Federal program.

* * * * *

(g) The Secretary may grant a limited variance from the performance standards of §§ 933.815 through 933.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§ 933.772 through 933.785 demonstrates in the application that: (1) Such variance is necessary because of the unique nature of North Carolina's terrain, climate, biological, chemical, or other relevant physical conditions; and (2) the proposed alternative will achieve equal or greater environmental protection than does the performance requirement from which the variance is requested.

§ 933.770 [Removed]

77. Section 933.770 is removed.

§ 933.771 [Removed]

78. Section 933.771 is removed.

79. Section 933.772 is added to read as follows:

§ 933.772 Requirements for coal exploration.

(a) Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

80. Section 933.773 is added to read as follows:

§ 933.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 933.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C. 4322, shall be considered in the determination of a complete application. The Office may require specific additional information from the applicant as any environmental review progresses when such specific information is needed. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) The Secretary shall coordinate, to the extent practicable, the issuance of the following permits, leases and/or certificates required by the State of North Carolina: Water discharge permit (NCGS 143-215.1); water use permits in a capacity use area (NCGS 143-215.5); an approval of dam construction (NCGS 143-215.108); an air pollution control permit (NCGS 143-215.26, Title 15, North Carolina Administrative Code, Subchapter 2K); air and water quality reporting systems (NCGS 143-215.63—143-215.69); a geophysical exploration permit (Title 15, North Carolina Administrative Code, Subchapter 5C); a development permit for operations in an area of environmental concern designated pursuant to the Coastal Area Management Act (NCGS 113A-100—113A-128); a dredging or filling permit issued by the Department of Natural Resources and Community Development (NCGS 113-229); a permit for dumping of toxic substances (NCGS 14-284.2); compliance with any applicable land use regulations adopted in a soil conservation district (NCGS 139-9); and compliance with any county ordinance regarding explosives (NCGS 153A-128).

(e) No person shall be granted a permit to conduct exploration which results in the removal of more than 250 tons of coal or shall conduct surface coal mining unless that person has acquired all required permits, leases, and/or certificates listed in paragraph (d) of this section.

(f) The Secretary shall provide to the North Carolina Department of Natural Resources and Community Development a copy of each decision to grant or deny a permit application.

81. Section 933.774 is added to read as follows:

§ 933.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, Revision, Renewal; and Transfer, Assignment, or Sale of Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSM.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of § 773.13, 773.19(b)(1) and (3), and 778.21 and of Part 775.

(2) OSM shall consider the following guidelines in determining the scale or extent of the proposed permit revision and in determining whether the revision is significant: (i) Possible adverse impacts to reclamation as specified in the approved plan; (ii) the environmental effects likely to result from the proposed revision including possible changes in air or water quality; (iii) the public interest in the operation, or likely interest in the proposed revision; (iv) possible adverse impacts

from the proposed revision on fish or wildlife, endangered species, bald or golden eagles, and cultural resources or historic sites; (v) possible adverse impacts, including noise, to scenic and aesthetic resources; (vi) any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining; (vii) changes in production or recoverability of the coal resource; and (viii) any change that would result in an alteration in the post mining land use.

(3) OSM shall make every effort to act on an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by Section 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

82. Section 933.775 is added to read as follows:

§ 933.775 Administrative and judicial review of decisions.

Part 775 of this chapter, Administrative and Judicial Review of Decisions, shall apply to all decisions on permits.

§ 933.776 [Removed]

83. Section 933.776 is removed.

84. Section 933.777 is added to read as follows:

§ 933.777 General content requirements for permit applications.

Part 777 of this chapter, General Content Requirements for Permit Applications, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

85. Section 933.778 is revised to read as follows:

§ 933.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

§ 933.782 [Removed]

86. Section 933.782 is removed.

§ 933.786 [Removed]

87. Section 933.786 is removed.

§ 933.787 [Removed]

88. Section 933.787 is removed.

§ 933.788 [Removed]

89. Section 933.788 is removed.

§ 933.826 [Removed]

90. Section 933.826 is removed.

§ 933.850 [Removed]

91. Section 933.850 is removed.

92. Section 933.855 is added to read as follows:

§ 933.855 Certification of blasters.

Part 855 of this chapter, Certification of Blasters, shall apply to any person who conducts coal exploration or surface coal mining and reclamation operations.

PART 937—OREGON

93. The authority citation for Part 937 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

93(a). The table of contents to Part 937 is revised to read as follows:

Sec.
937.700 Oregon Federal program.
937.701 General.
937.707 Exemption for coal extraction incident to government-financed highway or other construction.
937.761 Areas designated unsuitable for surface coal mining by Act of Congress.
937.762 Criteria for designating areas as unsuitable for surface coal mining operations.
937.764 Process for designating areas as unsuitable for surface coal mining operations.
937.772 Requirements for coal exploration.
937.773 Requirements for permits and permit processing.
937.774 Revision; renewal; and transfer, assignment, or sale of permit rights.
937.775 Administrative and judicial review of decisions.
937.777 General content requirements for permit applications.
937.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
937.779 Surface mining permit applications—minimum requirements for information on environmental resources.
937.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
Sec.
937.783 Underground mining permit applications—minimum requirements for information on environmental resources.
937.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
937.785 Requirements for permits for special categories of mining.
937.795 Small operator assistance.
937.800 General requirements for bonding of surface coal mining and reclamation operations.
937.815 Performance standards—coal exploration.
937.816 Performance standards—surface mining activities.
937.817 Performance standards—underground mining activities.
937.819 Special performance standards—auger mining.
937.823 Sepcial performance standards—operations on prime farmland.
937.824 Special performance standards—mountaintop removal.
937.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
937.828 Special performance standards—in situ processing.
937.842 Federal inspections.
937.843 Federal enforcement.
937.845 Civil penalties.
937.855 Certification of blasters.

94. The title of Section 937.700 is revised to read as follows:

§ 937.700 Oregon Federal program.

§ 937.770 [Removed]

95. Section 937.770 is removed.

§ 937.771 [Removed]

96. Section 937.771 is removed.

97. Section 937.772 is added to read as follows:

§ 937.772 Requirements for coal exploration.

(a) Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt of such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) Where coal exploration is to occur on State lands or the minerals to be explored and owned by the State, a mineral lease issued by the Oregon Division of Lands authorizing the coal

exploration is required to be filed with the permit application.

98. Section 937.773 is added to read as follows:

§ 973.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 937.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C. 4322, shall be considered in the determination of a complete application. The Office may require specific additional information from the applicant as any environmental review progresses when such specific information is needed. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) Where applicable, no person shall conduct surface coal exploration operations which result in the removal of more than 250 tons in one location, or surface coal mining operations without permits issued pursuant to leases and/or certificates required by the State of Oregon, including compliance with Oregon's Statewide Planning Goals (ORS 197.180) and any relevant County Comprehensive Land Use Plans (ORS 197.005–ORS 197.775); license from the Division of State Lands where mines or exploration are on State lands (ORS 273.005–273.815); Solid Waste Disposal Permits, Hazardous Waste Transportation and Disposal Permits, Industrial Waste Disposal Permits issued by the Department of Environmental Quality (ORS 459.005–ORS 459.850); leases issued by the county where county designated forest lands are involved (ORS 275.340); noise restrictions enforced by the Department of Environmental Quality (ORS 467.010–467.990); Air Contaminant Discharge Permits (ORS 468.005–ORS 468.997), Water Pollution Control Facilities Permits, Waste Discharge Permits (ORS 468.900–ORS 468.997), Energy Facility Site Certificates (ORS 469.300–ORS 469.570, ORS 469.990, ORS 469.992) issued by the Energy Facilities Siting Council; Department of Fish and Wildlife issues permits for dam use (ORS 509.600), for use of explosives used to construct dams or similar structures (ORS 509.140); the State Fire Marshall issues Certificates of Possession for persons having or using explosives (ORS 480.210); the Division of State Lands issues licenses for use of dredging machines (ORS 517.611–ORS 517.700); the Department of Water Resources issues permits with respect to the use, appropriation or diversion of State waters (ORS 537.130, ORS 537.135) and surface waters (ORS 537.135, ORS 537.140 and ORS 537.800), and permits relative to the design, construction and maintenance of dams, dikes or other hydraulic structures or works (ORS 540.350, ORS 540.400); matter may be removed from the beds and banks of State waters and fill may be deposited in State waters once a permit is obtained from the Division of State Lands (ORS 541.605–ORS 541.990).

99. Section 937.774 is added to read as follows:

§ 937.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSM.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b) (1) and (3), and 778.21 and of Part 775.

(2) OSM shall consider the following guidelines in determining the scale or extent of the proposed permit revision and in determining whether the revision is significant: (i) Possible adverse impacts to reclamation as specified in the approved plan; (ii) the environmental effects likely to result from the proposed revision including possible changes in air or water quality; (iii) the public interest in the operation, or likely interest in the proposed revision; (iv) possible adverse impacts from the proposed revision on fish or wildlife, endangered species, bald or golden eagles, and cultural resources or historic sites; (v) possible adverse impacts, including noise, to scenic and aesthetic resources; (vi) any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining; (vii) changes in production or recoverability of the coal resource; and (viii) any change that would result in an alteration in the post mining land use.

(3) OSM shall make every effort to act on an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of

the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

100. Section 937.775 is added to read as follows:

§ 937.775 Administrative and judicial review of decisions.

Part 775 of this chapter, Administrative and Judicial Review of Decisions, shall apply to all decisions on permits.

§ 937.776 [Removed]

101. Section 937.776 is removed.

102. Section 937.777 is added to read as follows:

§ 937.777 General content requirements for permit applications.

Part 777 of this chapter, General Content Requirements for Permit Applications, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

103. Section 937.778 is revised to read as follows:

§ 937.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

§ 937.782 [Removed]

104. Section 937.782 is removed.

§ 937.786 [Removed]

105. Section 937.786 is removed.

§ 937.787 [Removed]

106. Section 937.787 is removed.

§ 937.788 [Removed]

107. Section 937.788 is removed.

§ 937.818 [Removed]

108. Section 937.818 is removed.

§ 937.826 [Removed]

109. Section 937.826 is removed.

110. Section 937.855 is added to read as follows:

§ 937.855 Certification of blasters.

Part 855 of this chapter, Certification of Blasters, shall apply to any person who conducts coal exploration or surface coal mining and reclamation operations.

PART 939—RHODE ISLAND

111. The authority citation for Part 939 is revised to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*

111(a). The table of contents to Part 939 is revised to read as follows:

Sec.
939.700 Rhode Island Federal program.
939.701 General.
939.707 Exemption for coal extraction incident to government-financed highway or other construction.
939.761 Areas designated unsuitable for surface coal mining by Act of Congress.
939.762 Criteria for designating areas as unsuitable for surface coal mining operations.
939.764 Process for designating areas as unsuitable for surface coal mining operations.
939.772 Requirements for coal exploration.
939.773 Requirements for permits and permit processing.
939.774 Revision; renewal; and transfer, assignment, or sale of permit rights.
939.775 Administrative and judicial review of decisions.
939.777 General content requirements for permit applications.
939.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
939.779 Surface mining permit applications—minimum requirements for information on environmental resources.
939.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
939.783 Underground mining permit applications—minimum requirements for information on environmental resources.
939.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
939.785 Requirements for permits for special categories of mining.
939.795 Small operator assistance.
939.800 General requirements for bonding of surface coal mining and reclamation operations.
939.815 Performance standards—coal exploration.
939.816 Performance standards—surface mining activities.
939.817 Performance standards—underground mining activities.
939.819 Special performance standards—auger mining.
939.823 Special performance standards—operations on prime farmland.
939.824 Special performance standards—mountaintop removal.
939.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
939.828 Special performance standards—in situ processing.
939.842 Federal inspections.
939.843 Federal enforcement.
939.845 Civil penalties.

Sec.
939.855 Certification of blasters.

§ 939.770 [Removed]

112. Section 939.770 is removed.

§ 939.771 [Removed]

113. Section 939.771 is removed.

114. Section 939.772 is added to read as follows:

§ 939.772 Requirements for coal exploration.

(a) Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting for the reasons and the additional time that is needed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, any person who intends to conduct coal exploration shall, prior to conducting the exploration, file with the regulatory authority a written notice of intention to explore including:

(1) The name, address, and telephone number of the person seeking to explore;

(2) The name, address, and telephone number of the representative who will be present at and responsible for conducting the exploration activities;

(3) A precise description and map, at a scale of 1:24,000 or larger, of the exploration area;

(4) A statement of the period of intended exploration;

(5) If the surface is owned by a person other than the person who intends to explore, a description of the basis upon which the person will explore claims the right to enter such area for the purpose of conducting exploration and reclamation; and

(6) A description of the practices proposed to be followed to protect the environment from adverse impacts as a result of the exploration activities.

(d) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting for the reasons and the additional time that is needed.

115. Section 939.773 is added to read as follows:

§ 939.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 939.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C. 4322, shall be considered in the determination of a complete application. The Office may require specific additional information from the applicant as any environmental review progresses when such specific information is needed. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) No person shall conduct coal exploration which results in the removal of more than 250 tons of coal nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR Part 773 and permits issued pursuant to State law, including: the Wetlands Protection Act (R.I. General Laws Section 2–1–22); Chapter 20 of the Waters and Navigation Act (petitions for ditches and drains) (R.I. General Laws Section 46–20–1 *et seq.*); the Coastal Resources Management Council Act of 1971 (R.I. General Laws Section 46–23–6); the Rhode Island Clean Air Act (R.I. General Laws Section 23–23–15); the Rhode Island Hazardous Waste Management Act of 1978 (R.I. General Laws Section 23–19.1–11 *et seq.*); the Rhode Island Act for Inspection of Dams and Reservoirs (R.I. General Laws Section 46–19–1 *et seq.*) and Chapter 23–28.28 of Rhode Island's Health and Safety Code (R.I. General Laws Section 23–28.28–1, *et seq.*, permits for blasting), and an order of approval authorizing discharge of sewage into waterways within the State and modification or operation of sewage disposal systems if applicable (R.I. General Laws Sections 46–12–1 to 46–12–37). The permit issued by the Secretary shall incorporate the requirements of the Rhode Island Historical Zoning Act of 1954, as amended (R.I. General Laws Section 45–24.1–1 *et seq.*) and the Rhode Island Antiquities Act of 1974 (R.I. General Laws Section 42–45.1–1 *et seq.*).

(e) The Secretary shall coordinate review and issuance of a coal exploration or surface coal mining permit with the review and issuance of other Federal and State permits listed in this Section and 30 CFR Part 773.

116. Section 939.774 is added to read as follows:

§ 939.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part of this chapter, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSM.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b) (1) and (3), and 778.21 and of Part 775.

(2) OSM shall consider the following guidelines in determining the scale or extent of the proposed permit revision and in determining whether the revision is significant: (i) Possible adverse impacts to reclamation as specified in the approved plan; (ii) the environmental effects likely to result from the proposed revision including possible changes in air or water quality; (iii) the public interest in the operation, or likely interest in the proposed revision; (iv) possible adverse impacts from the proposed revision on fish or wildlife, endangered species, bald or golden eagles, and cultural resources or historic sites; (v) possible adverse impacts, including noise, to scenic and aesthetic resources; (vi) any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining; (vii) changes in production or recoverability of the coal resource; and (viii) any change that would result in an alteration in the post mining land use.

(3) OSM shall make every effort to act on an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

117. Section 939.775 is added to read as follows:

§ 939.775 Administrative and judicial review of decisions.

Part 775 of this chapter, Administrative and Judical Review of Decisions, shall apply to all decisions on permits.

§ 939.776 [Removed]

118. Section 939.776 is removed.

119. Section 939.777 is added to read as follows:

§ 939.777 General content requirements for permit applications.

Part 777 of this chapter, General Content Requirements for Permit Applications, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

120. Section 939.778 is revised to read as follows:

§ 939.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

§ 939.782 [Removed]

121. Section 939.782 is removed.

§ 939.786 [Removed]

122. Section 939.786 is removed.

§ 939.787 [Removed]

123. Section 939.787 is removed.

§ 939.788 [Removed]

124. Section 939.788 is removed.

§ 939.826 [Removed]

125. Section 939.826 is removed.

§ 939.850 [Removed]

126. Section 939.850 is removed.

127. Section 939.855 is added to read as follows:

§ 939.855 Certification of blasters.

Part 855 of this chapter, Certification of Blasters, shall apply to any person who conducts coal exploration or surface coal mining and reclamation operations.

PART 941—SOUTH DAKOTA

128. The authority citation for Part 941 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

128(a). The table of contents to Part 941 is revised to read as follows:

Sec.

941.700 South Dakota Federal program.
941.701 General.
941.707 Exemption for coal extraction incident to government-financed highway or other construction.
941.761 Areas designated unsuitable for surface coal mining by Act of Congress.
941.762 Criteria for designating areas as unsuitable for surface coal mining operations.
941.764 Process for designating areas as unsuitable for surface coal mining operations.
941.772 Requirements for coal exploration.
941.773 Requirements for permits and permit processing.
941.774 Revision; renewal; and transfer, assignment, or sale of permit rights.
941.775 Administrative and judicial review of decisions.
941.777 General content requirements for permit applications.
941.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
941.779 Surface mining permit applications—minimum requirements for information on environmental resources.
941.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
941.783 Underground mining permit applications—minimum requirements for information on environmental resources.
941.784 Underground mining permit applications—minimum requirements for permits for special categories of mining.
941.795 Small operator assistance.
941.800 General requirements for bonding of surface coal mining and reclamation operations.
941.815 Performance standards—coal exploration.
941.816 Performance standards—surface mining activities.
941.817 Performance standards—underground mining activities.
941.822 Special performance standards—operations in alluvial valley floors.
941.823 Special performance standards—operations on prime farmland.
941.824 Special performance standards—mountaintop removal.
941.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
941.828 Special performance standards—in situ processing.
941.842 Federal inspections.
941.843 Federal enforcement.
941.845 Civil penalties.
941.855 Certification of blasters.

129. The title and paragraphs (d) and (g) of § 941.700 are revised to read as follows:

§ 941.700 South Dakota Federal program.

* * * * *

(d) The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

* * * * *

(g) The Secretary may grant a limited variance from the performance standards of § 941.815 through 941.828 of this part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§ 941.772 through 941.785 demonstrates in the application that: (1) Such variance is necessary because of the unique nature of South Dakota's terrain, climate, biological, chemical, or other relevant physical conditions; and (2) the proposed alternative will achieve equal or greater environmental protection than does the performance requirement from which the variance is requested.

§ 941.770 [Removed]

130. Section 941.770 is removed.

§ 941.771 [Removed]

131. Section 941.771 is removed.

132. Section 941.772 is added to read as follows:

§ 941.772 Requirements for coal exploration.

(a) Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting for the reasons and the additional time that is needed.

133. Section 941.773 is added to read as follows:

§ 941.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copies of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating

specifically what information must be supplied and the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 941.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C. 4322, shall be considered in the determination of a complete application. The Office may require specific additional information from the applicant as any environmental review progresses when such specific information is needed. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) No person shall conduct coal exploration which results in the removal of more than 250 tons of coal, nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR Part 773, and permits, leases and certificates required by the State of South Dakota including compliance with: (1) Air pollution control, S. D. Comp. Laws Ann. Chap. 34A–1; (2) water pollution control, S. D. Comp. Laws Ann. Chap. 34A–2; and (3) solid waste disposal, S. D. Comp. Laws Ann. Chap. 34A–6.

(e) No person shall be granted a permit to conduct exploration which results in the removal of more than 250 tons of coal or shall conduct surface coal mining unless that person has acquired all required permits, leases, and certificates listed in paragraph (d) of this section.

134. Section 941.774 is added to read as follows:

§ 941.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSM.

(1) Significant revisions shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b) (1) and (3), and 778.21 and of Part 775.

(2) OSM shall consider the following guidelines in determining the scale or extent of the proposed permit revision and in determining whether the revision is significant: (i) Possible adverse impacts to reclamation as specified in the approved plan; (ii) the environmental effects likely to result from the proposed revision including possible changes in air or water quality; (iii) the public interest in the operation, or likely interest in the proposed revision; (iv) possible adverse impacts from the proposed revision on fish or wildlife, endangered species, bald or golden eagles, and cultural resources or historic sites; (v) possible adverse impacts, including noise, to scenic and aesthetic resources; (vi) any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining; (vii) changes in production or recoverability of the coal resource; and (viii) any change that would result in an alteration in the post mining land use.

(3) OSM shall make every effort to act on an application for permit revision within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

135. Section 941.775 is added to read as follows:

§ 941.775 Administrative and judicial review of decisions.

Part 775 of this chapter, Administrative and Judicial Review of Decisions, shall apply to all decisions on permits.

§ 941.776 [Removed]

136. Section 941.776 is removed.

137. Section 941.777 is added to read as follows:

§ 941.777 General content requirements for permit applications.

Part 777 of this chapter, General Content Requirements for Permit Applications, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

138. Section 941.778 is revised to read as follows:

§ 941.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

§ 941.782 [Removed]

139. Section 941.782 is removed.

§ 941.786 [Removed]

140. Section 941.786 is removed.

§ 941.787 [Removed]

141. Section 941.787 is removed.

§ 941.788 [Removed]

142. Section 941.788 is removed.

§ 941.818 [Removed]

143. Section 941.818 is removed.

§ 941.826 [Removed]

144. Section 941.826 is removed.

145. Section 941.855 is added to read as follows:

§ 941.855 Certification of blasters.

Part 855 of this chapter, Certification of Blasters, shall apply to any person who conducts coal exploration or surface coal mining and reclamation operations.

PART 947—WASHINGTON

146. The authority citation for Part 947 is revised to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

146(a). The table of contents to Part 947 is revised to read as follows:

Sec.
947.700 Washington Federal program.
947.701 General.
947.707 Exemption for coal extraction incident to government-financed highway or other construction.
947.761 Areas designated unsuitable for surface coal mining by Act of Congress.
947.762 Criteria for designating areas as unsuitable for surface coal mining operations.
947.764 Process for designating areas as unsuitable for surface coal mining operations.
947.772 Requirements for coal exploration.
947.773 Requirements for permits and permit processing.
947.774 Revision; renewal; and transfer, assignment, or sale of permit rights.
947.775 Administrative and judicial review of decisions.
947.777 General content requirements for permit applications.
947.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.
947.779 Surface mining permit applications—minimum requirements for information on environmental resources.
947.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.
947.783 Underground mining permit applications—minimum requirements for information on environmental resources..
947.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
947.785 Requirements for permits for special categories of mining.
947.795 Small operator assistance.
947.800 General requirements for bonding of surface coal mining and reclamation operations.
947.815 Performance standards—coal exploration.
947.816 Performance standards—surface mining activities.
947.817 Performance standards—underground mining activities.
947.819 Special performance standards—auger mining.
947.822 Special performance standards—operations in alluvial valley floors.
947.823 Special performance standards—operations on prime farmland.
947.824 Special performance standards—mountaintop removal.
947.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
947.828 Special performance standards—in situ processing.
Sec.
947.842 Federal inspections.
947.843 Federal enforcement.
947.845 Civil penalties.
947.855 Certification of blasters.

147. Paragraph (g) of § 947.700 is revised to read as follows:

§ 947.700 Washington Federal program.

* * * * *

(g) The Secretary may grant a limited variance from the performance standards of §§ 947.815 through 947.828 of this part if the applicant for a coal exploration approval or surface coal mining reclamation permit submitted pursuant to §§ 947.772 through 947.785 of this part demonstrates in the application: (1) That such a variance is necessary because of the nature of the terrain, climate, biological, chemical, or other relevant physical conditions in the area of the mine; and (2) if applicable, that the proposed variance is no less effective than the environmental protection requirements of the regulations in this program and is consistent with the Act.

§ 947.770 [Removed]

148. Section 947.770 is removed.

§ 947.771 [Removed]

149. Section 947.771 is removed.

150. Section 947.772 is added to read as follows:

§ 947.772 Requirements for coal exploration.

(a) Part 772 of this chapter, Requirements for Coal Exploration, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but that more time is necessary to complete such review, setting for the reasons and the additional time that is needed.

151. Section 947.773 is added to read as follows:

§ 947.773 Requirements for permits and permit processing.

(a) Part 773 of this chapter, Requirements for Permits and Permit Processing, shall apply to any person who applies for a permit for surface coal mining and reclamation operations.

(b) In addition to the requirements of Part 773, the following permit application review procedures shall apply:

(1) Any person applying for a permit shall submit five copes of the application to the Office.

(2) The Office shall review an application for administrative completeness and acceptability for further review and shall notify the applicant in writing of the findings. The Office may:

(i) Reject a flagrantly deficient application, notifying the applicant of the findings;

(ii) Request additional information required for completeness stating specifically what information must be supplied and the date by which the information must be submitted; or

(iii) Judge the application administratively complete and acceptable for further review.

(3) Should the applicant not submit the information as required by § 947.773(b)(2)(ii) by the specified date, the Office may reject the application. When the applicant submits the required information by the specified date, the Office shall review it and advise the applicant concerning its acceptability.

(4) When the application is judged administratively complete, the applicant shall be advised by the Office to file the public notice required by § 773.13 of this chapter.

(5) A representative of the Office shall visit the proposed permit area to determine whether the operation and reclamation plans are consistent with actual site conditions. The applicant will be notified in advance of the time of the visit. At the time of the visit, the applicant shall have the locations of the proposed permit boundaries, topsoil storage areas, sediment control structures, roads, and other significant features contained in the application marked by flags.

(6) Adequacy of information to allow the Office to comply with the National Environmental Policy Act, 42 U.S.C. 4322, shall be considered in the determination of a complete application. The Office may require specific additional information from the applicant as any environmental review progresses when such specific information is needed. Failure to submit the additional information by the date(s) requested could result in disapproval of the application.

(c) In addition to the information required by subchapter G of this chapter, the Office may require an applicant to submit supplementary information to ensure compliance with applicable Federal laws and regulations other than the Act.

(d) The Secretary shall coordinate, to the extent practicable, his

responsibilities under the following Federal laws with the relevant Washington State laws to avoid duplication:

Federal Law	Washington Law
(1) Clean Water Act, as amended, 33 U.S.C. 1251, *et seq.*	Water Pollution Control Act, Chapter 90.48 RCW.
(2) Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*	Washington Clean Air Act, Chapter 70.94 RCW.
(3) Resource Conservation and Recovery Act, 42 U.S.C. 3251 *et seq.*	Solid Waste Management, Chapter 70.95 RCW; Hazardous Waste Disposal Act, Chapter 70.105 RCW.
(4) National Historic Preservation Act, RCW, 16 U.S.C. 470 *et seq.*	Indian Graves and Records, Chapter 27.44.
(5) Archeological and Historic Preservation Act, 16 U.S.C. 469a *et seq.*	Archeological Sites and Resources, Chapter 27.53 RCW, Office of Archeology and Historic Preservation, Chapter 43.51A RCW.
(6) National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*	State Environmental Policy Act, Chapter 43.21C RCW.
(7) Coastal Zone Management Act, 16 U.S.C. 1451, 1453–1464	Shoreline Management Act, Chapter 90.58 RCW.
(8) Section 208 of the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*	Water Pollution Control Act, Chapter 90.48 RCW; Washington Forest Practices Act, Chapter 76.09 RCW.
(9) Endangered Species Act, 16 U.S.C. 1531 *et seq.*	Natural Area Preserves Act (Plants), Chapter 79.70 RCW; Department of Game, Chapter 43.17 RCW; Game Commission, Chapter 77.08 RCW.
(10) Fish and Wildlife Coordination Act, 16 U.S.C. 661–667	Water Resources Act of 1971, Chapter 90.54 RCW; Minimum Water Flows and Levels, Chapter 90.22 RCW.
(11) Noise Control Act, 42 U.S.C. 4903	Noise Control Act of 1974, Chapter 70.107 RCW
(12) Bald Eagle Protection Act, 16 U.S.C. 668–668(d)	

(e) The following State permits shall be coordinated by the Secretary to avoid duplication to the extent possible:

(1) Department of Ecology:

Surface Water Rights Permit, RCW 90.03.250
Dam Safety Approval, RCW 90.03.350
Reservoir Permit, RCW 90.03.370
Approval of Change of Place or Purpose of Use (water), RCW 90.03.380
Ground Water Permit, RCW 90.44.050
New Source Construction Approval, RCW 70.94.152
Burning Permit, RCW 70.94.650
Flood Control Zone Permit, RCW 86.16.080
Waste Discharge Permit, RCW 90.48.180
National Pollution Discharge Elimination System (NPDES) Permit, RCW 90.48
Approval of Change of Point of Diversion, RCW 90.03.380
Sewage Facilities Approval, RCW 90.48.110
Water Quality Certification, RCW 90.48.160

(2) Department of Natural Resources:

Burning Permit, RCW 76.04.150 & .170
Dumping Permit, RCW 76.04.242
Operating Permit for Machinery, RCW 76.04.275
Cutting Permit, RCW 76.08.030
Forest Practices, RCW 76.09.060
Right of Way Clearing, RCW 76.04.310
Drilling Permit, RCW 78.52.120

(3) Regional Air Pollution Control Agencies:

New Source Construction Approval, RCW 70.94.152
Burning Permit, RCW 70.94.650

(4) Department of Fisheries:

Hydraulic Permit, RCW 75.20

(5) Department of Game:

Hydraulic Permit, RCW 75.20.100

(6) Department of Social Health Services:

Public Sewage, WAC 248.92
Public Water Supply, WAC 248.54

(7) Department of Labor and Industries:

Explosive license, RCW 70.74.135
Blaster's license, WAC 296.52.040
Purchaser's license, WAC 296.52.220
Storage Magazine license, WAC 296.52.170

(8) Cities and Counties:

New Source Construction Approval, RCW 70.94.152
Burning Permit, RCW 70.94.650
Shoreline Substantial Development Permit, RCW 90.58.140
Zoning and Building Permits, Local Ordinances

(f) Where applicable, no person shall conduct coal exploration operations which result in the removal of more than 250 tons in one location or surface coal mining and reclamation operations without first obtaining permits required by the State of Washington.

(g) The Secretary shall provide a copy of the decision to grant or deny a permit application to the Washington Department of Natural Resources, the Department of Ecology and to the County Department of Planning, if any, in which the operatic n is located.

152. Section 947.774 is added to read as follows:

§ 947.774 Revision; renewal; and transfer, assignment, or sale of permit rights.

(a) Part 774 of this chapter, Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights, shall apply to any such actions involving surface coal mining and reclamation operations permits.

(b) Any revision to the approved permit will be subject to review and approval by OSM.

(1) Significant revision shall be processed as if they are new applications in accordance with the public notice and hearing provisions of §§ 773.13, 773.19(b) (1) and (3), and 778.21 and of Part 775.

(2) OSM shall consider the following guidelines in determining the scale or extent of the proposed permit revision and in determining whether the revision is significant: (i) Possible adverse impacts to reclamation as specified in the approved plan; (ii) the environmental effects likely to result from the proposed revision including possible changes in air or water quality; (iii) the public interest in the operation, or likely interest in the proposed revision; (iv) possible adverse impacts from the proposed revision on fish or wildlife, endangered species, bald or golden eagles, and cultural resources or historic sites; (v) possible adverse impacts, including noise, to scenic and aesthetic resources; (vi) any change which would adversely affect the level of protection afforded any land, facility or place designated unsuitable for mining; (vii) changes in production or recoverability of the coal resource; and (viii) any change that would result in an alteration in the post mining land use.

(3) OSM shall make every effort to act on an application for permit revision within 60 days or receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

(c) In addition to the requirements of Part 774 of this chapter, any person having an interest which is or may be adversely affected by a decision on the transfer, assignment, or sale of permit rights, including an official of any Federal, State, or local government agency, may submit written comments on the application to the Office within thirty days of either the publication of the newspaper advertisement required by § 774.17(b)(2) of this chapter or receipt of an administratively complete application, whichever is later.

153. Section 947.775 is added to read as follows:

§ 947.775 Administrative and judicial review of decisions.

Part 775 of this chapter, Administrative and Judicial Review of Decisions, shall apply to all decisions on permits.

§ 947.776 [Removed]

154. Section 947.776 is removed.

155. Section 947.777 is added to read as follows:

§ 947.777 General content requirements for permit applications.

Part 777 of this chapter, General Content Requirements for Permit Applications, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

156. Section 947.778 is revised to read as follows:

§ 947.778 Permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 778 of this chapter, Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information, shall apply to any person who applies for a permit to conduct surface coal mining and reclamation operations.

§ 947.782 [Removed]

157. Section 947.782 is removed.

§ 947.786 [Removed]

158. Section 947.786 is removed.

§ 947.787 [Removed]

159. Section 947.787 is removed.

§ 947.788 [Removed]

160. Section 947.788 is removed.

§ 947.818 [Removed]

161. Section 947.818 is removed.

§ 947.826 [Removed]

162. Section 947.826 is removed.

§ 947.850 [Removed]

163. Section 947.850 is removed.

164. Section 947.855 is added to read as follows:

§ 947.855 Certification of blasters.

Part 855 of this chapter, Certification of Blasters, shall apply to any person who conducts coal exploration or surface coal mining and reclamation operations.

[FR Doc. 85-18382 Filed 8-2-85; 8:45 am]
BILLING CODE 4310-05-M

federal register

Monday
August 5, 1985

Part III

Office of Management and Budget

Budget Deferrals

OFFICE OF MANAGEMENT AND BUDGET

Budget Deferrals

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report one new deferral of budget authority for 1985 totaling $16,004,810. The deferral affects an account in the United States Information Agency.

The datails of this deferral are contained in the attached report.

Ronald Reagan

The White House,

July 30, 1985.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL #	ITEM	BUDGET AUTHORITY
	Other Independent Agencies	
	U.S. Information Agency	
D85-75	Acquisition and construction of radio facilities	16,005
	Total, deferrals	16,005

SUMMARY OF SPECIAL MESSAGES
FOR FY 1985
(in thousands of dollars)

	RESCISSIONS	DEFERRALS
Eleventh special message:		
New items	---	16,005
Revisions to previous special messages	---	---
Effects of eleventh special message	---	16,005
Amounts from previous special messages that are changed by this message (changes noted above)	---	---
Subtotal, rescissions and deferrals	---	16,005
Amounts from previous special messages that are not changed by this message	1,843,315	15,323,292 1/
Total amount proposed to date in all special messages	1,843,315	15,339,297

1/ This amount includes $170 million transmitted by the Comptroller General on June 24, 1985, for the General Services Administration.

Deferral No: D85-75

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: U.S. Information Agency	New budget authority..... $ 85,000,000 (P.L. 98-411)
Bureau:	Other budgetary resources 88,663,342
Appropriation title and symbol:	Total budgetary resources 173,663,342
Acquisition and construction of radio facilities 1/ 67X0204	Amount to be deferred: Part of year $___; Entire year 16,004,810
OMB identification code: 67-0204-0-1-154	Legal authority (in addition to sec. 1013): [X] Antideficiency Act [ ] Other
Grant program: [ ] Yes [X] No	
Type of account or fund: [ ] Annual; [ ] Multiple-year (expiration date); [X] No-Year	Type of budget authority: [X] Appropriation; [ ] Contract authority; [ ] Other

Justification: The United States Information Agency (USIA) is authorized by the United States Information and Educational Exchange Act of 1948, as amended (22 U.S.C. 1431, et. seq.), the Mutual Educational and Cultural Exchange Act of 1961 (22 U.S.C. 2451, et. seq.), Executive Order 11034 of June 25, 1962, as amended, and Reorganization Plan No. 2 of 1977 to carry out international communication, cultural, and education exchange programs. The Appropriations Act for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1985 (P.L. 98-411, approved August 30, 1984), appropriated $85,000,000 to remain available until expended for the "Acquisition and construction of radio facilities" account, primarily to enhance the Voice of America's world-wide broadcasting system. It is estimated that $16,004,810 will not be obligated during 1985. These funds will be utilized in succeeding years for major construction projects included in the modernization plan. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in 1984 (D84-36).

[FR Doc. 85-18532 Filed 8-2-85; 8:45 am]

BILLING CODE 3110-01-C

federal register

Monday
August 5, 1985

Part IV

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Appendix B: Performance Specification 4 for Continuous Monitoring of Carbon Monoxide Emission; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2855-1]

Standards of Performance for New Stationary Sources; Appendix B: Performance Specification 4 for Continuous Monitoring of Carbon Monoxide Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The purpose of this action is to promulgate "Performance Specification 4—Specifications and Test Procedures for Carbon Monoxide Continuous Emission Monitoring Systems in Stationary Sources," to be added to Appendix B of 40 CFR Part 60. This specification was proposed in the **Federal Register** on February 10, 1984 (49 FR 5326). The intended effect is to require applicable sources in oil refineries as specified in Subpart J of 40 CFR Part 60 to install and operate continuous emission monitoring systems (CEMS) that meet the prescribed performance specification (PS) within 1 year of the promulgation date. An exemption to this monitoring requirement will be allowed for sources whose normal carbon monoxide (CO) emissions can be shown to be less than 10 percent of the applicable emission standard.

EFFECTIVE DATE: August 5, 1985.

Under section 307(b)(1) of the Clean Air Act, judicial review of the action taken by this notice is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia within 60 days of today's publication of this rule. Under section 307(b)(2) of the Clean Air Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

ADDRESSES: *Docket.* A docket, number A-79-03, containing information considered by EPA in development of this rulemaking, is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at EPA's Central Docket Section (LE-131), West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger T. Shigehara, Emission Measurement Branch, Emission Standards and Engineering Division (MD-19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-2237.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Performance Specification 4 will be used to evaluate the acceptability of CO CEMS at oil refineries. It contains installation specifications, testing and data reduction procedures, and performance limits for monitor calibration drift and relative accuracy (RA). Most facilities, however, will qualify for a monitoring exemption and will not have to install monitors. This exemption will be allowed when normal CO emission levels can be shown to be less than 10 percent of the emission standard.

This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change the emission standard or make it more stringent. Rather, this rulemaking will bring into effect the continuous monitoring requirements to which the affected facilities are already subject.

II. Public Participation

Performance Specification 4 was proposed and published in the **Federal Register** on February 10, 1984 (49 FR 5326). The opportunity to request a public hearing was presented to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed test methods, but no person desired to make an oral presentation. The public comment period was from February 10, 1984, to April 25, 1984. Four comment letters were received concerning issues relative to the proposed specification. The comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made.

III. Significant Comments and Changes to the Proposed Rulemaking

Four comment letters were received on the proposed PS. The major comments and responses are summarized in this preamble. Some of the comment letters contained multiple comments. The significant comments and subsequent changes to the proposed specification are listed here.

1. One commenter thought the proposed PS lacked sufficient test requirements to allow a complete evaluation of the acceptability of CEMS. The commenter was disturbed that RA may be conducted over a very limited range of operating conditions and emission rates, no response time is specified, and the calibration drift (CD) test does not check accuracy and linearity over the entire instrument range.

The specifications are not designed for long-term CEMS evaluation nor for continual compliance but to provide the initial check of the instrument's capabilities at the time of installation. The EPA is currently investigating quality assurance procedures to determine whether CEMS produce acceptable data on a day-to-day basis and whether continual compliance will be necessary. At the present time, the Agency feels that CEMS data accuracy and representativeness can be demonstrated sufficiently by RA and CD tests. A more in-depth evaluation of the CEMS at the discretion of the operator is encouraged, but this additional testing need not be mandated since the overall quality of monitor data can be determined by the RA and CD tests.

2. Two commenters, whose facilities employ high efficiency catalyst regenerators, sought relief from the continuous monitoring requirements because their CO emission levels are typically less than 10 percent of the emission standard. To these facilities, economic advantage and normal operation of the regenerators depend upon maintaining low levels of CO emissions. The requirement to install CO monitors where emission levels border on the detection limits of many instruments was thought to create a burdensome and unjustifiable expense.

In 1982, one of the commenters petitioned the EPA for a waiver of the monitoring requirements. The Agency responded that a decision would be made during the 4-year review of the petroleum refineries regulation scheduled for the 1984 fiscal year. The commenter thought a waiver privilege similar to that offered fossil fuel-fired steam generators under 40 CFR 60.45(b)(3) was reasonable. This regulation waives the requirement for a nitrogen oxide (NO_x) CEMS when emissions can be shown to be less than 70 percent of the standard.

The other commenter thought high efficiency regenerators should be exempted from the CO monitoring requirement in favor of a temperature monitoring requirement immediately downstream of the regenerator cyclones. It was felt that this would adequately satisfy the CO emission monitoring and be more economical and reliable.

The Agency considers these waiver requests for high efficiency regenerators to be reasonable and feels an exemption, based on emissions below a percentage of the standard, is the best

approach. Since these regenerators typically emit CO at levels less than 10 percent of the standard, a waiver clause exempting sources from the CO monitoring requirement, if the average CO emissions can be shown to be less than 0.005 percent over a 30-day period, is being added to § 60.105(a)(2).

3. Another commenter was opposed to CO CEMS because they were thought to be unreliable, costly to operate and maintain, require sophisticated sample conditioning and delivery systems, and require the constant attention of trained personnel. An EPA field study was cited to show that carbon dioxide (CO_2), NO_x, and sulfur oxides interfere with some analyzers and special precautions have to be taken to eliminate these interferences. The commenter recommended delaying promulgation of PS 4 until after sufficient trial on-line operating experience has been obtained in using CO CEMS at petroleum refineries. Until that time, the commenter recommended Draeger tubes or Orsat analysis as sufficient substitutes.

The results to the cited EPA field study showed that reliable CO monitors with good drift control are available for use at petroleum refineries. While two of the four evaluated CEMS developed technical problems and could not be fully tested, the remaining two operated with minimal malfunctions over an 11-month period. Of the type successfully tested, CO_2 is the only likely interference, and its effect is small and correctable. There is no need to delay the promulgation of PS 4 in light of this favorable long-term evaluation of CO CEMS.

IV. Administrative

The docket is an organized and complete file of the information considered by EPA in the development of this rulemaking. The docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify readily and locate documents so that they can intelligently and effectively participate in the rulemaking process. Along with the statement of basis and purposes of the proposed and promulgated rule and EPA responses to significant comments, the contents of the docket will serve as the record in case of judicial review [Section 307(d)(7)(A)].

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This regulation is not major because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

An economic impact analysis performed for sulfur dioxide monitoring at the affected fluid catalytic cracking units at petroleum refineries has shown an insignificant impact on small businesses. The impact of CO monitoring is expected to be the same. Therefore, pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant economic impact on small entities.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB and any written EPA responses are available in the docket.

This rulemaking is issued under the authority of sections 111, 114, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7414, and 7601(a)).

List of subjects in 40 CFR Part 60

Air pollution control, Reporting and recordkeeping requirements, Incorporation by reference, Intergovernmental relations, Petroleum.

Dated: June 25, 1985.

Lee M. Thomas,
Administrator.

PART 60—[AMENDED]

40 CFR Part 60 is amended as follows:

1. The Authority for 40 CFR Part 60 continues to read as follows:

Authority: Secs. 111, 114, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7414, 7601(a)).

§ 60.105 [Amended]

2. Section 60.105 is amended by adding the following sentence to paragraph (a)(2): (a) * * *

(2) * * * Installation of carbon monoxide (CO) continuous monitoring systems is not required if the owner or operator files a written request for exemption to the Administrator and demonstrates, by the exemption performance test described below, that the average CO emissions are less than 10 percent of the applicable standard listed in § 60.103. The exemption performance test shall consist of continuously monitoring CO emissions for 30 days using an instrument that meets the requirements of Performance Specification 4 of Appendix B, except the span value shall be 100 ppm instead of 1000 ppm, and if required, the relative accuracy limit shall be 10 percent or 5 ppm, whichever is greater.

* * * * *

Appendix B—Performance Specifications

3. By adding Performance Specification 4 to Appendix B as follows:

Performance Specification 4—Specifications and Test Procedures for Carbon Monoxide Continuous Emission Monitoring Systems in Stationary Sources

1. Applicability and Principle

1.1 Applicability. This specification is to be used for evaluating the acceptability of carbon monoxide (CO) continuous emission monitoring systems (CEMS) at the time of or soon after installation and whenever specified in an applicable subpart of the regulations.

This specification is not designed to evaluate the installed CEMS performance over an extended period of time nor does it identify specific calibration techniques and other auxiliary procedures to assess CEMS performance. The source owner or operator, however, is responsible to calibrate, maintain, and operate the CEMS. To evaluate CEMS performance, the Administrator may require, under section 114 of the Act, the source owner or operator to conduct CEMS performance evaluations at other times besides the initial test. See Section 60.13(c).

The definitions, installation specifications, test procedures, data reduction procedures for determining calibration drifts (CD) and relative accuracy (RA), and reporting of Performance Specification 2 (PS 2), sections 2, 3, 5, 6, 8, and 9 apply to this specification.

1.2 Principle. Reference method (RM), CD, and RA tests are conducted to determine that the CEMS conforms to the specification.

2. Performance and Equipment Specifications

2.1 Instrument Zero and Span. This specification is the same as Section 4.1 of PS 2.

2.2 Calibration Drift. The CEMS calibration must not drift or deviate from the reference value of the calibration gas, gas cell, or optical filter by more than 5 percent of the established span value for 6 out of 7 test days (e.g., the established span value is 1000 ppm for Subpart J affected facilities).

2.3 Relative Accuracy. The RA of the CEMS shall be no greater than 10 percent of the mean value of the RM test data in terms of the units of the emission standard or 5 percent of the applicable standard, whichever is greater.

3. Relative Accuracy Test Procedure

3.1 Sampling Strategy for RM Tests, Correlation of RM and CEMS Data, Number of RM Tests, and Calculations. These are the same as PS 2, Sections 7.1, 7.2, 7.3, and 7.5, respectively.

3.2 Reference Methods. Unless otherwise specified in an applicable subpart of the regulation, Method 10 is the RM for this PS. A test method that does not use a nondispersive

infrared analyzer (NDIR) is being developed and evaluated to later serve as the RM for those CEMS utilizing an NDIR. In the meantime, NDIR CEMS meeting the specifications of Method 10 are exempted from the RA tests, but not the CD test.

4. Bibliography

4.1 Ferguson, B.B., R.E. Lester, and W.J. Mitchell. Field Evaluation of Carbon Monoxide and Hydrogen Sulfide Continuous Emission Monitors at an Oil Refinery. U.S. Environmental Protection Agency. Research Triangle Park, N.C. Publication No. EPA-600/4-82-054. August 1982. 100 p.

4.2 Repp, M. Evaluation of Continuous Monitors for Carbon Monoxide in Stationary Sources. U.S. Environmental Protection Agency. Research Triangle Park, N.C. Publication No. EPA-600/2-77-063. March 1977/ 155 p.

4.3 Smith, F., D.E. Wagoner, and R.P. Donovan. Guidelines for Development of a Quality Assurance Program: Volume VIII—Determination of CO Emissions from Stationary Sources by NDIR Spectrometry. U.S. Environmental Protection Agency. Research Triangle Park, N.C. Publication No. EPA-650/4-74-005-h. February 1975. 96 p.

[FR Doc. 85-18505 filed 8-2-85; 8:45 am]

BILLING CODE 6560-50-M

Reader Aids

Federal Register

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Monday August 5, 1985

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

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3 (1984 Compilation and Parts 100 and 101)	7.50	Jan. 1, 1985
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240-End	14.00	Apr. 1, 1985
18 Parts:		
1-149	12.00	Apr. 1, 1985
150-399	19.00	Apr. 1, 1985
400-End	7.00	Apr. 1, 1985
19	21.00	Apr. 1, 1985
20 Parts:		
1-399	8.00	Apr. 1, 1985
400-499	16.00	Apr. 1, 1985
500-End	18.00	Apr. 1, 1985
21 Parts:		
1-99	9.00	Apr. 1, 1985
100-169	11.00	Apr. 1, 1985
170-199	13.00	Apr. 1, 1985
200-299	4.25	Apr. 1, 1985
300-499	20.00	Apr. 1, 1985
500-599	16.00	Apr. 1, 1985
600-799	6.50	Apr. 1, 1985
800-1299	10.00	Apr. 1, 1985
1300-End	5.50	Apr. 1, 1985
22	21.00	Apr. 1, 1985
23	14.00	Apr. 1, 1985
24 Parts:		
0-199	11.00	Apr. 1, 1985
200-499	19.00	Apr. 1, 1985
500-699	6.50	Apr. 1, 1985
700-1699	13.00	Apr. 1, 1985
1700-End	9.00	Apr. 1, 1985
25	18.00	Apr. 1, 1985
26 Parts:		
§§ 1.0-1.169	21.00	Apr. 1, 1985
§§ 1.170-1.300	12.00	Apr. 1, 1985
§§ 1.301-1.400	7.50	Apr. 1, 1985
§§ 1.401-1.500	15.00	Apr. 1, 1985
§§ 1.501-1.640	12.00	[2] Apr. 1, 1984
§§ 1.641-1.850	11.00	Apr. 1, 1985
§§ 1.851-1.1200	22.00	Apr. 1, 1985
§§ 1.1201-End	22.00	Apr. 1, 1985
2-29	15.00	Apr. 1, 1985
30-39	9.50	Apr. 1, 1985
40-299	18.00	Apr. 1, 1985
300-499	11.00	Apr. 1, 1985
500-599	8.00	[1] Apr. 1, 1980
600-End	4.75	Apr. 1, 1985
27 Parts:		
1-199	18.00	Apr. 1, 1985
200-End	13.00	Apr. 1, 1985
28	13.00	July 1, 1984
29 Parts:		
0-99	14.00	July 1, 1984
100-499	6.50	July 1, 1984
500-899	14.00	July 1, 1984
900-1899	7.50	July 1, 1984
1900-1910	15.00	July 1, 1984
1911-1919	5.50	July 1, 1984
1920-End	14.00	July 1, 1984
30 Parts:		
0-199	13.00	July 1, 1984
200-699	5.50	July 1, 1984
700-End	13.00	July 1, 1984
31 Parts:		
0-199	8.00	July 1, 1984
200-End	9.50	July 1, 1984

Title	Price	Revision Date
32 Parts:		
1-39, Vol. I	15.00	July 1, 1984
1-39, Vol. II	19.00	July 1, 1984
1-39, Vol. III	18.00	July 1, 1984
40-189	13.00	July 1, 1984
190-399	13.00	July 1, 1984
400-629	13.00	July 1, 1984
630-699	12.00	July 1, 1984
700-799	13.00	July 1, 1984
800-999	9.50	July 1, 1984
1000-End	6.00	July 1, 1984
33 Parts:		
1-199	14.00	July 1, 1984
200-End	13.00	July 1, 1984
34 Parts:		
1-299	14.00	July 1, 1984
300-399	8.50	July 1, 1984
400-End	14.00	July 1, 1984
35	7.50	July 1, 1984
36 Parts:		
1-199	9.00	July 1, 1984
200-End	12.00	July 1, 1984
37	8.00	July 1, 1984
38 Parts:		
0-17	14.00	July 1, 1984
18-End	9.50	July 1, 1984
39	8.00	July 1, 1984
40 Parts:		
1-51	13.00	July 1, 1984
52	14.00	July 1, 1984
53-80	18.00	July 1, 1984
81-99	14.00	July 1, 1984
100-149	9.50	July 1, 1984
150-189	13.00	July 1, 1984
190-399	13.00	July 1, 1984
400-424	13.00	July 1, 1984
425-End	14.00	July 1, 1984
41 Chapters:		
1, 1-1 to 1-10	13.00	July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)	13.00	July 1, 1984
3-6	14.00	July 1, 1984
7	6.00	July 1, 1984
8	4.50	July 1, 1984
9	13.00	July 1, 1984
10-17	9.50	July 1, 1984
18, Vol. I, Parts 1-5	13.00	July 1, 1984
18, Vol. II, Parts 6-19	13.00	July 1, 1984
18, Vol. III, Parts 20-52	13.00	July 1, 1984
19-100	13.00	July 1, 1984
101	15.00	July 1, 1984
102-End	9.50	July 1, 1984
42 Parts:		
1-60	12.00	Oct. 1, 1984
61-399	8.00	Oct. 1, 1984
400-End	18.00	Oct. 1, 1984
43 Parts:		
1-999	9.50	Oct. 1, 1984
1000-3999	14.00	Oct. 1, 1984
4000-End	8.00	Oct. 1, 1984
44	13.00	Oct. 1, 1984
45 Parts:		
1-199	9.50	Oct. 1, 1984
200-499	6.50	Oct. 1, 1984
500-1199	13.00	Oct. 1, 1984
1200-End	9.50	Oct. 1, 1984
46 Parts:		
1-40	9.50	Oct. 1, 1984
41-69	9.50	Oct. 1, 1984
70-89	6.00	Oct. 1, 1984
90-139	9.00	Oct. 1, 1984
140-155	9.50	Oct. 1, 1984
156-165	10.00	Oct. 1, 1984
166-199	9.00	Oct. 1, 1984
200-499	13.00	Oct. 1, 1984
500-End	7.50	Dec. 31, 1984
47 Parts:		
0-19	13.00	Oct. 1, 1984
20-69	14.00	Oct. 1, 1984
70-79	13.00	Oct. 1, 1984
80-End	14.00	Oct. 1, 1984
48 Chapters:		
1 (Parts 1-51)	13.00	Oct. 1, 1984
1 (Parts 52-99)	13.00	Oct. 1, 1984
2	13.00	Oct. 1, 1984
3-6	12.00	Oct. 1, 1984
7-14	14.00	Oct. 1, 1984
15-End	12.00	Oct. 1, 1984
49 Parts:		
1-99	7.50	Oct. 1, 1984
100-177	14.00	Nov. 1, 1984
178-199	13.00	Nov. 1, 1984
200-399	13.00	Oct. 1, 1984
400-999	13.00	Oct. 1, 1984
1000-1199	13.00	Oct. 1, 1984
1200-1299	13.00	Oct. 1, 1984
1300-End	3.75	Oct. 1, 1984
50 Parts:		
1-199	9.50	Oct. 1, 1984
200-End	14.00	Oct. 1, 1984
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[1] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.